

**REQUEST FOR PROPOSALS (RFP)  
FOR  
ON-CALL REAL ESTATE TITLE AND ESCROW SERVICES  
RFP NO.: 20-112**



**CITY OF SANTA ANA  
Santa Ana Public Works Agency  
20 Civic Center Plaza  
Santa Ana, CA 92701**

**Hayley Gilbert  
Project Manager  
(714) 647-5059  
[hgilbert@santa-ana.org](mailto:hgilbert@santa-ana.org)**

Approved for Release:

  
Jason Gabriel  
Principal Civil Engineer  
Public Works Agency

**KEY RFP DATES (Subject to change at discretion of City):**

Issue Date:	August 25, 2020
Deadline for Requests for Information:	September 11, 2020
Pre-Proposal Meeting:	N/A
Proposal Due Date:	September 16, 2020 at 4:00pm.
Projected Award Date:	October 20, 2020



## **NOTICE INVITING PROPOSALS**

NOTICE IS HEREBY GIVEN that proposals will be received from qualified firms for Real Estate Title and Escrow Services on an as needed basis.

Responses to this Request for Proposals (RFP) must be submitted electronically to the PlanetBids system no later than September 16, 2020 at 4:00 p.m. Proposals received after this date/time will not be considered. It is the responsibility of the proposer to ensure that any proposals submitted have sufficient time to be received by the City of Santa Ana prior to this proposal due date and time.

Additionally, it is a requirement that hard copy proposals also be sent by courier service, mailed, or hand delivered in an enclosed sealed envelope and marked clearly with the following

“SEALED PROPOSAL FOR  
**ON-CALL REAL ESTATE TITLE AND ESCROW SERVICES**  
**RFP NO. 20-112**  
IN THE CITY OF SANTA ANA  
DO NOT OPEN WITH REGULAR MAIL.”

City of Santa Ana  
Attn.: Hayley Gilbert  
Public Works Agency; M-36  
20 Civic Center Plaza; Ross Annex  
Santa Ana, CA 92701

For further instructions regarding hard copy submission proposals, refer to PlanetBids.

All notifications, requests for information, updates and addenda will be posted online on PlanetBids at <https://www.planetbids.com/portal/portal.cfm?CompanyID=20137>. Proposers shall be responsible for monitoring the site to obtain information regarding this solicitation. Failure to respond to required updates may result in a determination of a nonresponsive qualification.

**LETTER OF INTENT:** As a courtesy to the City, all interested firms are encouraged to submit a Letter of Intent of their pending proposal to the noted Project Manager by the required date, as shown on the cover page of this RFP. Letters shall be sent via certified mail or email. Failure to submit a Letter of Intent will not lead to disqualification of the firm.



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## **I. INTRODUCTION / PROJECT DESCRIPTION**

### Nature of Work:

The City routinely has various roadway enhancement and other public improvement projects, which require real estate title and escrow services for property acquisitions and title search. The City of Santa Ana is seeking a qualified title company to provide real estate title and escrow services on an “as needed” basis as described in the Scope of Work included in Attachment 1 of the Appendix. The total cost for the contract shall not exceed \$300,000. The Scope of Work shall become a part of the Professional Services Agreement.

### Number of Proposals and Signature:

Five (5) hard copies are required to accompany an electronic submittal of the complete proposal package on PlanetBids. One of the hard copies shall be marked as “ORIGINAL” and shall be signed by a company official with the power to bind the company and submitted to the City of Santa Ana. *Please be explicit in identifying the appropriate person with legal authority to bind the company.*

The Statement of Qualifications section shall be limited to a maximum of (10) double-sided pages (excluding front and back covers, section dividers and attachments such as resumes, forms). Font size shall be minimum 11-point Arial. Proposal exhibits shall be maximum 11” x 17”.

### Proposal Evaluation and Rating:

The criteria for evaluating the proposals submitted will take the following items into consideration:

- |  |     |
|--|-----|
| • Firm/Team Experience                     | 20% |
| • Understanding of Need                    | 20% |
| • Relevant Experience with Public Agencies | 20% |
| • Schedule of Delivery                     | 20% |
| • Fee Schedule                             | 20% |

The City has established a proposal review committee to evaluate proposers based on the response to the RFP, which includes adherence to outlined directions and format, and the City evaluation criteria set forth above. A final score will be calculated for each submitted proposal and used to rank the proposers.



## II. INSTRUCTIONS TO PROPOSERS

### A. CITY RESPONSIBILITIES

The City will provide information in its possession relevant to preparation of required information in RFP. The City will provide only the staff assistance and documentation specifically referred to herein.

### B. PROPOSER RESPONSIBILITIES

Point of Contact: The selected proposer will assume responsibilities for all services in its proposal. The selected proposer shall identify a sole point of contact with the greatest knowledge in regard to the required service operations and contractual matters, including payment of any and all charges resulting from the Agreement.

Evidence of Financial Capacity: Proposer may be requested to submit its most recent audited financial statement, evidencing proposer's financial capacity to fully perform the required services, including provision of equipment and personnel expenses over a ninety (90) day period. If said financial statement does not reflect full ninety (90) day operational capacity, proposer may include a letter of credit as evidence of supplemental capacity.

### C. REQUEST FOR INFORMATION OR CLARIFICATION

All questions or requested clarifications shall be made only in writing to the Q&A section located in PlanetBids no fewer than five (5) calendar days prior to the date and time set for opening of proposals. No verbal requests or responses will be accepted. Significant interpretations or clarifications will be addressed via addenda to this RFP.

### D. ADDENDA

Any changes in RFP from the date of release to date of submittal will result in an addendum or amendment. Notification of such addendum or amendment shall be posted on PlanetBids at <https://www.planetbids.com/portal/portal.cfm?CompanyID=20137> as set forth in the Notice Inviting Proposals. Addenda shall become part of the agreement documents.

### E. LICENSES & PERMITS

The selected proposer shall be required to obtain a City of Santa Ana Business license within ten (10) business days of selection and must provide a copy to the City projects manager or designee prior to commencing any work in Santa Ana.

Additionally, Proposer will be responsible for obtaining any licenses/permits required by the Scope of Work.

### F. INSURANCE

The Selected Proposer shall provide the required evidence of insurance coverage as set forth in the Scope of Work within ten (10) business days after receipt of notice that the contract has been awarded. Failure to provide the required insurance certificates shall be cause for the annulment of the award and the forfeiture of the proposal guaranty.



#### G. PAYMENT INFORMATION PACKET

The selected proposer shall return a completed payment information packet within ten (10) business days after the successful proposer has received notice that the contract has been awarded.

#### H. PRE-PROPOSAL MEETING

Should a pre-proposal be scheduled, the date, time and location is identified on the cover page of this RFP. The meeting will include discussion of the project scope and a question-and-answer session. It is highly recommended that the Proposer's key team members attend this meeting. Significant interpretations or clarifications will be addressed via addenda to this RFP, as described above in "Section D: Addenda."

#### I. CITY RIGHT TO REJECT

The City reserves the right to reject any or all proposals submitted and no representation is made hereby that any contract will be awarded pursuant to this RFP or otherwise.

The City reserves the right to accept or reject the combined or separate components of this proposal in part or in its entirety or to waive any minor inconsistency, informality or technical defect in the proposal.

The City reserves the right to reject, replace and approve any and all subcontractors. All subcontractor(s) shall be identified in the response to the RFP. Subcontractors shall be the responsibility of the successful proposer and the City shall assume no liability of such subcontractors.

#### J. BID PROTESTS

Proposers with concerns or rebuttal of any staff determination of non-responsiveness or non-responsibility may submit, in writing within five (5) business days, to the Project Manager, any concerns regarding the RFP process or staff determination. Such writing shall be considered by the City Manager or his designated representative, and may be acted upon within five (5) business days. If no action is taken within such time, there shall be no change to the staff determination. The exercise by Proposer of its right to submit written concerns shall be a condition precedent to seeking judicial review of any award of a contract hereunder.



### **III. SUBMITTAL REQUIREMENTS**

#### **A. GENERAL**

- I. The number of Proposal Copies and signature is specified in:  
RFP SECTION I - INTRODUCTION / PROJECT DESCRIPTION.
- II. Deadline:  
Proposals are due to the City of Santa Ana at the date, time, and location specified in the Notice Inviting Proposals.

#### **B. PROPOSAL CONTENTS**

The proposal format and page limitation, if any, is specified in:  
RFP SECTION I - INTRODUCTION / PROJECT DESCRIPTION.

##### **1. STATEMENT OF QUALIFICATIONS**

- a. Cover Letter – Proposals shall include a letter signed by a principal or authorized representative who can make legally binding commitments for the entity.
- b. Contract Agreement Statement: Proposal shall include a statement outlining your concurrence or concerns with any and all provisions as contained in the Agreement attached herein as Attachment 2 in the Appendix.
- c. Firm and Team Experience: Proposal shall include a profile of the firm's experience. Include resumes of project team/sub-consultants that will be providing services which outline their technical and design experience. At a minimum, this should include the project manager/principal agent, associates in charge when project manager/principal agent is unavailable, key personnel, firm size, and an organization chart identifying only those who will perform work for the proposed project and the percentage of each individual's time devoted to this project. The project manager/principal agent shall be the primary contact person to represent your firm and will be the person to conduct the presentation, if invited for an interview.
- d. Understanding of Need: Proposal shall include an outline which demonstrates the firm's understanding of the work. This outline should include anticipated approach, tasks necessary for successful completion, deliverables, and suggestions or special concerns that the City should be made aware of. Identify any assumptions and/or exclusions used in preparation of the scope of work and associated fee estimate.
- e. Relevant Project Experience: Proposal shall include a list of projects which your firm or personnel have completed within the last 5 years, including significant work with public agencies. Project information should include project description, year completed, client name, along with a person to contact and their telephone number.



f. References: Proposal shall include a listing of relevant projects with references for three public entities for which Proposer has performed similar work within the past five (5) years.

2. SCOPE OF SERVICES AND SCHEDULE:

Proposal shall include a Scope of Services and Schedule which details the work phases to be completed, the tasks to be accomplished, the deliverables to be provided, and the schedule / timeline to complete the project, based upon the requested Scope of Work detailed in Attachment 1 of this RFP.

3. FEE PROPOSAL:

The fee proposal shall be submitted concurrently with the technical proposal, but in a separately sealed envelope, clearly labeled as "Fee Proposal." This shall include the firm's Standard Hourly Fee Schedule, a table outlining the tasks and team hourly effort for each of the major tasks, and a Project Fee Schedule as outlined in the Scope of Work.

The fee proposal will not be opened until the proposals have been evaluated by the proposal selection committee. The City will select the consultant based on qualifications, and then negotiate a contract price based on available funding.

4. CERTIFICATIONS:

The following forms shall be signed and included as part of the proposal submittal package:

- Attachment 3-1: Non-Collusion Affidavit
- Attachment 3-2: Non-Lobbying Certification
- Attachment 3-3: Non-Discrimination Certification

**IV. PROPOSAL REVIEW (CONSULTANT SELECTION)**

A. EVALUATION AND RATING

The criteria for evaluating the proposals are specified in:

RFP SECTION I - INTRODUCTION / PROJECT DESCRIPTION.

B. SELECTION

The committee may interview the top ranking proposers. The City will recommend award of the contract to the proposer who will provide the best value to the City. City reserves the right to begin negotiations and enter into a contract without interview or further discussions.

**V. CONTRACT AWARD**

A. REQUEST FOR COUNCIL ACTION



Following evaluation and rating by the proposal review committee, the Project Manager will recommend award of a contract to the proposer providing the best value to the City.

**B. EXECUTION OF AGREEMENT**

The Scope of Services, Schedule, and Fees submitted in the proposal will be the basis of any negotiation of final terms which will lead to a completed agreement ready for execution based on the standard Agreement attached herein as Attachment 2 in the Appendix.

**VI. IMPLEMENTATION**

**A. KICK-OFF MEETING**

A kick-off meeting will be held after award of contract. Consultant and its team will meet with City of Santa Ana staff to conduct introductions, discuss scope of services, and implementation process.

**B. NOTICE TO PROCEED**

Following the kick-off meeting, a formal Notice to Proceed (NTP) may be issued after the agreement is fully executed, and all required bonds, insurance documents and contents of the Information Packet have been received and approved.

For “On-Call” contracts, Consultant will be notified by individual City Project Managers on a case-by-case basis to request project/task specific proposals. Written NTPs will be then issued accordingly.

**VII. PUBLIC RECORDS**

All data, documents and other products used, developed, or produced during response preparation of the RFP will become property of the City. All responses to the RFP shall become property of the City. Proposer information identified as proprietary information shall be maintained confidential, to the extent allowed under the California Public Records Act.

Proposals will become public record after award of contract. Proposer information identified as proprietary information shall be maintained confidential, to the extent allowed under the California Public Records Act.

**Appendix  
ATTACHMENT 1  
SCOPE OF WORK**

**CITY OF SANTA ANA  
REQUEST FOR PROPOSALS  
FOR  
ON-CALL REAL ESTATE TITLE AND ESCROW SERVICES  
RFP NO.: 20-112**

**Introduction and Background:**

The Proposer shall provide real estate title, escrow and related services for various Capital Improvement Projects and other facilities that will be used for public use under the direction of City staff. The Proposer will be expected to provide experienced and knowledgeable professional staff. The Proposer and its staff or representatives shall be responsive and maintain excellent working relationships with City staff and City Right-of-Way Consultants. The Proposer shall be committed to provide adequate staffing levels at all times in order to adhere to established schedules.

**Description of Work:**

The proposal should include the following tasks and fees and any additional tasks and fees deemed necessary by the Consultant shall be clearly identified in the proposal. Additionally, the City reserves the right to provide Notice To Proceed (NTP) for any, all or none of the following optional tasks:

On an as-needed basis, Proposer is responsible for providing real estate title and escrow services on a timely manner, including but not limited to:

Preliminary Title Reports

1. Update to an existing title report (either ordered by the City or others)
2. Issue new reports and provide copies of all underlying exception and exclusion documents.

- Litigation guarantees – Issue condemnation litigation or continuation guarantees.
- Provide other related information and documents of record concerning title to property such as copies of vesting deeds, parcel maps/tract, maps, FEMA flood zone designations.
- Issue chain of title reports on an exception basis.
- Assist with the development of legal descriptions for: (a) public and private properties; and/or (b) unrecorded easements, right-of-way or other apparent encumbrances or rights granted by other agencies.
- Assist the City, its consultants and agents in resolving issues affecting marketable title to properties through, among other things, recordation of corrective instruments and/or other appropriate means.

- Escrow services:
 

Issue either CLTA or ALTA extended-coverage owner	
CLTA 100	Comprehensive
CLTA 103.1A	Encroachment Coverage
CLTA 103.4	Access through an easement
CLTA 103.7	Access
CLTA 110.1	Deletion of item from policy
CLTA 116	Location
CLTA 116.1	Survey
CLTA 116.4	Contiguity
CLTA 116.7	subdivision
CLTA 123.3	Zoning
  
- Assist the City in determining the appropriate amount of title insurance coverage for each property or portfolio (or portion thereof) whether acquired by purchase or without financial consideration and taking into account valuation as determined by appraisal, or by opinion of value from a commercial real estate company.
- Provide all necessary assistance to the City to clear all exceptions stated in the Preliminary Title report unless waived by the City in writing.
- Obtain partial release, partial re-conveyance and subordination agreements from the property owners or any party having interest in the property.
- Ensure that all conditions present and conditions subsequent provide for in the Purchase Agreement are met and satisfied prior to closing escrow.
- Prepare, subject to review and approval by the City, Escrow Instructions for execution by the City and grantor(s). Proposer shall ensure all legal requirements are satisfied prior to escrow closing.
- Provide a comprehensive Escrow Services to the City and owners involved in the related transactions.
- Prepare all necessary conveyance documents; demand and release of lien/encumbrance documents and submit the same for approval by the City prior to close of escrow.
- Record grant deeds, certificates of acceptance. Memoranda of agreements and related documents required with respect to the transfer of each property in the office of Orange County Recorder.
- Distribute to the parties originals or copies of executed and/or closing documents
- Disburse to the party or parties entitled hereto amounts required to be disbursed in connection with the closing of each property transfer transaction.
- Prepare closing settlement statements reflecting pro-rations and funds disbursed through escrow in each property transfer transaction.
- Provide additional services related to title, escrow and related services specified above, at hourly rates, the scope of which will be agreed to in writing between the City & Proposer.
- Meet and coordinate work with other right-of-way consultants as directed by the City.
- Prior to closing escrow, Proposer shall order and provide the City with an updated Preliminary Title report to ensure that no new liens and/or encumbrances are recorded on the property/property interests to be acquired by the City.
- Provide multi lingual services as needed for efficient closing of escrow.
- Company shall at no cost to the City provide status reports of the requested services on a weekly, bi-weekly, or monthly basis at City's option.

- Proposer shall at no cost to the City provide the City and its consultants with password protected access to Proposer's website dedicated for City's projects. The website shall contain all copies of City ordered reports and other documents will be posted no later than due date agreed upon and indicated on the work authorization. Website access must be available to City throughout the term of the agreement and after expiration for a minimum of 3 months from time all ordered documents and reports have been posted.

**Appendix  
ATTACHMENT 2  
STANDARD AGREEMENT**

**CONSULTANT AGREEMENT  
CITY OF SANTA ANA**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between \_\_\_\_\_, (“Consultant”), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (“City”).

**RECITALS**

A. The City desires to retain a consultant having special skill and knowledge in the field of:

Real Estate Title and Escrow Services

B. Consultant represents that Consultant is able and willing to provide such services to the City.

C. In undertaking the performance of this Agreement, Consultant represents that it is knowledgeable in its field and that any services performed by Consultant under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

**NOW THEREFORE**, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

**1. SCOPE OF SERVICES**

Consultant shall perform during the term of this Agreement, the tasks and obligations including all labor, materials, tools, equipment, and incidental customary work required to fully and adequately complete the services described and set forth in **Scope of Services - Exhibit A**, attached hereto and incorporated by reference.

**2. COMPENSATION**

a. City agrees to pay, and Consultant agrees to accept as total payment for its services for City, the rates and charges identified in **Compensation - Exhibit B**. The total amount to be expended under this Agreement shall not exceed \$xxxxxx during the term of this Agreement, including any extension periods exercised under Section 3.

- b. Payment by City shall be made within 45 days (forty-five) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by City.

### **3. TERM**

This Agreement shall commence on the date first written above for a three (3) year term with the option for the City to grant up to two (2) one (1) year extensions exercisable by the City Manager, unless terminated earlier in accordance with Section H, below.

### **4. PREVAILING WAGES**

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the services being performed are part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **5. INDEPENDENT CONTRACTOR**

Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; however, the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

### **6. OWNERSHIP OF MATERIALS**

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were provided to Consultant by the City. City shall not

be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

## 7. INSURANCE

Prior to undertaking performance of work under this Agreement, Consultant shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

- a. Commercial General Liability Insurance. Consultant shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of Consultant's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$1,000,000 per occurrence, with \$2,000,000 in the aggregate. Such insurance shall (a) name the City, its officers, employees, agents, and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.
- b. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- c. Worker's Compensation Insurance. In accordance with the provisions of Section 3700 of the Labor Code, Consultant, if Consultant has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, Consultant agrees to obtain and maintain any employer's liability insurance with limits not less than \$1,000,000 per accident.
- d. If Consultant is or employs a licensed professional such as an architect or engineer: Professional liability (errors and omissions) insurance, with a combined single limit of not less than \$1,000,000 per claim with \$2,000,000 in the aggregate.
- e. The following requirements apply to the insurance to be provided by Consultant pursuant to this section:
  - i. Consultant shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
  - ii. Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved by the City.
  - iii. Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.
  - iv. Consultant shall supply City with a fully executed additional insured endorsement.

- f. If Consultant fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not affect Consultant's right to be paid for its time and materials expended prior to notification of termination. Consultant waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

## **8. INDEMNIFICATION**

Consultant agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, contractors, special counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the negligent operations of the Consultant, its subcontractors, agents, employees, or other persons acting on its behalf which relates to the services described in section 1 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. The Consultant further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

## **9. INTELLECTUAL PROPERTY INDEMNIFICATION**

Consultant shall defend and indemnify the City, its officers, agents, representatives, and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in the work product or documents provided by Consultant to the City pursuant to this Agreement.

## **10. RECORDS**

Consultant shall keep records and invoices in connection with the work 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 the 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 the City to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement during regular business hours.

Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

## **11. CONFIDENTIALITY**

If Consultant receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Consultant agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Consultant disclosed in a publicly available source; (c) is in rightful possession of the Consultant without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Consultant without reference to information disclosed by the City.

## **12. CONFLICT OF INTEREST CLAUSE**

Consultant covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services. Conflict may be further specified in **Certifications - Exhibit C**, attached hereto and incorporated in this Agreement by reference.

## **13. DISCRIMINATION**

Consultant shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations and as further specified in **Certifications - Exhibit C**, attached hereto and incorporated in this Agreement by reference.

## **14. EXCLUSIVITY AND AMENDMENT**

This Agreement represents the complete and exclusive statement between the City and Consultant, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Consultant. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Consultant or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or

otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein.

**15. ASSIGNMENT**

Inasmuch as this Agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other consultants retained by City.

**16. TERMINATION**

This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, Consultant shall be entitled to receive and the City shall pay Consultant compensation for all services performed by Consultant prior to receipt of such notice of termination, subject to the following conditions:

- a. As a condition of such payment, the Executive Director may require Consultant to deliver to the City all work product(s) completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Consultant consents to the City's use thereof for such purposes as the City deems appropriate.
- b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

**17. WAIVER**

No waiver of breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure or right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

**18. JURISDICTION - VENUE**

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

## **19. PROFESSIONAL LICENSES**

Consultant shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Consultant shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

## **20. MISCELLANEOUS PROVISIONS**

- a. Additional provisions, if any, are identified as Additional Provisions, **Exhibit D**, attached hereto and incorporated into this Agreement by reference. No Exhibit D is attached in the absence of additional provisions.
- b. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.
- c. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

## **21. NOTICE**

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:

Clerk of the City Council  
City of Santa Ana  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, CA 92702-1988  
Fax: 714- 647-6956

With courtesy copies to:

Jason Gabriel Principal Civil Engineer, PWA City of Santa Ana 20 Civic Center Plaza (M- ) P.O. Box 1988 Santa Ana, California 92702	Sonia R. Carvalho City Attorney City of Santa Ana 20 Civic Center Plaza (M-29) P.O. Box 1988 Santa Ana, California 92702 Fax: 714- 647-6515
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To Consultant:

First & Last Name Title Consultant Firm Name Address City, State, Zip Fax:
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A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.



**EXHIBIT A**

**SCOPE OF SERVICES**

## **EXHIBIT B**

### **COMPENSATION**

Fee Proposal including hourly rates  
(from Consultant Proposal)

The total compensation may include a line item for the cost from the Fee Proposal, followed by a line item for any contingency, followed by a grand total not to exceed (NTE) Amount. This is what may be transferred to the front page of the contract.

**EXHIBIT C**  
CERTIFICATIONS

C-1 through C-3

**EXHIBIT D**

ADDITIONAL PROVISIONS  
Caltrans Forms

**Appendix**  
**ATTACHMENT 3-1: NON-COLLUSION AFFIDAVIT**  
**CERTIFICATIONS**

NON-COLLUSION AFFIDAVIT  
(Title 23 United States Code Section 112 and  
Public Contract Code Section 7106)

To the CITY OF SANTA ANA DEPARTMENT OF PUBLIC WORKS

In accordance with Title 23 United States Code Section 112 and Public Contract Code 7106 the BIDDER declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the BIDDER has not directly or indirectly induced or solicited any other BIDDER to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived or agreed with any BIDDER or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the BIDDER has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the BIDDER or any BIDDER, or to fix any overhead, profit, or cost element of the bid price, or of that of any other BIDDER, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the BIDDER has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Non-collusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Non-collusion Affidavit. BIDDERS are cautioned that making a false certification may subject the certifier to criminal prosecution.

Signed \_\_\_\_\_

State of California  
County of \_\_\_\_\_

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Notary Public Seal

**Appendix**  
**ATTACHMENT 3-2: NON-LOBBYING CERTIFICATION**  
**CERTIFICATIONS**

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant loan, loan or cooperative agreement, the undersigned shall complete and submit a "Disclosure of Lobbying Activities".

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

Firm \_\_\_\_\_

Signed and Printed Name: \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**Appendix**  
**ATTACHMENT 3-3: NON-DISCRIMINATION CERTIFICATION**  
**CERTIFICATIONS**

The undersigned consultant or corporate officer, during the performance of this contract, certifies as follows:

1. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action 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. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Consultant shall send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Consultant shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Consultant shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation, to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Consultant's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, the contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Consultant shall include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted

by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontract or purchase order as the administering agency may direct as means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a sub-consultant or vendor as a result of such direction by the administering agency, the Consultant may request that the United States enter into such litigation to protect the interests of the United States.

8. Pursuant to California Labor Code Section 1735, as added by Chapter 643 Stats. 1939, and as amended,

No discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical handicaps, mental condition, marital status, or sex of such persons, except as provided in Section 1420, and any consultant of public works violating this Section is subject to all the penalties imposed for a violation of the Chapter.

Signed: \_\_\_\_\_

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

Firm: \_\_\_\_\_

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