

REQUEST FOR PROPOSALS (RFP)
FOR
ON-CALL RIGHT OF WAY COORDINATOR
RFP NO.: 22-150



CITY OF SANTA ANA
Public Works Agency
20 Civic Center Plaza, M-36
Santa Ana, CA 92701

Hayley Gilbert
Project Manager
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Approved for Release:


Nabil Saba, P.E.
For: Executive Director
Public Works Agency

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

Issue Date:	June 13, 2023
Deadline for Requests for Information:	June 29, 2023
Proposal Due Date:	July 6, 2023 at 2:00 p.m. PST
Projected Award Date:	August 15, 2023



NOTICE INVITING PROPOSALS

NOTICE IS HEREBY GIVEN that proposals will be received from qualified firms for on-call Right of Way Coordinator.

Responses to this Request for Proposals (RFP) must be submitted electronically to the PlanetBids system no later than July 6, 2023 at 2:00 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 be delivered to the Public Works Agency ***drop box located on the first floor of Ross Annex*** across from the Development Permit counter in an enclosed sealed envelope and marked clearly with the following:

**“SEALED PROPOSAL FOR
ON-CALL RIGHT OF WAY COORDINATOR
RFP NO. 22-150
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

Gentle note: staff will not timestamp or sign any hard copy deliveries as the electronic submittal by the deadline is suffice. For further instructions regarding hard copy submission of 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.



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I. INTRODUCTION / PROJECT DESCRIPTION

Nature of Work:

The City of Santa Ana is seeking a qualified On-Call Right of Way Coordinating firm for the City of Santa Ana Public Works Agency on an as-needed basis.

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 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 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 RFP submitted will take the following items into consideration:

- | | |
|-------------------------------|-----|
| • Firm/Team Experience | 25% |
| • Understanding of Need | 30% |
| • Relevant Project Experience | 30% |
| • Schedule of Delivery | 10% |
| • References | 5% |

The City has established a proposal review committee to evaluate proposers based on the response to this 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.

Project Funding:

Funding sources for each project may vary and shall comply with the funding agency's requirements. Special conditions may apply. Refer to Attachment 1 (Scope of Work) in the Appendix of this RFP.



Term of Contract Agreement:

The term of these contracts shall be for three years with a City option for one (1) two (2) year extension period. This term is outlined in the Standard Consultant Agreement, as contained in the Appendix of this RFP as Attachment 2.



II. **INSTRUCTIONS TO PROPOSERS**

A. CITY RESPONSIBILITIES

The City will provide information in its possession relevant to preparation of required information in this 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 concerning the required service operations and contractual matters, including payment of all charges resulting from the Agreement. Contact information such as email and phone number must be included into the proposal.

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's project 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. The City will provide the Selected Proposer with a “New Vendor Checklist”, which outlines insurance requirements.

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 meeting 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 response to this 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 her 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 the 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

1. The number of Proposal Copies and signature is specified in:
RFP SECTION I - INTRODUCTION / PROJECT DESCRIPTION
2. 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 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 relevant 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, project location, year completed, client name and contact information, and name of consultant project manager. City of Santa Ana staff may conduct site visits at select projects.
 - f. Schedule of Delivery: Proposal shall detail the work phases to be completed, the tasks to be accomplished and the deliverables to be provided in order to satisfy the Scope of Work, including the time required to complete each task.
 - g. References: Proposals shall include a listing of relevant projects with references for three public entities with valid current emails 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 separate and concurrently with the technical proposal, both submitted electronically in PlanetBids and as a hard copy 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 selection committee will be comprised of at least (3) City staff from multiple departments. The committee may interview the top ranking proposers. The City will recommend award of contracts to the proposers who will provide the best value to the City. The 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 and acceptance from Funding agency following financial audit, the Project Manager will recommend award contracts to the three top-ranking proposers that will provide 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 contracts. Consultants and their team will meet with City of Santa Ana staff to conduct introductions, discuss scope of services, and implementation processes.



B. NOTICE TO PROCEED

Prior to issuance of a formal Notice to Proceed (NTP), Consultants shall provide all required bonds, insurance documents, and contents of the Information Packet for review and approval by the City.

For “On-Call” contracts, individual City Project Managers will request project/task specific proposals from Consultants on an as-needed basis. Proposals will then be evaluated by City staff and written NTPs will be issued accordingly per each task order.

VII. PUBLIC RECORDS

All data, documents and other products used, developed, or produced during response preparation of this RFP will become property of the City. All responses to this RFP shall become property of the City. Proposer information identified as proprietary information 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 RIGHT OF WAY COORDINATOR
RFP NO. 22-150**

INTRODUCTION

The City of Santa Ana is issuing this Request for Proposals (RFP) to seek a qualified Right-of-Way Consultant to provide right-of-way coordinating services for the City of Santa Ana Public Works Agency on an as-needed basis. From the proposals received, it is the City's goal to select one firm to enter into agreement for a not to exceed amount of **\$XXX,XXX**.

Minimum Qualifications:

Consultant qualifications must demonstrate the minimum qualifications as established in the California Department of Transportation (Caltrans) Right of Way Manual which can be accessed at: <http://www.dot.ca.gov/hq/row/rowman/manual/index.htm>.

Description of Work:

Consultant under contract with the City of Santa Ana will provide support and services to City of Santa Ana staff or their designee on an as-needed basis. The Consultant shall be thoroughly familiar with the Statement of Work prior to submitting a response to this Request for Proposal (RFP).

- The Consultant shall perform work to produce a high quality, professional and complete work product.
- Consultant must have experience with State and Federally funded projects. All work shall be performed in conformance with all applicable regulations, policies, procedures and standards.
- Work may include, but not be limited to, the following: onsite review of the project area; review of existing records; conducting research and performing analysis; information gathering; negotiations; development of strategies.
- The Consultant shall carry out the instructions received from the City and shall cooperate with the City and other agencies.
- The Consultant has total responsibility for the accuracy and completeness of the work

produced. The work will be reviewed by the City for conformity with the requirements of the Agreement. Reviews by the City may NOT include a detailed review for the accuracy of items submitted. The responsibility for accuracy and completeness of such items remains solely that of the Consultant.

- The Consultant shall be responsible for coordination and supervision of all work performed by its sub-consultants. The Consultant shall review all work performed by its sub-consultants and the responsibility for accuracy and completeness of work performed remains solely that of Consultant.
- The Consultant shall have a Quality Assurance/Quality Control (QA/QC) plan in effect during the entire time work is performed under the Agreement. The QA/QC plan is intended to ensure that the appraisals, maps, reports, plans, studies, estimates, agreements and other documents submitted under assigned Scope of Work are complete, accurate, checked, and proofread to meet professional standard practice requirements, and to monitor work for conformance with the appropriate standards and policies. Additionally, all electronic files shall conform to the City's file naming system.
- The Consultant shall diligently work on each assignment and complete each task in accordance with the schedule and accommodate the City's needs.
- The Consultant's work will be subject to inspection and audit by City, County, State and Federal representatives.
- Project files including copies of all correspondences, reports, documents, and electronic files shall be managed online to be shared among the City and various Consultants and update weekly. The schedule and/or status report shall be updated frequently.
- All work, including reports, analysis, data, and intellectual properties developed during the life of the Agreement shall become the properties of the City.
- The Consultant will receive written notification of the award of the contract. Upon on such notification, the Consultant will proceed with the services required by the Agreement.

SCOPE OF SERVICES

Assist City staff overseeing all the right of way and real estate services. Ensuring all work will be performed in accordance with the public agency's policies and procedures and federal, state and local regulations. Consultant shall assign one staff as Project Coordinator managing and overseeing the following tasks including, but not limited to:

- Administration of all right-of-way related consultant contracts including but not limited to: 1) Property appraisal; 2) Furniture, fixture and equipment appraisal; 3) Business goodwill appraisal; 4) Acquisition/relocation and property management services; and 5) City real estate properties.

- Prepare Weekly Project Summary Reports for review by City Legal Staff
- Review consultant invoices and recommend payment to City
- Review consultants schedule for acquisition/relocation and monitor progress.
- Review relocation claim and monitor status of relocation and eviction efforts in accordance with the Uniform Relocation and Real Property Acquisition Act of 1970 (Uniform Act); the California Relocation Assistance and Real Property Acquisition Guidelines; CITY's Real Property Policies and Procedures and any other applicable regulations.
- Review Title reports and identify pertinent information
- Review and comment on real estate appraisals
- Review and comment on improvements pertaining to realty, furniture, fixtures and equipment appraisals
- Review and comment on loss of business goodwill appraisals
- Review and comment on acquisition tasks such as offer packages
- Monitor negotiations done by other consultants
- Prepare documentation for administrative settlements
- Provide Condemnation support
- Monitor Demolition activities
- Recommend amount of just compensation. The CITY shall make the final determination of just compensation.
- Review title and escrow services necessary for the acquisition of real property, which include, but are not limited to, preliminary title reports, litigation guarantees, policies of title, title searches, document searches, document preparation, estimates of closing costs, escrow instructions, and other documents.
- Review all documents for submission and delivery to escrow companies; review title and escrow documents; ensure that CITY is acquiring good title and/or the property rights needed for the completion of the PROJECT, free and clear of any and all encumbrances that may affect or hinder the development of future consideration; coordinate escrow closings and file all applicable forms and documents with the County Assessor's Office.
- Coordinate and provide support to CITY legal staff to clear title, if necessary.
- Advise CITY of any Preliminary Title Reports/Litigation Guaranties, determine title deficiencies, develop a plan to resolve and cure title deficiencies and clear liens and encumbrances.
- Upon completion of Project, advise CITY of any Policy of Title insurance, American Land Title Association (ALTA) or California Land Title Association (CLTA) extended-coverage owner's policy based on the value of the property provided by CITY.
- Review design plans, construction plans, appraisal, appraisal maps, legal descriptions, and if necessary, environmental site assessments.
- Review and maintain a parcel negotiator's log (parcel diary) for each parcel.
- Review the acquisition file for each property owner or property interest acquired, and maintain a file checklist pursuant to City's policies and procedures
- Secure Agreements for Possession and Use, Right of Entries, and licenses or permits

from property owners for purposes of performing hazardous waste, archeological and other inspections. If needed, provide support to CITY legal staff.

- Perform any other normal procedures and processes to implement the acquisition assignment and shall provide any other supporting information and/or correspondence required by CITY
- Assist CITY in achieving California Department of Transportation (Caltrans) Right Of Way Certification.
- Review existing leases, licenses, franchises, easements, permits and other agreements for the subject properties.
- Establishment of right of way requirements for road widening projects
- Review accuracy of Right of way mapping and legal descriptions
- Review and comment on environmental studies to meet all applicable local, federal, and state laws, regulations, rules, and other requirements.
- Review and comment on relocation plan, arrange for periodic circulation support in accordance with the Uniform Act, the California Relocation Assistance and Real Property Acquisition Guidelines, CITY's Real Property Policies and Procedures and any other applicable regulations.
- Prepare documentation for Right of way disposition
- Attend neighborhood and Council meetings, make public presentations to individuals and organizations and represent CITY in presentations and public hearing on all matters pertaining to the right of way process.
- The overseeing Right of Way Coordinator shall be currently and validly licensed to practice the business of Real Estate in the State of California. The Proposal shall include the Right of Way Coordinator's Broker License Number as issued by the California Department of Consumer Affairs Bureau of Real Estate. All right of way activities shall be in accordance with CITY's Real Property Policies and Procedures Manual, and Federal, State and local regulations
- The Coordinator shall also have full time experience conducting same work as those required by this RFP for at least the past 5 years.
- Prepare all necessary documents to the title and escrow companies for approval by CITY. CONSULTANT will be responsible for managing and monitoring the title and escrow companies to ensure timely delivery.
- Market for sale properties via traditional and non-traditional methods
- Coordinate Phase I Environmental Soil Assessment Reports and, if required, provide Phase II assessments, Hazardous Materials Disclosure Documents (HMDD) and Request to Acquire Contaminated Property (RACP) if required.
- Advise for the submittal of any approval, certification or other similar document that any jurisdictional agency may require, and obtain approval/acceptance from said jurisdictional agency.
- Advise in the preparation of the Informational Letter and Offer Letter
- Maintain a Record of Negotiations documenting that all elements of the acquisition process and transactions were performed in accordance with applicable Federal, State,

and local laws and regulations.

- Provide bilingual acquisition agents as needed.
- Assist CITY in Eminent Domain Support. If requested, CONSULTANT shall provide expert testimony in any court or administrative proceedings, and assist as required in legal matters as directed by CITY legal staff, especially in the litigation of cases for or against CITY, including but not limited to gathering of documents and information.
- Responsible for coordinating the identification, relocation, protection, and abandonment of all utilities required by the PROJECT.
- Set-up procedure to sell surplus property

**Appendix
ATTACHMENT 2
SAMPLE AGREEMENT**

THIS AGREEMENT is made and entered into on this ____ day of _____, 20__ 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:

On-Call Right of Way Coordinating 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 during the term of this Agreement shall not exceed \$**XXX,XXX**.
- 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 [enter a Start Date or “the date first written above”] for a **number (#) year term** with the **option for the City to grant up to a number (#)-year renewals**, exercisable by a writing by the City Manager and the City Attorney, 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 (Subject to revision per RMD requirements)

Contractor 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 Contractor, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation:** 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.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the Contractor’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor.

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 Contractor 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 Contractor’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 **Contractor’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 Contractor’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

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor 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 Contractor 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 Contractor must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Contractor 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 Contractor'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.

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:

Nabil Saba
Executive Director, Public Works Agency
City of Santa Ana
20 Civic Center Plaza (M-21)
P.O. Box 1988
Santa Ana, California 92702
Fax:

To Contractor:

First & Last Name
Title
Consultant Firm Name
Address
City, State, Zip
Fax:

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.

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

ATTEST:

CITY OF SANTA ANA

Jennifer L. Hall
Clerk of the Council

Kristine Ridge
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

CONSULTANT:

By: _____

Assistant City Attorney

_____ (name) (title)

RECOMMENDED FOR APPROVAL:

Nabil Saba
Executive Director
Public Works Agency

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

COMPENSATION

Fee Proposal including hourly rates if applicable

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: _____