



REQUEST FOR PROPOSAL

FOR

**PRE-DESIGN, FINAL DESIGN, AND
CONSTRUCTION SUPPORT SERVICES**

WATER RECLAMATION PLANT BLDG. K
Data Center

Project No. 13810

JANUARY 2015

CITY HALL - INFORMATION SERVICES
100 AVENIDA PRESIDIO, SAN CLEMENTE, CA 92673
PHONE: (949) 361-8318

CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL

Prospective Contractors:

The City of San Clemente (City) is interested in receiving proposals from Professional Services Consultants (contractors) to provide pre-design, final design, and construction support services for installation of a new data center within Building K at the Water Reclamation Plant, as described in detail in the attached Request for Proposal (RFP). Contractors must be licensed with the state of California.

City Point of Contact:

The sole source of contact regarding this RFP is Matt Squires SquiresM@san-clemente.org. Individuals or firms interested in submitting a proposal are asked not to contact other members of the City of San Clemente staff or Councilmembers in connection with the RFP prior to the announcement of the consultant selected.

A mandatory pre-proposal meeting will be held 9:00 A.M. February 5, 2015 at the Water Reclamation Plant, Building K to view the building and data center room, existing data closet at 380 Pico Building J, and the current data center at 100 Avenida Presidio.

Proposals and all written inquiries related to this RFP are to be submitted confidentially to Matt Squires, Information Services Specialist at the following address:

CONFIDENTIAL

Matt Squires
Information Services
City of San Clemente
100 Avenida Presidio
San Clemente, CA 92672

Mandatory Pre-proposal Meeting: 9:00 A.M. PST on February 5, 2015

Proposal Due Date: 5:00 P.M. PST on February 25, 2015

Last day to submit questions pertaining to this RFP will be February 11, 2015 2 P.M. PST. All questions and answers will be posted on the City web site (<http://san-clemente.org/departments-services/business-services/bid-information>) February 12, 2015 by 5 P.M. PST.

Six (6) copies of each contractor's proposal including one in electronic format must be received by the City no later than 5:00 P.M. PST on February 25, 2015. All proposals must be delivered to the above address. Proposals received after submittal deadline will not be accepted. Proposals will become part of the official files of the City of San Clemente and cannot be returned.

CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL – PRE-DESIGN, FINAL DESIGN, AND CONSTRUCTION SUPPORT SERVICES

WATER RECLAMATION PLANT BLDG. K Data Center

INTRODUCTION

The City of San Clemente (City) is seeking proposals from data center designers currently licensed with the state of California to provide pre-design, final design, and construction support services for installation of a new data center within Building K at the Water Reclamation Plant. Designers should be capable of providing Engineer-stamped electrical and mechanical drawings for future construction bid.

BACKGROUND

The City currently utilizes two data rooms located in its facilities at 100 Avenida Presidio (City Hall), and 390 Avenida Pico Building J (Utilities). The City Hall data facility is approximately 155 sq ft, containing five server racks, a single two post rack, redundant 3 ton Liebert AC units, FM 200 fire suppression, UPS with one hour of standby battery power and dedicated electrical panels. The Utilities data room is approximately 80 sq. ft. containing two server racks, one 3 ton Liebert AC unit, UPS with 15 minutes of battery power. These facilities are estimated to be at 90% capacity.

The Secondary Treatment Control Building, also known as Building K, was constructed in 1988 and houses the main switch gear, aeration blowers, pumps, process piping and equipment for the secondary treatment of sewage at the water reclamation plant. Building K is a split level two-story reinforced concrete block masonry building with wood framed roofing. A vacant storage room within the building has been determined to be the preferred location for a future network server room due to being adjacent to adequate power source with generator back up capabilities and proximity to fiber optic transmission cables. The proposed space for the server room is L shaped, has 12 foot vertical height from floor to ceiling, and provides approximately 300 sq. ft. of useable space. Building K is serviced with an existing 4000Amp 480Y/277V service with an associated fully rated Automatic Transfer Switch (ATS) and generator.

SCOPE OF WORK

Project scope of work includes Pre-Design, Professional Consulting Services to prepare final drawings, technical specifications, bid form, and cost estimate for construction bid, along with permit approval and construction support services estimate.

Engineering Services

- Design modifications for the existing electrical systems in accordance with all Governing Codes and applicable requirements.
- Design new computer room air conditioning units based on N+1 configuration.
- Design new UPS/PDU units based on N+1.
- Perform site investigation to determine existing conditions at both existing data center locations.
- Prepare final construction documents – electrical drawings (single line diagram, panel schedules and load summary), mechanical drawings (schedules, floor plans, details, and controls), plumbing drawings (partial floor plan), Title 24 documentation and specs.
- Respond to plan check comments as required by reviewing code authorities.
- Respond to contractor request for information (RFI's) during construction. Provide clarification and revisions to drawings and/or specifications when required.
- Review shop drawings and submittals.
- Prepare electrical, mechanical and plumbing final punch list: two field visits.
- Design of offsite monitoring solution that includes power, temperature, humidity and motion detection at a minimum.
- Calculate power demand of new data center to ensure no other incidental or associated upgrades are needed to the existing power equipment and generator. Recommend and provide design for any needed upgrades that are identified.

The City desires all necessary electrical, mechanical, and communications plans and specs for a turn key data center.

MEETINGS AND DELIVERABLES

Project design period meetings and deliverables are as follows:

Contract approval subject to City Council approval, and the City's Public Services Agreement. (Attachment A)

Upon submittal of approved agreements and insurance certificates, staff will issue a Notice to Proceed to start the project.

Any and all deliverables are to be provided in a reproducible electronic format (Word, PDF, DWG files as applicable) and one hardcopy, including all drawings and submittals.

Meetings

1. Project Kick Off Meeting at City Office to discuss updated schedule and to coordinate access to the facility.

2. 60% Design Drawing Submittal at City Office
3. 90% Design Contract Document Submittal at City Office
4. 100% Final Design Contract Document Submittal at City Office

Pre-Design Services

Provide a data center requirements document for a new data center based on current IT infrastructure with a 10year growth factored in. This document shall include needs for size, power, AC, infrastructure, cabling, utilities and constraints if any. This document should be based on analysis of the two existing data room facilities.

Final Design Services

1. 60% complete design drawings for the City's review and approval showing:
Layouts, proposed equipment and costs.
Itemized construction cost estimate.
2. 90% complete design drawings, technical specifications, bid form, and updated itemized construction cost estimate for City's review and approval. Including all calculations for required permits including electrical, mechanical and building.
3. 100% Final design drawings, technical specifications, bid form, and construction cost estimate. Obtain City of San Clemente Building Division permit approval for construction.

Construction Support Services

Prepare and submit as part of this proposal a separate offer for **Construction Period Services**. Offer a not-to-exceed maximum fee, which includes: 40 hours of meeting time by the team project manager or engineer, project inspections or consultation time.

Also note firms should stipulate/confirm that the hours listed are reasonable to complete the work and if not, they should indicate what other services and how much time they anticipate based on the scope of the project.

SCHEDULE

Provide a graphical schedule that shows milestones for relevant tasks and deliverables through completion of the project.

FEE

Provide a fee to accomplish the work per this request for proposal including breakdown on hours, position, and hourly fee.

CITY OF SAN CLEMENTE

REQUEST FOR PROPOSAL

WATER RECLAMATION PLANT BLDG. K

Data Center

PRE-DESIGN, FINAL DESIGN, AND CONSTRUCTION SUPPORT SERVICES

FEBRUARY 2015

INSTRUCTIONS AND CONDITIONS

The following instructions and conditions apply to this RFP:

A. GENERAL CONDITIONS

1. Pre-Contractual Expenses

Pre-contractual expenses are defined as expenses incurred by the Professional Services Consultant (contractor) in:

- Preparing a proposal in response to this RFP
- Submitting that proposal to the City of San Clemente
- Negotiating with the City of San Clemente on any matter related to this RFP, proposal and/or contractual agreement
- Any other expenses incurred by the contractor prior to the date of an executed contract

The City of San Clemente shall not, in any event, be liable for any pre-contractual expenses incurred by any contractor. In addition, no contractor shall include any such expenses as part of the price proposed to conduct the scope of work for this project.

2. Authority to Withdraw RFP and/or Not Award Contract

The City of San Clemente reserves the right to withdraw this RFP at any time without prior notice. Further, the City makes no representations that any agreement will be awarded to any contractor responding to this RFP. The City expressly reserves the right to postpone the opening of proposals for its own convenience and to reject any and all proposals in response to this RFP without indicating any reasons for such rejection(s).

3. Pricing Approach

The City of San Clemente intends to award a fixed price contract for the conduct of this project. In no event shall the City pay an amount in excess of the dollar value negotiated in the contractual agreement with the successful contractor.

4. Right to Reject Proposals

The City of San Clemente reserves the right to reject any or all proposals submitted. Any award made for this engagement will be made to the contractor which, in the opinion of the City, is best qualified to conduct the project.

5. Proposal Evaluation Criteria

Proposals will be evaluated on the basis of their response to all provisions of this RFP. The City of San Clemente may use some or all of the following criteria in its evaluation and comparison of proposals submitted. The criteria listed are not necessarily an all-inclusive list. The order in which they appear is not intended to indicate their relative importance:

- a. Previous experience
- b. Demonstrated record of success on work previously performed for the City or similar work performed for others
- c. Project Lead
- d. Educational background of project lead and staff
- e. Staff to perform work within the specified time
- f. Methodology proposed to accomplish the work
- g. Ability to make effective public presentations of the report and/or design required
- h. Ability to work effectively with City staff, other public agencies and related parties as directed during the course of the design, study or other services
- i. Pertinent new ideas which may be presented during the course of the selection process
- j. Innovation of design
- k. Adequate knowledge of local conditions

- l. Availability, experience and knowledge of all subcontractors hired to complete the job or study
- m. Additional work performed by the contractor which may have a direct and substantial physical relationship or conflict to the proposed project
- n. Previous history of completing projects within budget and design estimates
- o. Ability to furnish adequate and effective construction supervision

B. PROPOSAL FORMAT AND CONTENT

Proposals should be typed as brief as possible. They should not include any elaborate or unnecessary promotional material. The following order and content of proposal sections should be adhered to by each contractor.

1. Cover Letter

A cover letter not to exceed three pages in length should summarize key elements of the contractor's proposal. The letter must be signed by an individual authorized to bind the contractor. The letter must stipulate that the proposed price will be valid for a period of at least 120 days. Indicate the address and telephone number of the contractor's office located nearest to San Clemente, California, and the office from which the project will be managed.

I. Background and Approach

The Background and Approach Section should describe your understanding of the City, the work to be done, and the objectives to be accomplished.

II. Methodology(ies)

This section should clearly describe the methodology or methodologies you plan to use to carry out the specific work tasks described in the Work Plan.

III. Work Plan

Describe the sequential work tasks you plan to carry out in accomplishing this project. Indicate all key deliverables and their contents. Identify how much of the work will be done on site.

IV. Project Organization and Staffing

Describe your approach and methods for managing the project. Provide an organization chart showing all proposed project team members. Describe the responsibilities of each person on the project team. Identify the Project Director and/or Manager and the person who will be the key contact with the City of San Clemente. Indicate how many hours each team member will devote to the project by task, along with a statement indicating the availability of the members of the project team for the duration of the project. Include resumes for each member of the project team. Include information and staff support required from City personnel. If utilizing a City-paid intern is possible to address data collection or routine work assignments, identify that opportunity and related cost savings.

V. Related Experience

Describe recent, directly related experience. Include on each listing the name of the client; description of the work done; primary client contact, address and telephone number; dates for the project; name of the Project Director and/or Manager and members of the proposed project team who worked on the project, as well as their respective responsibilities.

At least three references should be included. For each reference, indicate the reference's name, organization affiliation, title, complete mailing address and telephone number. The City of San Clemente reserves the right to contact any of the organizations or individuals listed.

VI. Project Schedule

Provide a schedule for completing each task in the work program, including deadlines for preparing all project deliverables.

VII. Cost Data

Indicate the total cost for which you will conduct the project by phase. Identify by project team member: name, classification, and the number of hours each member will spend on each work task. Indicate separately, total cost for fees and expenses, including any proposed fee discount.

VIII. Statement of Compliance

Contractors must submit a Statement of Compliance with all parts of the Request for Proposal and Draft Agreement terms and conditions, or a listing of exceptions and suggested changes, along with a description of any cost implications or schedule changes the exceptions and/or changes cause. The Statement of Compliance must declare either:

- A. This proposal is in strict compliance with the Request for Proposal and Draft Agreement and no exceptions to either are proposed; or
- B. This proposal is in strict compliance with the Request for Proposal and Draft Agreement except for the items listed.

For each exception and/or suggested change, the contractor must include:

- 1. The suggested change in the RFP or rewording of the contractual obligations.
- 2. Reasons for submitting the proposed exception or change.
- 3. Any impact the change or exception may have on project costs, scheduling or other considerations.

IX. Other Information

Include any other information you consider to be relevant to the proposal.

Consultant agrees that in carrying out its responsibilities under this agreement, and in particular with regard to the employment of persons and sub-contractors working on the project, it will not discriminate on the basis of race, color, creed, national origin, religion, sex, age, or handicap. In the event any of the work performed by consultant hereunder is sub-contracted to another person or firm (with approval of the City as required herein), sub-contract shall contain a similar provision.

X. Insurance Coverage

Prior to commencement of any project activities, consultant is to secure worker's compensation insurance, so as to be in compliance with State statutes and comprehensive general liability insurance, including auto and contractual liability coverage, in an amount not less than \$1 million.

Attachment A

City of San Clemente Standard Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT
FOR **[IDENTIFY PROJECT]**

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20____ (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY", and _____ of _____ **[address]** hereinafter referred to as the "CONTRACTOR".

RECITALS:

- A. CITY requires professional **[identify type of service]** services to be performed at or in connection with **[identify project]**.
- B. CONTRACTOR has represented to CITY that CONTRACTOR is qualified to perform said services and has submitted a proposal to CITY for same.
- C. CITY desires to have CONTRACTOR perform said services on the terms and conditions set forth herein.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and CONTRACTOR agree as follows:

ARTICLE 1
RESPONSIBILITIES OF CONTRACTOR

1.1 Term.

The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect, until **[Insert Termination Date]**, unless terminated earlier pursuant to the terms hereof. Notwithstanding the forgoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days.

1.2 Scope of Services.

CONTRACTOR shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A" in a manner satisfactory to CITY. By execution of this Agreement, CONTRACTOR warrants that (i) it has thoroughly investigated and considered the work

to be performed; (ii) it has carefully examined the location or locations at or with respect to which the work is to be performed, as applicable; and (iii) it fully understands the difficulties and restrictions attending the performance of the work provided for under this Agreement. CONTRACTOR acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary to achieve CITY's goals hereunder, and CONTRACTOR shall cooperate with and assist the CITY to identify and make such refinements prior to undertaking any tasks or services that may require refinement.

1.3 Schedule of Performance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to CONTRACTOR of a fully executed copy hereof and issuance of a written Notice to Proceed, CONTRACTOR shall promptly commence performance of the work. Until such time, CONTRACTOR is not authorized to perform and will not be paid for performing any work under this Agreement. CONTRACTOR shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to CITY for final approval as soon as reasonably practicable and in accordance with the schedule of performance attached hereto and incorporated herein as Exhibit "B", provided that CONTRACTOR shall be entitled to an extension of time for any delays caused by events or occurrences beyond CONTRACTOR's reasonable control.

1.4 Identity of Persons Performing Work.

CONTRACTOR represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. CONTRACTOR shall not replace any of the principal members of the Project team, including any of the persons listed in Exhibit "A" (if CONTRACTOR'S personnel is listed on Exhibit "A"), or any successors to any of such persons, without CITY's prior written approval.

CONTRACTOR represents that the tasks and services required hereunder will be performed by CONTRACTOR or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, CONTRACTOR shall not employ any undocumented aliens (i.e., persons who are not citizens or nationals of the United States).

This Agreement contemplates the personal services of CONTRACTOR and CONTRACTOR's employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONTRACTOR and CONTRACTOR's employees. Neither this Agreement nor any interest therein may be assigned by CONTRACTOR, except upon written consent of CITY.

Furthermore, CONTRACTOR shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of CITY, except for those subcontractors named in the proposal for the project. Nothing herein contained is intended to or shall be construed as preventing CONTRACTOR from employing or hiring as many employees as CONTRACTOR may deem necessary for the proper and efficient execution of this Agreement.

1.5 Cooperation and Coordination of Work With CITY.

CONTRACTOR shall work closely with CITY's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review and approve CONTRACTOR's work. CONTRACTOR shall ensure that CITY has reviewed and approved all required work as the project progresses.

1.6 Compliance With Laws.

CONTRACTOR shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. CONTRACTOR shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to CONTRACTOR in connection with this Agreement on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, or mental or physical disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, and mental or physical disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Prior to execution of this Agreement, CONTRACTOR shall furnish to CITY proof that CONTRACTOR and all of its subcontractors have a current, valid business license issued by CITY.

1.7 Standard of Performance.

CONTRACTOR acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONTRACTOR's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. CONTRACTOR represents to CITY that CONTRACTOR holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. CONTRACTOR shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the accepted standards of the professional disciplines involved in the project. All work shall be completed to the reasonable satisfaction of CITY. If CITY

reasonably determines that the work is not satisfactory, CITY shall have the right to: (i) meet with CONTRACTOR to review CONTRACTOR's work and resolve matters of concern; and/or (ii) require CONTRACTOR to repeat unsatisfactory work at no additional charge until it is satisfactory.

1.8 Contractor Ethics.

CONTRACTOR represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. CONTRACTOR shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to CONTRACTOR pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) CONTRACTOR shall not possess or maintain any business relationship with the applicant or any other person or entity which CONTRACTOR knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this Agreement CONTRACTOR shall not advocate either for or against said project and/or application, and (iii) CONTRACTOR shall immediately notify CITY in the event CONTRACTOR determines that CONTRACTOR has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of CONTRACTOR's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

1.9 Changes and Additions to Scope of Services.

CITY may make changes within the general scope of services provided for in this Agreement. CONTRACTOR shall agree to any such changes that are reasonable. CONTRACTOR shall make no change in or addition to the character or extent of the work required by this Agreement except as may be authorized in advance in writing by CITY. Such supplemental authorization shall set forth the specific changes of work to be performed and related extension of time and/or adjustment of fee to be paid to CONTRACTOR by CITY.

1.10 Hiring of Illegal Aliens Prohibited

CONTRACTOR shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States.

1.11 Endorsement on PS&E/Other Data

CONTRACTOR shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by CONTRACTOR, and where appropriate will indicate CONTRACTOR's authorized signature and professional registration number.

ARTICLE 2 RESPONSIBILITIES OF CITY

2.1 Provision of Information.

CITY shall provide full information regarding its requirements for the project, and it shall furnish, without charge to CONTRACTOR, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by CONTRACTOR of the tasks and services set forth herein.

2.2 Cooperation With CONTRACTOR.

CITY shall cooperate with CONTRACTOR in carrying out the work and services required hereunder without undue delay. In this regard, CITY, including any representative thereof, shall examine plans and documents submitted by CONTRACTOR, shall consult with CONTRACTOR regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3 PAYMENT

3.1 Payment Schedule: Maximum Payment Amount.

Prior to the tenth of the month, CONTRACTOR shall submit to CITY a monthly status report and invoices itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from CONTRACTOR, CITY shall determine whether and to what extent CONTRACTOR has adequately performed the services for which payment is sought. If CITY determines that CONTRACTOR has not adequately performed such services, CITY shall inform CONTRACTOR of those acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the City to withhold payment in the event CONTRACTOR's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONTRACTOR within fifteen (15) working days from CITY's determination that CONTRACTOR has adequately performed those services for which CITY has been invoiced. In no case shall CITY pay in excess of each line item set forth in Exhibit "A" for any particular task unless approved and authorized by the CITY in writing (applicable only if Exhibit "A" breaks down the Scope of Services on a line item basis). The total compensation for the Scope of Services set forth in Exhibit "A" shall not exceed _____ (\$_____), including all amounts payable to

CONTRACTOR for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement (the "Total Compensation").

3.2 Changes in Work.

If CONTRACTOR estimates that any proposed change within the general scope of services set forth in Exhibit "A" causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONTRACTOR shall so notify CITY of that fact in advance of commencing performance of such work. Any such change, and the cost for such change, shall be agreed upon by CITY and CONTRACTOR, and reduced to a writing that, once signed by both CITY and CONTRACTOR, shall modify this Agreement accordingly. In determining the amount of any cost increase for such change, the value of the incomplete portions of the original tasks and services affected by the change shall be credited back to CITY.

3.3 Additional Work.

CITY may request CONTRACTOR to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and CONTRACTOR shall perform such extra services and will be paid for such extra services when the extra services and the cost thereof are reduced to writing, signed by both CITY and CONTRACTOR, and made a part of this Agreement. CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written amendment. To the extent that the extra services render all or a portion of the original tasks and services unnecessary, the value of the unnecessary and incomplete portions of original tasks and services shall be credited back to CITY.

ARTICLE 4 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and not an employee of the CITY. Neither the CITY nor any of its employees shall have any control over the conduct of the CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth, and CONTRACTOR expressly warrants not to, at any time or in any manner, represent that CONTRACTOR, or any of CONTRACTOR's agents, servants or employees, are in any manner agents, servants or employees of the CITY, it being distinctly understood that CONTRACTOR is and shall at all times remain as to the CITY a wholly independent contractor and that CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

ARTICLE 5
INDEMNITY AND INSURANCE

5.1 Indemnification

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS A “LICENSED DESIGN PROFESSIONAL” AND IS PROVIDING DESIGN PROFESSIONAL SERVICES:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees (collectively, the “Indemnitees”) from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of CONTRACTOR or any officers, agents, employees, representatives, or subcontractors of CONTRACTOR [collectively, the “CONTRACTOR ENTITIES”]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney’s fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the “Liabilities”). Such obligation to defend, hold harmless and indemnify any Indemnatee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnatee.

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS NOT A “LICENSED DESIGN PROFESSIONAL”:

CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONTRACTOR or CONTRACTOR’s officers, agents, employees, representatives, or subcontractors [collectively, the “CONTRACTOR ENTITIES”]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney’s fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the actions or failure to act of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

For purposes of this Agreement, a "Licensed Design Professional" shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by California Civil Code § 2782.8.

5.2 Insurance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall submit certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and CONTRACTOR shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONTRACTOR's employees as required by the California Labor Code with employer's liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by CITY, CONTRACTOR shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONTRACTOR shall require all subcontractors similarly to provide such compensation insurance for the respective employees.

None of the CITY, the San Clemente Redevelopment Agency, or any of their respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of CONTRACTOR to comply with this paragraph.

- B. Commercial General Liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:

- (1) be issued by companies that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by CITY's Risk Manager for all coverages except surety.
- (2) name and list as additional insureds CITY, CITY's officers, employees, and agents and, if the CITY's Risk Manager so requires, the City of San Clemente Redevelopment Agency and its officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insureds.

- (3) specify it acts as primary insurance and that no insurance held or owned by CITY (or, if applicable, the San Clemente Redevelopment Agency) shall be called upon to cover a loss under said policy;
- (4) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to CITY of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (5) cover the operations of CONTRACTOR pursuant to the terms of this Agreement; and
- (6) be written on an occurrence and not a claims made basis.

C. Professional Liability or Errors and Omissions insurance specifically designed to protect against acts, errors or omissions of the CONTRACTOR and "covered professional services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

☐ If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in paragraph C above is hereby waived.

CITY's Initials: _____

Notwithstanding anything herein to the contrary, in the event any of CONTRACTOR's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONTRACTOR hereunder until such time as CONTRACTOR obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONTRACTOR shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONTRACTOR insurance that complies with the foregoing minimum insurance requirements. CONTRACTOR shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

ARTICLE 6 TERMINATION

This Agreement may be terminated by CITY for any reason, with or without cause, upon written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for all services performed and costs incurred up to the date of notification for which CONTRACTOR has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for (but in no event to exceed the amount which, when combined with other amounts paid, exceeds the amount for any uncompleted task set forth in Exhibit "A", as applicable). Upon receipt of notice of termination from CITY, CONTRACTOR shall immediately stop its services, unless otherwise directed, and deliver to CITY all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

ARTICLE 7 MISCELLANEOUS

7.1 Ownership of Documents.

All reports, software programs, as well as original data collected, original reproducible drawings, plans, studies, memoranda, computation sheets and other documents assembled or prepared by CONTRACTOR or furnished to CONTRACTOR in connection with this Agreement shall be the property of CITY and delivered to CITY at completion of the project or termination of this Agreement, whichever occurs first. Copies of said documents may be retained by CONTRACTOR, but shall not be made available by CONTRACTOR to any individual or organization without the prior written approval of CITY.

Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from CONTRACTOR will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR.

7.2 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed to CONTRACTOR at _____ [address] _____, and to the City of San Clemente, [address] _____, San Clemente, California _____, Attention: _____ [specify] _____.

7.3 Covenant Against Contingent Fees.

CONTRACTOR warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee or commission from the award or making of this Agreement. For breach

or violation of this warranty, CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.4 Liquidated Damages.

☐ **APPLICABLE ONLY IF THIS BOX HAS BEEN CHECKED AND BOTH PARTIES HAVE INITIALED BELOW.**

If CITY seeks monetary damages for CONTRACTOR'S failure to complete all of the services required hereunder by the completion date set forth in Exhibit "B" (the "Completion Date"), CONTRACTOR shall be required to pay to CITY _____ Dollars (\$_____) per day for each day beyond the Completion Date that any of such services remain uncompleted; provided, however, that nothing herein shall be deemed to limit CITY's remedy for CONTRACTOR's failure to complete all services required hereunder by the Completion Date to seeking monetary damages, and CITY shall be entitled to pursue any other equitable remedy permitted by law, including, without limitation, specific performance.

THE PARTIES HERETO AGREE THAT THE AMOUNT SET FORTH IN THIS SECTION 7.4 (THE "DAMAGE AMOUNT") CONSTITUTES A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY, THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE DAMAGE AMOUNT SET FORTH IN THIS SECTION 7.4 SHALL BE THE SOLE DAMAGES REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, BUT NOTHING IN THIS SECTION 7.4 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

CONTRACTOR'S INITIALS: _____ CITY'S INITIALS: _____

Notwithstanding any of the above, nothing herein is intended to preclude the CITY's recovery of its attorney's fees and costs incurred to enforce this Section 7.4, as provided in Section 7.10 below.

7.5 Interpretation and Enforcement of Agreement.

This Agreement shall be construed and interpreted both as to validity and 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 and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court with jurisdiction in such county, and CONTRACTOR agrees to submit to the personal jurisdiction of such court.

7.6 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim therefor. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed 30 days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if the default results in an immediate danger to the health, safety, and general welfare, CITY may take such immediate action as CITY deems warranted.

7.7 Retention of Funds.

CITY may withhold from any monies payable to CONTRACTOR sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of CONTRACTOR in the performance of the services required by this Agreement.

7.8 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. CITY's consent or waiver of one act or omission by CONTRACTOR shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by CONTRACTOR. Any waiver by either party of any default must be in writing.

7.9 Rights and Remedies are Cumulative.

Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.10 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.11 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

7.12 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

[APPLICABLE TO INDIVIDUAL CONTRACTORS ONLY]

7.13 Compliance with California Unemployment Insurance Code Section 1088.8:

Prior to signing the Contract, CONTRACTOR shall provide to CITY a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. CONTRACTOR understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

[End – Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 20____

ATTEST:

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:
RUTAN & TUCKER

By: _____
City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING

By: _____
Finance Authorization

("CONTRACTOR")

Contractor's License Number _____

By: _____

Its: _____

Dated: _____, 20____

EXHIBIT “A”

SCOPE OF SERVICES

[To be inserted by CITY]

[Scope of Services should include complete description of scope of work, identification of Project team, and payment schedule by task. See Sections 1.2, 1.4, and 3.1 of Agreement]

EXHIBIT “B”

SCHEDULE OF PERFORMANCE

[To be inserted by CITY]

[See 1.3 of Agreement]

WORKER'S COMPENSATION INSURANCE CERTIFICATION

Project No. _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)

☐

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.

☐

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier_____

Policy Number_____

☐

I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Workermans'
Comp

Dated: _____, 20____

Contracting Firm

By: _____

Title

Address