

# **CITY OF NEWPORT BEACH**



## **REQUEST FOR PROPOSAL NEWPORT BEACH LIBRARY LECTURE HALL BUILDING PROJECT DESIGN**

**RFP Due Date: Thursday, July 18, 2019 at 3:00 p.m. (PST) (Hard Copy Responses ONLY)**

**MANDATORY SITE WALK:** *Tuesday, June 19, 2019 at 10:00 a.m. (PST) @ Central Library South Entrance – 1000 Avocado Avenue*

**Project Engineer:**

Peter Tauscher, Senior Civil Engineer  
T: 949.644.3316  
[ptauscher@newportbeachca.gov](mailto:ptauscher@newportbeachca.gov)

**REQUEST FOR PROPOSAL  
PROFESSIONAL ARCHITECTURAL, CONCEPTUAL PLANNING, AND  
ENGINEERING SERVICES FOR:**

**CITY OF NEWPORT BEACH  
NEWPORT BEACH LIBRARY LECTURE HALL BUILDING PROJECT  
(CONTRACT 7444-2)**

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**A. Project Description**

The City of Newport Beach is requesting proposals for preliminary architectural concepts, planning, permitting, and final architectural and engineering design services for a new Library Lecture Hall (LLH) at the Central Library campus. The project scope of work includes conceptualizing and designing an approximately 7,000 SF, 275 seat, library lecture hall; assessing related site work and parking impacts; addressing the required permits for construction (Building, Planning, WQMP); designing site landscaping; maintaining connectivity to existing buildings and setting; and associated appurtenances and other necessary infrastructure per the attached concept exhibits. The anticipated construction cost for this project is expected to be \$7,000,000.

This proposal is for teaming with the City in identifying the features, appearance and cost for a new LLH. The project will be divided into three phases and the selected consultant shall be required to lead a team during each phase. The first phase includes providing four preliminary concept design layouts at the desired location; preparing for and attending two community informational meetings and two council meetings; and developing concepts that are acceptable to the City. The second phase shall be researching, applying and obtaining all necessary entitlements, building/development permits required by the City and State. The third phase will be completing 100 percent contract documents, working with City to bid the project and providing construction support services.

A specific location has been identified, please see attached exhibit illustrating area for placing the LLH building.

Oversight of the LLH design is expected to include coordination with an ad hoc LLH Design Committee (LLHDC) appointed by the Mayor. LLHDC will provide programming and design input for this highly visible location. While the LLH will be owned by the City, funding for LLH is expected to include a significant public element and therefore ensuring thoughtful and attractive design characteristics and use of quality construction materials will be important in attracting project donors.

**B. Scope of Services**

The Consultant shall provide complete design services for the project in accordance with the latest California Building Code (2019), City-approved Standard Specifications

for Public Works Construction (which, as of this date is the 2015 Edition) and the City of Newport Beach Design Criteria, Standard, Standard Special Provisions and Standard Drawings (2004 Edition), including supplements. At a minimum, tasks shall include:

### **Phase 1**

1. Attend pre-design meeting with City staff and LLHDC prior to starting work.
2. Prepare a design schedule showing times of completion and milestones for each task.
3. Include at least 15 meetings of approximately two hours each at the site or at or near City Hall to review design with LLHDC as it progresses to ensure the goals of LLHDC are being achieved.
4. ALTA Site Survey and topographic base map.
5. Geotechnical investigation providing necessary site and design criteria.
6. Prepare four pictorial floor and site plan concepts for the preferred location. The concepts should include:
  - Lecture hall with a 275 seat capacity with possible location for 50 movable seats for overflow seating
  - Ticket booth
  - Lobby to accommodate 200
  - Kitchen: refrigerator, sink, storage
  - Restroom facilities for patrons
  - Green room with restroom facilities
  - Audio-visual control room
  - Unisex/ADA restrooms
  - Exterior hardscape/landscaping to complement existing building and landscape
  - Place LLH so there is minimal loss of parking that may be replaced elsewhere on site
  - Includes features in Architecture Design Guidelines – Exhibit B
7. Attend and present at two evening /or weekend community informational meetings with the public. Prepare PowerPoint presentations explaining the project to the public.
8. Prepare presentations with pictorial exhibits, multiple sets/versions of electronic, full-size color, half-size color, poster-board interior, exterior renderings and make two City Council presentations.
9. Conduct field reviews of existing facilities. This will include, but not limited to, inspecting for preliminary design possibilities; identifying all utility locations; and establishing final design features.
10. Prepare preliminary construction drawings including base map, cross sections needed to visualize the project and complete design; researching and providing recommendations for energy-efficient solutions and their applicable rebates available from the different utility companies; and including construction cost estimates and design of adjacent areas to accommodate the project. All preliminary electrical, mechanical, and structural calculations shall be provided. All drawings shall be transmitted on a CD to the City in AutoCAD 2015 or later in ".dwg" file format. All written documents shall be transmitted to the City, in the City's latest

adopted version of Microsoft Word and Excel. This submittal shall be used for initial permitting considerations - approximately 50 percent design submittal.

11. Employ an acoustical engineering for eliminating exterior sounds and improving interior sound.
12. Work with local utility companies to develop Savings by Design package.

## **Phase 2**

1. Prepare a schedule and pathway to obtain all required permits (Building, Planning, AQMD, WQMP and Irvine Company review).
2. Prepare a preliminary WQMP as part the preliminary design.
3. Providing coordination of document review of all documents with other departments and agencies.
4. Obtain all other required permits or conditional approvals (SCE, Gas Company, etc.).
5. Provide coordination of construction document review.

## **Phase 3**

1. Preparing construction drawings including base map, cross sections, needed to construct the project, specifying energy-efficient solutions and their applicable rebates available from the different utility companies, providing construction cost estimates and design of adjacent areas to accommodate the project. Electrical, mechanical, and structural calculations shall be provided. All drawings shall be transmitted on a CD to the City in AutoCAD 2015 or later in ".dwg" file format. All written documents shall be transmitted to the City, in the City's latest adopted version of Microsoft Word and Excel, and original signed and stamped Mylar plans and specifications upon completion of the project.
2. Preparing complete contract documents using the City's standard template documents, including general and special provisions, quantities, proposals, and engineer's estimate. Construction cost estimates based on recently completed local projects. Drawings shall be signed and sealed by a California licensed architect and/or the licensed professional for their respective disciplines. Design Package submittals:
  - a. 75-percent design review. Consultant shall, as a minimum, submit preliminary title sheet, plan sheets, including details and sections, and preliminary quantities and cost estimates.
  - b. 95-percent design review. Consultant shall, as a minimum, submit final plans, completed specifications, and final quantities and cost estimates. All 75-percent design review comments shall be addressed at this time.
  - c. Final approval review. Consultant shall submit final drawings, specifications, and revised final quantities and cost estimates prepared and sealed by California licensed architect. All 95-percent design review comments shall be addressed at this time.

The City anticipates a period of three weeks for drawing review of each of the 75-percent, 95-percent and final submittals. The City may require a review meeting at the time of each submittal.

3. Attend meetings with Community Development Department to discuss planning, building and life safety comments and conditions for approval.
4. Preparing addenda to the specifications and drawings.
5. Preparing the preliminary audio visual, cabling, FF&E, fire protection design for value engineering.

## **CONSTRUCTION ENGINEERING ASSISTANCE**

When requested by the City, the Consultant shall be available for:

1. Attending pre-bid, pre-construction, construction coordination meetings (assume biweekly meetings).
2. Reviewing and processing shop drawings, Requests for Information, and other submittals.
3. Monitoring construction progress, advising the City with respect to the contractor's general conformance to drawings and specifications, visiting the site, and providing field recommendations.
4. Revising the drawings and/or special provisions.
5. Preparing "as-built" drawings.

## **C. Progress Submittals**

Progress submittals and/or meetings will be required prior to execution of the contract documents. Milestone submittals are:

### **Phase 1**

1. Pictorial and Floor Plan and Site Plan Concepts
2. Project Schedule
3. Site Research
  - a. Existing site and infrastructure
  - b. Project survey
  - c. Geotechnical investigation
4. Programming and Master Planning

### **Phase 2**

1. Develop path for permitting process
2. Approval or conditional approval of all required permits.

### **Phase 3**

1. Provide final bidding contract documents
2. Bidding and construction support services

#### **D. Consultant's Representative**

The consultant shall assign a primary representative and an alternate to perform the services described in the scope of work. Each shall be identified in the proposal. The consultant's representatives shall remain in responsible charge of all duties from contract negotiations through project completion. If the primary representative is unable to continue with the project, then the alternate representative shall become the primary representative upon the City's approval.

#### **E. Additional Consultant Responsibilities**

The consultant shall be responsible for completing the specified services in accordance with the City's standard "Professional Services Agreement". A copy of the standard agreement template is attached. Services specified in this agreement shall be taken directly from the consultant's proposal and "Request for Proposal" and/or the Scope of Services listed herein.

Consultant's contractual relationship will be with the City of Newport Beach and all authorization and/or approvals will be granted by the Project Engineer, the City's representative. While other agencies, Departments, staff, and end users are valued members in the Project, they will have no authority to direct consultant's work at any point or in any manner. In coordinating the sometimes competing interests of all project participants, consultant shall bring such conflicts to the attention of both parties for discussion and resolution and publish a written understanding agreed to by the Engineer. Likewise, end users of the new facility are not authorized to direct or approve consultant's work.

#### **F. COMMUNICATION**

Respondents shall communicate in writing with the Engineer. Respondents are prohibited from communicating with any City representative, employee, official, consultant, staff member, other than the Engineer, the Building Division and Fire Marshal's office. Respondents may ask verbal questions concerning this RFP at the Mandatory Site Walk and the City may elect to answer them verbally or in writing to best serve the quality of the project or interest of the City. However, only questions and answers responded to in an addendum will be a part of this RFP solicitation. **Respondents may submit written questions concerning this RFP to the Engineer until June 27, 2019 at 1:00 p.m. PST.** Questions received after the stated deadline will not be answered. All questions shall be sent by electronic mail. Questions should be addressed to:

**Peter Tauscher, Senior Civil Engineer**  
**Phone: (949) 644-3316**  
**Email: [ptauscher@newportbeachca.gov](mailto:ptauscher@newportbeachca.gov)**

Respondents may find it necessary to contact, communicate, and coordinate discussions and meetings with the City Building Official (or his office) and the Fire Marshal (or his office) (hereinafter referred to as Building and Fire) regarding code interpretation, compliance, background, and procedures etc. Communications with Building and Fire is permitted during the course of the RFP at the discretion of the respondents. Confidentially needs with pertinent design features proposed by the respondents should be communicated directly with Building and Fire. Representatives from Building and Fire will not participate in the evaluation of the Proposals. Respondents are responsible and required to ensure that their proposed designs and concepts can obtain code compliance approvals.

Other than as expressly permitted or required in this RFP, any attempt on the part of any respondents and/or their representative (including team members, directors, officers, employees, agents, accountants, consultants, financial or legal advisors, advocates, subcontractors, parties, suppliers, vendors, agencies, and organizations) to contact any City representative, LLHDC member, employee, official, consultant, staff, other than the Engineer, Building Division and Fire Marshal's office, directly or indirectly, with respect to this RFP, prior to City's award of the Project Agreement, may lead to disqualification of a respondent and/or rejection of their Proposal.

## **G. City Responsibilities**

The City shall provide the following items to assist the consultant in completing services:

1. Existing drawings that are available and applicable to the proposed project.
2. Copying and other related services of the final bid documents.
3. Design criteria and other technical information that are available and applicable to the proposed project.
4. Sample contract documents, if available, from previous projects for reference.

In addition, the City shall:

1. Advertise the project and prepare the bid summary.
2. Print final drawings and specifications.
3. Print and distribute addenda.
4. Award the construction contract.
5. Schedule and conduct a pre-construction meeting.
6. Administer and inspect the construction contract.
7. Prepare final cost accounting.

## **H. Submission of Proposal – Information Requested**

The proposal shall be clear and concise. Boilerplate and generic marketing materials should be excluded from the proposal. The proposal shall include the following:

1. Introduction and understanding of the project including key ideas for successful implementation of this project.

2. The Firm's and Project Manager's experience with at least three similar projects of successful installation in Southern California, including references, with contact person and telephone number. A floor plan and several interior and exterior photographs of projects referred to shall be provided.
3. Identify all subconsultants with qualifications, specific project responsibilities, and anticipated total effort.
4. Identify the project team, including organizational chart and resumes of each team member. The consultant's primary representative shall be a California licensed architect, and shall be readily available for discussion with City staff.
5. Specific responsibilities of each team member, including subconsultants, along with their anticipated total effort in the project, shall be detailed in a matrix of total hours of work for each task versus each job classification on the project.
6. Project schedule, including start and completion dates for each task.
7. Scope of work.
8. Suggestions of additional tasks to improve the project or for reducing costs.
9. A Not-to-Exceed Fee for the services to be provided and current fee schedule for each job classification (design team and subconsultants) that will remain valid for the duration of the project. These items shall be submitted in a separate, sealed envelope. The fee shall be broken down showing hours for each job classification (design team and subconsultants) for each task, fee for each task, and shall include miscellaneous costs such as travel, duplication, clerical support, etc. The City reserves the right to eliminate any task from the scope of work, and reduce the not-to-exceed fee by the cost of the task eliminated.

## **I. SUBMITTAL REQUIREMENTS & SELECTION PROCESS**

1. **SITE WALK:** Consultant must attend a **Mandatory Site Walk on Tuesday, June 19, 2019 at 10:00 a.m. (PST) @ Central Library South Entrance – 1000 Avocado Avenue**
2. **Q & A:** All questions regarding the project shall be submitted to Peter Tauscher no later than **June 27, 2019 at 1:00 p.m. PST.**
3. Consultant shall provide all information requested within the Request for Proposal.

**One (1) unbound, signed original and six (6) complete, bound copies of your proposal shall be submitted to the City no later than 3:00 p.m. on THURSDAY, JULY 18, 2019. Include a single copy of the fee proposal in a separate sealed envelope.** Proposals shall be titled "Newport Beach Library Lecture Hall Building Project Design" and addressed to:

**Peter Tauscher, Senior Civil Engineer**  
Public Works Department  
City of Newport Beach  
100 Civic Center Drive  
Newport Beach, CA 92660



Email address: [ptauscher@newportbeachca.gov](mailto:ptauscher@newportbeachca.gov)  
Tel: (949) 644-3316

4. All proposals become the property of the City. Final disposition will be made according to City of Newport Beach policies, including the right to reject all proposals.
5. Consultant agrees that the proposal and fee shall remain firm for a period of 180 days from RFP due date.
6. Consultant may attach relevant information and documentation not specifically requested.

#### **J. Proposal Evaluation and Selection Procedure**

1. This RFP does not commit the City to pay costs incurred in the preparation of a proposal. Services shall not commence until the Professional Services Agreement is executed, all insurance documents have been approved, and the City issues a Notice to Proceed.
2. All data, documents, and other products used or developed for this project shall be the property of the City. Similarly, all responses to this RFP shall become the property of the City.
3. The City reserves the right to reject any or all of the proposals submitted in response to this RFP.
4. A committee comprised of the LLCDC and City staff will review the proposals. The successful consultant will be selected on the basis of project understanding, previous firm experience, demonstrated design aesthetic and expertise of the project team on similar projects, proposed project schedule, and successful negotiation of fees. The selection process may include an interview.
5. A committee will review the proposals and rank consultants according to their qualifications, appropriateness of scope of work, and compliance with this RFP. An interview with the LLHDC may be necessary. Staff will open the top-ranked consultant's fee envelope, and services and fees will be negotiated if necessary. If agreement as to services and fees is not reached with the top-ranked consultant, staff will dismiss the first firm and negotiate services and fees with the second-ranked consultant, etc. Accordingly, the consultant will be retained based on their qualifications, proposal, successful negotiation of services and fees. If LLHDC and staff have selected a consultant and successfully negotiated the terms of services and fees of the selected consultant, LLHDC shall recommend such consultant to the City Council which shall have the sole authority to enter into an agreement with the preferred consultant.

**EXHIBIT A: Location Map**  
**EXHIBIT B: Architecture Design Guidelines**

**ATTACHMENT A: SAMPLE AGREEMENT**



**NBGiS**  
NEWPORT BEACH



0 100 200  
Feet

**Disclaimer:**  
Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

5/15/2019

## EXHIBIT B: Architecture Design Guidelines

1. Additional non-fixed seating for up to 50 in lobby for overflow.
2. Sloped seating with optimal sightlines/slope as much as possible meeting ADA guidelines. Consider steps as in Mark Taper Auditorium- Central Library, Los Angeles.
3. Side and center aisles for ease of entering & exiting.
4. Minimal loss of parking spaces and determine where replacement parking may be located on the library lot
5. Attractive from four sides
6. Position the LLH partially in/over detention swale, between the library parking lot and Avocado Avenue.
7. Proximity to Bamboo Courtyard for receptions
8. Possible relocation or reconfiguration of pedestrian bridge to Avocado Avenue and addressing the pergola along library front if integral to design, or to improve the flow of pre-function and lobby space
9. Stage large enough to accommodate a piano (with a closet/backstage stow area) and small musical groups
10. Consider a stage that can be lowered to floor level so dance groups can perform
11. Effective use of natural light
12. Both semi shades and blackout shades that can be lowered easily
13. Consider repairs or improvements to Bamboo Courtyard to create a better venue for receptions, for example, consider extending the Bamboo Courtyard out towards Avocado Avenue in line with Lecture Hall to gain additional space for receptions
14. Level of Quality Equivalent to:
  - 2013 Library expansion and
  - City Hall



**{ON-CALL} PROFESSIONAL SERVICES  
AGREEMENT  
WITH \_\_\_\_\_ FOR  
\_\_\_\_\_**

THIS {ON-CALL} PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_ ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and \_\_\_\_\_, a \_\_\_\_\_ ("Consultant"), whose address is \_\_\_\_\_, and is made with reference to the following:

**RECITALS**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to \_\_\_\_\_ ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

**1. TERM**

The term of this Agreement shall commence on the Effective Date, and shall terminate on \_\_\_\_\_, unless terminated earlier as set forth herein.

**2. SERVICES TO BE PERFORMED**

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). City may elect to delete certain Services within the Scope of Services at its sole discretion.

**3. SERVICES TO BE PERFORMED {ON-CALL AGREEMENT}**

3.1 Consultant shall perform the on-call services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). Upon written request from the Project Administrator as defined herein, Consultant shall provide a letter proposal for Services requested by the City (hereinafter referred to as the "Letter Proposal"). The Letter Proposal shall include the following:

3.1.1 A detailed description of the Services to be provided;

3.1.2 The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;

3.1.3 The estimated number of hours and cost to complete the Services; and

### 3.1.4 The time needed to finish the specific project.

3.2 No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Consultant shall diligently perform the duties in the approved Letter Proposal.

#### 4. TIME OF PERFORMANCE

4.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A {and the Letter Proposal}. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A {and the Letter Proposal}, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

4.2 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

4.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

4.4 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by hand-delivery or mail.

## 5. COMPENSATION TO CONSULTANT

5.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the {Letter Proposal and the} Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed \_\_\_\_\_ **Dollars and 00/100** (\_\_\_\_\_), without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

5.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. Consultant's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

5.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement {and the Letter Proposal} or specifically approved in writing in advance by City.

5.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement.

Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B {and the Letter Proposal}.

## **6. PROJECT MANAGER**

6.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated \_\_\_\_\_ to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

6.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6.3 If Consultant is performing inspection services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. The Project Manager's cellular phone number shall be provided to City.

## **7. ADMINISTRATION**

This Agreement will be administered by the \_\_\_\_\_. City's \_\_\_\_\_ or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

## **8. CITY'S RESPONSIBILITIES**

To assist Consultant in the execution of its responsibilities under this Agreement,

City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

## **9. STANDARD OF CARE**

9.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards. Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

9.2 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

## **10. HOLD HARMLESS**

10.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this (collectively, the "Indemnified Parties), from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), and which may arise from or in any manner relate (directly or indirectly) to any breach the negligence, recklessness, or willful misconduct of the terms and conditions of this Agreement, any work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Consultant or its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them.



10.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence, active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and 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 the Consultant.

## **11. INDEPENDENT CONTRACTOR**

11.1 It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11.2 Consultant agrees and acknowledges that no individual performing Services or Work pursuant to this Agreement shall: work full-time for more than six (6) months; work regular part-time service of at least an average of twenty (20) hours per week for one year or longer; work nine hundred sixty (960) hours in any fiscal year; or already be a CalPERS member.

11.3 Consultant must submit to and pass a criminal background investigation by providing a complete set of fingerprints to City prior to commencing or performing Services or Work. Consultant is required to submit any fees for the criminal background investigation according to the City's most current administrative fee schedule or successor document. Fingerprints may be required to be updated every five (5) years.

## **12. COOPERATION**

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

## **13. CITY POLICY**

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

## **14. PROGRESS**

Consultant is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

## **15. INSURANCE**

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

## **16. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS**

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

## **17. SUBCONTRACTING**

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A {and the Letter Proposal}. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

## **18. OWNERSHIP OF DOCUMENTS**

18.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party.

Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

18.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant, and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

18.3 All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

18.4 CADD data delivered to City shall include the professional stamp of the engineer or architect in charge of or responsible for the Work. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by City, or anyone authorized by City, of CADD data; (b) the decline of accuracy or readability of CADD data due to inappropriate storage conditions or duration; or (c) any use by City, or anyone authorized by City, of CADD data for additions to this Project, for the completion of this Project by others, or for any other Project, excepting only such use as is authorized, in writing, by Consultant. By acceptance of CADD data, City agrees to indemnify Consultant for damages and liability resulting from the modification or misuse of such CADD data. All original drawings shall be submitted to City in the version of AutoCAD used by the City in .dwg file format, on a CD, and should comply with the City's digital submission requirements for improvement plans available from the City's Public Works Department. The City will provide Consultant with City title sheets as AutoCAD file(s) in .dwg file format. All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

18.5 All improvement and/or construction plans shall be prepared with indelible waterproof ink or electrostatically plotted on standard twenty-four inch (24") by thirty-six inch (36") Mylar with a minimum thickness of three (3) mils. Consultant shall provide to City 'As-Built' drawings and a copy of digital Computer Aided Design and Drafting ("CADD") and Tagged Image File Format (.tiff) files of all final sheets within ninety (90) days after finalization of the Project. For more detailed requirements, a copy of the City of Newport Beach Standard Design Requirements is available from the City's Public Works Department.

## **19. OPINION OF COST**

Any opinion of the construction cost prepared by Consultant represents the Consultant's judgment as a design professional and is supplied for the general guidance of City. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to Consultant or contractor bids or actual cost to City.

## **20. CONFIDENTIALITY**

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

## **21. INTELLECTUAL PROPERTY INDEMNITY**

Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

## **22. RECORDS**

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

## **23. WITHHOLDINGS**

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

## **24. ERRORS AND OMISSIONS**

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

## **25. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS**

City reserves the right to employ other Consultants in connection with the Project.

## **26. CONFLICTS OF INTEREST**

26.1 Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

26.2 If subject to the Act, Consultant shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

## **27. NOTICES**

27.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

27.2 All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: \_\_\_\_\_

\_\_\_\_\_  
City of Newport Beach  
100 Civic Center Drive  
PO Box 1768  
Newport Beach, CA 92658

27.3 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **28. CLAIMS**

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Consultant's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Consultant in writing as unsettled at the time of its final request for payment. Consultant and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Consultant shall be required to file any claim Consultant may have against City in strict conformance with the Government Claims Act (Government Code

sections 900 *et seq.*).

28.2 To the extent that Consultant's claim is a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, the Parties agree to follow the dispute resolution process set forth therein. Any part of such "Claim" remaining in dispute after completion of the dispute resolution process provided for in Public Contract Code section 9204 or any successor statute thereto shall be subject to the Government Claims Act requirements requiring Consultant to file a claim in strict conformance with the Government Claims Act. To the extent that Contractor/Consultant's claim is not a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, Consultant shall be required to file such claim with the City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*).

## **29. TERMINATION**

29.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

29.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

## **30. PREVAILING WAGES**

Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime Work for each craft or type of workman needed to execute the Work contemplated under the Agreement shall be paid to all workmen employed on the Work to be done according to the Agreement by the Consultant and any subcontractor. In accordance with the California Labor Code (Sections 1770 *et seq.*), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the Work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Agreement. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774, and requesting one from the Department of Industrial Relations. The Consultant is required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of the Consultant or any subcontractor under him/her to comply with all State of California labor laws, rules and



regulations and the parties agree that the City shall not be liable for any violation thereof.

30.1 Unless otherwise exempt by law, Consultant warrants that no contractor or subcontractor was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Consultant further warrants that it is currently registered and qualified to perform “public work” pursuant to California Labor Code section 1725.5 or any successor statute thereto and that no contractor or subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

### **31. PREVAILING WAGES {MODIFIED PREVAILING WAGES}**

31.1 If any of the Work contemplated under the Agreement is considered a “public work”, pursuant to the applicable provisions of the Labor Code of the State of California, including but not limited to Section 1720 *et seq.*, not less than the general prevailing rate of per diem wages including legal holidays and overtime Work for each craft or type of workman shall be paid to all workmen employed on such. In accordance with the California Labor Code (Sections 1770 *et seq.*), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the Work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Agreement. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774, and requesting one from the Department of Industrial Relations. The Consultant is required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of the Consultant or any subcontractor under him/her to comply with all State of California labor laws, rules and regulations and the parties agree that the City shall not be liable for any violation thereof.

31.2 In such event, unless otherwise exempt by law, Consultant warrants that no contractor or subcontractor was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Consultant further warrants that it is currently registered and qualified to perform “public work” pursuant to California Labor Code section 1725.5 or any successor statute thereto and that no contractor or subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

### **32. STANDARD PROVISIONS**

32.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

32.2 Compliance with all Laws. Consultant shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

32.3 Waiver. A waiver by either party of any breach, of any term, covenant or

condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

32.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

32.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

32.6 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 the Agreement or any other rule of construction which might otherwise apply.

32.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

32.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

32.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

32.10 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

32.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

32.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

**[SIGNATURES ON NEXT PAGE]**



**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: \_\_\_\_\_

By: Aaron C. Harp  
City Attorney

**ATTEST:**

Date: \_\_\_\_\_

By: Leilani I. Brown  
City Clerk

**CITY OF NEWPORT BEACH,**  
a California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**CONSULTANT:** \_\_\_\_\_, a

Date: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**[END OF SIGNATURES]**

Attachments:      Exhibit A – Scope of Services  
                         Exhibit B – Schedule of Billing Rates  
                         Exhibit C – Insurance Requirements

# **EXHIBIT A**

## **SCOPE OF SERVICES**

# **EXHIBIT B**

## **SCHEDULE OF BILLING RATES**

## EXHIBIT C

### INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
  - A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement.
  - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
  - C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this

Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.
- B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement shall be included as insureds under such policies.
- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- D. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- E. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- F. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.

- G. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- H. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.



## CONSULTANT PROPOSAL WORKSHEET

Please fill out and submit this worksheet along with the proposal or scope of work.

### Company Information

Legal Business Name: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Primary Address (For Legal Notices)

Mailing Address (For invoices, letters etc.):

☐ Use address from the attached proposal

☐ Same as Primary Address

Address Line 1: \_\_\_\_\_

Address Line 2: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

### Type of Business (select one):

- |   |   |
|---|---|
| <input type="radio"/> Corporation                                       | <input type="radio"/> Limited Liability Corporation |
| <input type="radio"/> Limited Partnership/Limited Liability Partnership | <input type="radio"/> General Partnership           |
| <input type="radio"/> Sole Proprietorship                               | <input type="radio"/> Other                         |

For corporations without a resolution designating the binding contracting authority, two (2) officers of the corporation must sign the contract: one from column A, and one from column B (Below). For single signatories, the resolution must also be attached.

### Column A

- President
- Vice President
- Chairman of the Board

### Column B

- Secretary
- Chief Financial Officer
- Any Assistant Secretary
- Any Assistant Treasurer

Signatory 1: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Signatory 2: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_





## ACKNOWLEDGEMENT OF CITY'S STANDARD AGREEMENT TERMS & CONDITIONS

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*The Consultant acknowledges that they have reviewed the terms and conditions of the attached Sample Draft Agreement, including all insurance provisions, with no exceptions taken.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Company Name

*Enclosure: Standard Template Draft – Professional Services Agreement with the City*