

AGREEMENT WITH ALTA LANGUAGE SERVICES FOR LANGUAGE PROFICIENCY TESTING

THIS AGREEMENT is made and entered into on this 6th day of September, 2022 by and between ALTA Language Services, Inc., a Georgia corporation, (“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 providing on-call or as-needed certification and testing services for employee language proficiency.
- 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. This is an on-call or as-needed agreement. City makes no promise of any specific compensation pursuant to the terms of this Agreement. To the extent that City utilizes Consultant’s services, 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 during the term of this Agreement shall not exceed \$100,000.
- b. Payment by City shall be made within forty-five (45) 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 September 6, 2022 and terminate on June 30, 2024, with the option for the City to grant up to three (3) one (1) year renewals, exercisable by a writing by the City Manager and the City Attorney to unless terminated earlier in accordance with Section 15, below.

4. INDEPENDENT CONTRACTOR

Consultant shall, during the entire term of this Agreement, be construed to be an independent Consultant 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.

5. 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.

6. INSURANCE

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, its agents, representatives, employees or subcontractors.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. (Not required if consultant provides written verification it has no employees)
2. Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified Minimum limits of insurance and coverage shall be available to the Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except with notice to the City.**

Waiver of Subrogation

Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses

and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Claims Made Policies

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7. 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 Contractor, 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 Contractor'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 Contractor.

8. 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.

9. 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.

10. 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.

11. 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 specified under this Agreement.

12. NON-DISCRIMINATION

Consultant shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, gender expression, gender, medical conditions, genetic information, or military and veteran status, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, teaching, training, utilization, promotion, termination or other employment related activities or any services provided under this Agreement. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

13. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Contractor, 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 Contractor. 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.

14. ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of Contractor, 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 Contractors retained by City.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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:

Executive Director,
Human Resources Agency
City of Santa Ana
20 Civic Center Plaza (M-24)
P.O. Box 1988
Santa Ana, California 92702
Fax: 714-647-6930

To Consultant:

Rob Jones, CEO
ALTA Language Services, Inc.
3355 Lenox Road NE, Suite 450
Atlanta, Georgia 30326
Fax: (404) 920-3801

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.

20. MISCELLANEOUS PROVISIONS

- a. 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.
- b. The Agreement is the final and complete agreement and any prior or contemporaneous agreements for similar services between the parties is superseded by this Agreement. This shall not apply where the Parties are currently engaged and Consultant is providing services not contemplated by this Agreement.

- c. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.
- d. The Parties agree that this Agreement may be signed electronically and in counterparts with each signature page being combined to form one fully executed original Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA

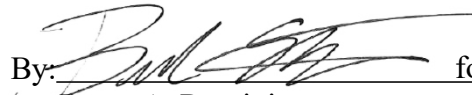
Clerk of the Council

Kristine Ridge
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

ALTA LANGUAGE SERVICES, INC.:

By:  for
Laura A. Rossini
Chief Assistant City Attorney


SignNow e-signature ID: fe6d7b4adc...
08/17/2022 14:43:06 UTC

By: Barbara Cozzarini
Title: Corporate Compliance

RECOMMENDED FOR APPROVAL:

Jason Motsick
Executive Director
Human Resources Agency

EXHIBIT A

SCOPE OF SERVICES



CITY OF SANTA ANA

EXHIBIT A

SCOPE OF SERVICES

I. SCOPE OF SERVICES

Many of the City's positions require additional language proficiency by staff to maintain efficient operations. A certification/testing process is required to validate an employee's verbal proficiency, and depending on assignment, their written proficiency, prior to the City's authorization of bilingual pay in those positions deemed necessary.

The following activities will be conducted by the CONSULTANT for the CITY:

- a) Provide the ability for City staff to assign tests in an efficient, simplified manner.
- b) Provide technical user support for both City staff and testtaker.
- c) Test career employees from the City of Santa Ana for bilingual pay certification.
- d) Issue a "certificate of competency" with performance rating or score for each tested employee that meets the requirements.
- e) Maintain data of all assessments conducted and provide reports as requested.
- f) While not required, ability to conduct online/remote testing option is desired.
- g) While not required, ability to conduct multiple, concurrent assessments is helpful.

EXHIBIT B

COMPENSATION

Fee Proposal including hourly rates if applicable



ALTA Language Services, Inc.

Tel: 404-920-3800

Fax: 404-920-3801

www.altalang.com

Spanish Instructor, inlingua Language and Intercultural Services Inc., Atlanta, GA, 1999-2001

- Evaluated Delta and Continental Airlines staff to qualify for international flights assignments.
- Taught Spanish Language classes to business executives such as Coca Cola Enterprises, BellSouth, Turner Broadcasting Group, the Center for Disease Control, and other Atlanta businesses.
- Taught language distance Spanish classes via internet-conferencing.

Education

Georgia State University, Atlanta, GA, 1998 –2000

Translation Certificate Program - English/Spanish

Studied translation techniques for legal, technical, medical, and commercial documentation.

Andrés Bello Catholic University, Caracas, Venezuela, 1985- 1991

Attorney (equivalent of a J.D.)

English, Spanish, and basic knowledge of French

VIII. Pricing

| Test (any language) | Rate per test |
|------------------------------------------------------------------|------------------------------------|
| Listening and Speaking (IVR) | \$55.00 |
| Listening and Speaking (Live) | \$66.00 |
| Access to the toll-free number for Listening and Speaking (Live) | \$2.00 |
| Writing | \$66.00 |
| Proctoring (ProctorU) (optional) | \$15.00 (IVR) \$23.00 (Writing) |
| Job Analysis (optional) | \$2,000 per position |



Document History

SignNow E-Signature Audit Log

All dates expressed in MM/DD/YYYY (US)

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Signers:

CC:

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| SignNow Web Application | Uploaded the Document | hr@altalang.com | 08/17/2022 14:41:34 pm UTC | 08/17/2022 14:41:32 pm UTC | 52.255.189.242 |
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