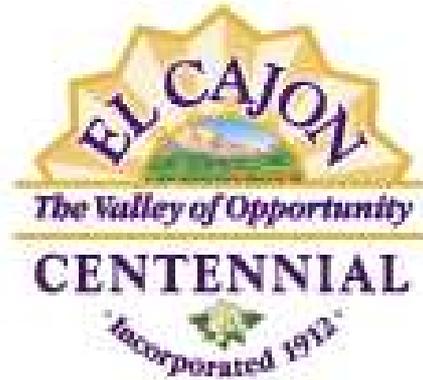


TRACKER #: 132-0252  
DUE DATE: 5/17/13  
GO/No-GO PERSON: BEB  
GO/No-GO DUE: 5/3/13

# **CITY of EL CAJON**

## **Public Works**



### **REQUEST for STATEMENT OF QUALIFICATIONS**

**CONSTRUCTION MANAGEMENT SERVICES:**

### **JOHNSON AVENUE SEWER RELIEF PROJECT**

SOQ NUMBER: PW NO. 01-13  
JOB NUMBER: WW3250  
DUE BEFORE: 5:00 PM, May 23, 2013

**CITY OF EL CAJON**  
**NOTICE INVITING STATEMENT OF QUALIFICATIONS**

**SOQ: Construction Management: Johnson Avenue Sewer Relief Project WW3250,  
PW 01-13**

**SOQ's MUST BE RECEIVED BEFORE: 5:00 p.m., May 23, 2013**

**PLACE OF RECEIPT OF SUBMITTALS: City of El Cajon  
City Hall – Fourth Floor  
David Keltner, Project Manager  
Department of Public Works  
200 Civic Center Way  
El Cajon, CA 92020  
City Hall Map @  
[www.cityofelcajon.us](http://www.cityofelcajon.us)**

NOTICE IS HEREBY GIVEN that the City of El Cajon, California, will receive Statements of Qualifications before the time and date set forth above, for construction management services related to the Johnson Avenue Sewer Relief Project.

Information regarding proposal forms and other matters pertaining to same may be downloaded from the City's website at [www.cityofelcajon.us](http://www.cityofelcajon.us) ([Bidding Opportunities Quick Link](#)). All submittals shall be delivered to the Public Works Department of the City of El Cajon as set forth above.

Firms interested in submitting qualifications must attend a MANDATORY PRE-SUBMITTAL MEETING at 1:30 p.m. on May 8, 2013, at City Hall, 5<sup>th</sup> Floor Conference Room.

The City reserves the right to reject any and all submittals, should it deem this necessary for the public good, and also the response of any interested firm who has been delinquent or unfaithful in any former contract with the City of El Cajon.

*/s/ Dede Porter*  
Purchasing Agent April 25, 2013

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# CITY OF EL CAJON REQUEST FOR STATEMENT OF QUALIFICATIONS JOHNSON AVENUE SEWER RELIEF PROJECT

## **MINIMUM QUALIFICATIONS**

The City of El Cajon is currently seeking a statement of qualifications from qualified Construction Management firms for oversight of final design and management of pipeline construction. Minimum qualifications are:

- Project Manager/**Certified Construction Manager (CCM)**;
- CM Firm must have a principal with a current State of California Civil Engineering License;
- Demonstrated experience with managing construction of large diameter wastewater pipelines.

**LOCAL PREFERENCE** Firms with an office located in San Diego County will receive a five-point scoring credit towards the SOQ evaluation.

Firms interested in submitting a Statement of Qualifications (SOQ) must register via the City's Website, [www.cityofelcajon.us](http://www.cityofelcajon.us) (Bidding Opportunities Quick Link) and download the SOQ document to become a listed "Perspective Bidder".

Interested firms are also invited to attend a mandatory pre-submittal meeting on May 8, 2013, at City Hall in the Fifth Floor Conference Room at 200 Civic Center Way, El Cajon, 92020, at 1:30 p.m. Any changes to the SOQ resulting from the meeting will be provided to registered firms only by e-mail.

## **BACKGROUND**

Since 2008, the City has been planning a new pipeline in Johnson Avenue to relieve capacity deficiencies identified in the update to the City's Sewer Master Plan. In December 2010, the City experienced a 40-year storm event that spiked inflow and infiltration into the sewer collection system that exceeded capacity of the City's trunk sewer main resulting in a sewer spill in Forrester Creek. In 2011, Atkins North America was retained to prepare a Preliminary Design Report (PDR) that was completed in April 2012. A Mitigated Negative Declaration (MND) and an Environmental Impact Mitigation, Monitoring and Reporting Plan (MMRP) were certified in September 2012. Final engineering and design will continue for the balance of 2013. You may view the PDR, and MMRP on the City's website at:

<http://www.ci.el-cajon.ca.us/dept/works/index.html>

The plan includes 1.8 miles of pipeline varying in size from 8" to 48" in diameter. The proposed alignment crosses Interstate I-8 easterly of the Johnson Avenue Bridge and under Forester Creek with a planned 550-foot jack and bore operation. Much of the project alignment varies in depth from 18 to 22 feet and portions of the alignment pass through high ground water with silted-sand soils some of which are contaminated with hazardous substances.

The City intends to retain a Construction Manager (CM) to participate in the final design phase including value engineering and a risk assessment prior to completion of the construction contract documents. The CM will continue with construction period services as outlined in the General Scope of Services following:

### **GENERAL SCOPE OF WORK**

The Construction Manager shall be in charge of the constructability review and managing all aspects of the construction project as directed by the City of El Cajon.

Atkins, the Design Engineer, will be retained to provide construction phase services that include reviewing shop drawings, answering requests for information, reviewing change orders and preparing "As-Built" record drawings.

### **CONSTRUCTION MANAGEMENT SERVICES**

#### **1. Constructability Review**

The consultant shall provide the following constructability review and risk management services:

- Perform constructability review on 60%, and 90% design submittals and provide written recommendations.
- Review the 100% contract documents for completeness and bid-ability.
- Participate with the design team in identifying significant project risks, risk mitigation measures and assist with preparation of a Risk Management Plan.
- Attend design progress meetings.

#### **2. Construction Inspection**

Provide experienced construction inspectors to perform full-time observation of the pipelines construction and related activities. The construction duration is estimated to be 265 calendar days. The construction inspector will observe and document the work, and the contractor's conformance with the plans and specifications. The construction inspector's duties will also consist of the following activities:

- Preparation of written Daily Field Reports for submittal to the City. Reports will include work performed, labor and equipment utilized, quality control testing performed, notable observations by environmental mitigation monitors, and a discussion of any work not conforming to the plans and specifications.
- Monitor, observe and report compliance with the Contractor's stated quality control plan.

- Depending on the source of funding review weekly Certified Payrolls and coordinate with Contractor to facilitate any changes needed to be in compliance with Federal and State guidelines.
- Observe all construction and coordinate observation of special construction including excavation, backfill, existing utility crossings and all piping and connections to existing facilities.
- Report any changes or discrepancies in existing conditions with the plans and specifications.
- Monitor and report trench dewater activities including quantities, ground water quality, contaminated ground water treatment efforts, and ground water disposal.
- Monitor and report observation for contaminated soils handling, temporary storage and disposal as per the requirements of the RWQCB.
- Monitor and report ground settlement conditions.
- Perform photographic documentation of construction activities in digital format.
- Observe and record all major materials delivery to the site to document their accordance with the specifications and approved shop drawings.
- Coordinate with Contractor and City approved construction monitors to verify compliance with the MMRP. Observe and report Contractor's mitigation activities, review weekly monitoring reports and field verify compliance with the MMRP and the construction contract documents.
- Monitor the Contractor's SWPPP activities and verify compliance with installation and maintenance of BMP's required by the contract documents.
- Check traffic control daily to insure that traffic control is set in accordance with approved traffic control plans.
- Coordinate with Caltrans' inspectors to insure that work is performed in accordance with the Caltrans encroachment permit.
- Provide special inspections, if needed, and not required of the contractor.
- Update project red lines during construction, Contractor red lines and update record drawings.

### **3. Construction Management**

Provide construction management services including the following:

- Manage the process of pre-qualifying general contractors with assistance from the City and the design engineer.
- Assist the City with the bidding process, selection of the contractor and contract award.

- Develop a list of project risks with the relative severity and probability of affecting the schedule, scope or project costs with assistance from the City and Design Engineer.
- Develop and maintain a risk management register that tracks mitigation strategy and risk management responsibilities.
- Coordinate with the Contractor in implementing a ground settlement observation procedure that tracks and measures ground settlement in high risk areas and the implementation of emergency response plans to mitigate ground settlement.
- Conduct bi-weekly progress meetings, or more often as needed, including job progress and schedule meetings with the Contractor, the City, mitigation monitors and others, as necessary. Prepare and distribute meeting minutes via email.
- Administer and track all “Submittals”, “Requests for Information,” “Change Order Requests”, and other related forms.
- Provide appropriate response and/or recommendations to and from the City. Consult with Engineering staff on all technical matters. Notify all parties of issues that impact critical path schedule.
- Negotiate Change Orders on behalf of the City. Coordinate with Design Engineer, as necessary.
- Monitor project permit conditions and related expiration dates and inform the City and Contractor when non-compliance is observed.
- Supervise Contractor’s compliance with all requirements of project design specifications and drawings.
- Monitor Contractor’s schedule each week, including the previous weeks’ progress and Contractor’s anticipated work.
- Inform City, as necessary, of schedule issues.
- Process monthly progress pay estimates including review of Contractor’s work progress with City representative, review for accuracy, and comparison with actual work completed; make appropriate recommendations to City on payment issues.
- Provide document control including processing and filing all project correspondence, documents, and drawings. The Construction Manager is to handle all paperwork between all parties.
- Prepare monthly construction management reports to include a detailed description of work completed, schedule status, submittals status, RFI status, design revision status, progress payment and overall contract status, and project photographs. The monthly reports will be prepared in a City-provided format including color copies of the digital photographs with captions of work performed. Electronic copies of the monthly reports will be provided to the City and other parties, as requested.
- Conduct and coordinate preliminary and final walk-throughs with punch lists, start-up and testing, and closeout.

#### 4. Construction Staking

All construction-staking services are provided by the Construction Contractor; however, the Construction Manager, in coordination with the City's Surveyor, must review the work and ensure compliance with all contract requirements.

#### 5. Geotechnical Services

All project geotechnical services are provided by the Construction Contractor; however, the Construction Manager must review the work and ensure compliance with all contract requirements.

#### Proposed Schedule

Currently the proposed schedule is as follows:

- SOQ issued April 25, 2013
- Mandatory Pre-Submittal Meeting May 8, 2013
- Last day to submit questions May 13, 2013
- Addendum issued, if necessary May 15, 2013
- SOQ's due May 23, 2013
- City Short List Announcement June 14, 2013
- Fee Proposal Due June 28, 2013
- Interviews July 15 through July 18, 2013
- City Council Award to Selected Firm Aug. 27, 2013
- Estimated NTP Sept. 16, 2013
- 60% PS&E Plan Check & Review September 2013
- 90% PS&E Plan Check & Review November 2013
- 100% PS&E Plan Check & Review January 2014
- Final design submittal is scheduled for March 2014
- Advertise bids May-June 2014
- NTP Construction September 2014

#### **INQUIRIES**

Questions pertaining to this SOQ and the selection process shall be directed in writing to the City's Purchasing Agent, Dede Porter at the e-mail address below. All additional information, questions/responses, and any addendums will be communicated by e-mail to registered firms. All questions, correspondence and submittals shall be directed to:

Dede Porter, Purchasing Agent  
City of El Cajon  
200 Civic Center Way  
El Cajon, CA 92020-3916  
Phone: (619) 441-1748  
e-mail: [dporter@cityofelcajon.us](mailto:dporter@cityofelcajon.us)

## **PRE-SUBMITTAL REQUIREMENTS**

There will be a mandatory pre-submittal meeting for STEP 1, described below, on May 8, 2013 at 1:30 p.m., at City Hall in the Fifth Floor Conference Room, 200 Civic Center Way, El Cajon. Questions and answers, along with any resulting addendums, will be communicated by e-mail correspondence to firms that have registered via the City's website for this solicitation and interested in responding to this SOQ.

Any additional request for information generated outside of the meeting shall be directed to the City's Purchasing Agent, by e-mail only at [dporter@cityofelcajon.us](mailto:dporter@cityofelcajon.us). The deadline for questions is May 13, 2013 at 5:00 p.m.. All questions and answers with any addendum will be distributed to the list of registered attendees May 15, 2013.

## **SUBMITTAL REQUIREMENTS**

### **STEP 1: STATEMENT OF QUALIFICATIONS OUTLINE**

**(10 maximum allowable pages excluding the Appendix, covers and tabs)**

1. Cover Page (Not included in page count)
2. Table of Contents (Not included in page count)
3. Organizational Chart
4. Qualifications of the Firm
5. Project Descriptions
6. Quality Assurance Plan
7. Change Order History
8. Workforce Commitment
9. Appendix (Not included in page count)
  - i. Attachment – Resumes of Key Participants
  - ii. Commendations and/or Independent Performance Reviews

### **Organizational Chart**

The organizational chart shall show key individuals performing work on the project including their titles and roles. The chart shall also designate the Construction Manager (CM) and single point of contact to interface with the City, as work progresses.

The Construction Manager, once assigned, will be required to perform that function until the work is complete or unless the City offers consent to a change in the Construction Manager.

It is important to demonstrate that individual team members account for all the essential needs of the project.

There is no requirement to include disadvantaged businesses on the CM team.

Note: Resumes of all individuals listed in the **Organizational Chart** must be included in the Appendix. Key personnel appearing on the Organizational Chart should also be highlighted in the **Project Descriptions** below.

## **Qualifications**

Qualifications of the firm or individual team members shall demonstrate the experience and expertise in performing similar work such as large diameter wastewater pipelines, scope and size with similar challenges, including past projects that have the same or similar requirements such as jack & bore applications, contaminated ground water treatment and disposal, contaminated soil management, and deep/large diameter pipelines, etc.

Individual resumes should reference projects similar in requirements, size and scope.

The Construction Manager shall be a currently Certified Construction Manager (CCM).

Projects noted in the qualifications must be included in the **Project Descriptions** below.

Experience of individual team members does not necessarily have to be with the prime firm.

## **Project Descriptions**

Project descriptions identified in the **Qualifications** above shall include relevant project specific information including, as a minimum, key personnel who performed the work, the objectives of the project, the results including completion dates, and the client contract administrator's name, project costs and change order amount, current address and phone number for reference purposes. Persons listed in the **Organizational Chart** should appear in the project descriptions demonstrating that the firm personnel has worked together with previous projects. References will be contacted for verification purposes; so, it is important to include current contact information for client contacts/contract administrators.

## **Quality Assurance Plan**

The Quality Assurance Plan will include, as a minimum, a subjective narrative of the firm's quality control and quality assurance procedures, as they would apply to this project. Discuss QC procedures that you would include for this project.

Include, as an attachment in the Appendix, any Letters of Commendations or Awards received by the firm or individuals working on projects of similar work. Inclusion of Commendations in the Appendix qualifies for additional scoring credit. Inclusion of mere quotations from sources are not sufficient and will not be counted.

## **Work Force Commitment and Change Order History**

Include an analysis of the firm's workforce availability and individuals committed to work on this project with work backlog projections demonstrating the firm's ability to commit to this project.

Present statistical information that illustrates the firm's track record for managing projects citing the original bid total, the cost of change orders, the total number of Change Orders, and the percent total change. Note amount of Change Orders attributed to the owner's change in scope or design and explain why.

Any information contained in independent performance reviews (to be included in the Appendices) to verify quality of work and ability to meet expectations will be viewed as supporting information and will be rewarded with extra credit. Simple written quotations attributed to clients will not be viewed as supporting information unless it is contained in a signed statement from the client.

Include any independent performance reviews or client "de-briefs" as an attachment in the Appendix. Inclusion of independent **Performance Reviews** in the appendix **qualifies for additional scoring credit.**

All firms choosing to respond will submit a Statement of Qualifications as outlined above. The submittals will be reviewed, scored and ranked. The top firms receiving the highest scores will be invited to participate in **STEP 2** of the selection process. At the City's option, the top ranked firms may be invited for a group meeting before proceeding to **STEP 2**.

## **STEP 2: PROJECT APPROACH, FEE PROPOSAL and PRESENTATION** **(8 maximum allowable pages excluding the Appendix, covers and tabs)**

Fee Estimate organized and outlined in concert with the scope of work to be provided by the City at the conclusion of **STEP 1**. Estimate may include a range of fees for certain tasks when a high and low range can define available choices in service. The City will provide a formatted spread sheet to be used for the fee estimate.

### **Project Approach**

The project approach shall include a narrative of how the Consultant plans to execute the work and shall be sufficiently detailed describing tasks, sequence of work and responsibility assignments for key team members to meet the needs of the scope of work shown above.

### **Fee Estimate**

The fee estimate will be used to negotiate a contract with the selected firm. The fee estimate shall include tasks identified in the **Project Approach** described above, along with the estimated fee for each task including labor classifications, hours and unit cost per class with an estimate of reimbursable costs. Note any assumptions or qualifiers used to prepare the estimate and note any exceptions to the standard form agreement enclosed herewith.

### **Presentation**

Each of the top ranked firms will be invited to an interview to present their approach and fee estimate.

### **Evaluation and Selection**

Prospective firms proposing to provide these professional services will be evaluated and ranked according to El Cajon Municipal Code (ECMC) Section 3.22.040. The City, however, will not disclose its ranking system. Prospective firms shall submit their responses in the format as outlined above. Submittals that do not follow the prescribed format will be considered as non-responsive and will not be considered. The statement of qualifications shall not exceed the page limits outlined above; although, resumes, commendations, performance reviews, section

divider tabs, back and cover, along with any signed Addendums, may be included to supplement the proposal and will not be considered in the page count.

Selection of the top ranked firm will be based on a combined rating of Step 1 and Step 2. The final selection will be the firm who, in the Selection Committee's opinion, is the most capable firm after considering qualifications, experience, approach, and creativity as stated in the SOQ and within the City's budgetary constraints.

As part of the selection process, the City will negotiate project costs and scope of work in accordance with Municipal Code Chapter 3.22.40.C., Selection Procedures.

The final proposal from the selected Consultant, as recommended by the Selection Committee, will be subject to the approval of the City Manager and City Council.

**Other Documents Available On The City's Website:**

<http://www.ci.el-cajon.ca.us/dept/works/>

1. Preliminary Design Report: Johnson Avenue Sewer Relief Project
2. Mitigation, Monitoring and Reporting Program: Johnson Avenue Sewer Relief Project

## **GENERAL CONDITIONS**

- 1. LICENSE REQUIREMENT** — A City of El Cajon Business License is required for this contract, which shall be obtained and paid for by the selected Consultant.
- 2. FORM OF PROPOSAL OR SOQ** - The Proposal/SOQ shall be submitted in the format and quantity specified in the Proposal document.
- 3. REJECTION OF PROPOSALS/SOQS** — The right is reserved to reject any and all Proposals.
- 4. NOTIFICATION OF WITHDRAWAL OF PROPOSAL/SOQ**— Proposals may be modified or withdrawn prior to the date and time specified for Proposal submission by an authorized representative of the firm or by formal written notice. Proposals submitted will become the property of the City after the Proposal submission deadline. The City will require certain contractual obligations. These may include, but are not limited to, the following:
  - Inclusion of Statement of Qualifications** — The Proposal/SOQ submitted in response to this Request will be required to be included as a part of the final contract with the selected vendor.
  - Insurance** — The City will require the selected vendor to meet the City's insurance requirements for the duration of the contract.
- 5. RIGHTS TO PERTINENT MATERIALS** — All responses, inquiries and correspondence relating to this Proposal and all reports, charts, displays, schedules, exhibits and other documentation produced by the vendor that is submitted as part of the Proposal shall become the property of the City when received by the City.
- 6. EXCEPTIONS TO THE PROPOSAL** — All requested information must be submitted as indicated. Any exceptions to Proposal terms and conditions must be included in writing in the Proposal response.
- 7. CONFIDENTIALITY OF DOCUMENTS** —All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the City or its designated agents.
- 8. EXECUTION OF CONTRACT** — The contract shall be signed by the selected Consultant and returned within 30 days of the award of contract. No proposal shall be considered binding upon the City until the execution of the contract. Failure to execute the contract (after the selected Consultant has received notice that the contract has been awarded to him) shall be just cause for the annulment of the award. The award will be given to the next best-qualified respondent.
- 9. INSURANCE** - The Consultant shall maintain general liability insurance to a limit of \$2,000,000.00, professional liability insurance to a limit of \$1,000,000.00, and State of California required levels of worker's compensation insurance for all work performed under this Contract in accordance with City requirements, Council Policy D-3 (attached).
- 10. TERMINATION FOR DEFAULT** —The City may, by written notice of default to the vendor, terminate any resulting order in whole or in part should the vendor fail to make satisfactory

progress, fail to deliver within time specified therein, or fail to deliver in strict conformance to specifications and requirements set forth therein. In the event of such termination, the City reserves the right to purchase or obtain the supplies or services elsewhere, and the defaulting vendor shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to the City. The prevailing market price shall be considered the fair repurchase price. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause. The rights and remedies of City provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

**11. TERMINATION FOR CONVENIENCE** — The City may, by written notice stating the extent and effective date, terminate any resulting order for convenience in whole or in part, at any time. The City shall pay the vendor as full compensation for performance until such termination at the unit or pro rate price for the delivered and accepted portion and a reasonable amount, as costs of termination, not otherwise recoverable from other sources by the vendor as approved by the City, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price. In no event shall the City be liable for any loss of profits on the resulting order or portion thereof so terminated. The rights and remedies of City provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

**12. CHANGES TO CONTRACT** — Any changes to the contract, the scope of work or the time for performance shall be in writing and will not be effective until both parties have executed a contract change order.

**13. PERSONAL SERVICES** — This is a professional services agreement between the parties, and contractor shall not assign, transfer or subcontract voluntarily or involuntarily any of its rights, duties or obligations under this agreement without the express written consent of the City in each instance.

**14. AFFIRMATIVE ACTION** - The City of El Cajon Affirmative Action Plan requires any vendor who receives business from the City in excess of \$10,000.00 to verify adherence to Affirmative Action guidelines as set forth in Executive Order 11246. To comply, each vendor awarded a contract by the City of El Cajon shall agree; and by signing and submitting a proposal for this contract, does certify to adhere to said guidelines.

**15. FISCAL YEAR** - Obligation for payment of any contract beyond the current fiscal year end is contingent upon the availability of funding from which payment can be made. No legal liability shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance.

**16. COMMENCEMENT AND COMPLETION** — Work shall commence upon award and execution of contract and shall be completed as stipulated in the contract.

**17. GOVERNING LAW** - Any contract shall be construed and interpreted according to the laws of the State of California.

## APPENDIX A

### City Council Policy D-3 (Insurance requirements)

#### PURPOSE

To provide a uniform City policy for liability insurance requirements and to establish procedures for its consistent application.

#### BACKGROUND

To help protect the City against liability, all individuals, contractors, agencies and organizations conducting business in association with, on behalf of, or in certain circumstances within the City of El Cajon are required to maintain adequate liability insurance coverage acceptable to the City.

Because of the differing levels of protection needed for various activities conducted within the city, the City has established policy limits and standards which directly relate to the type of activity being conducted.

#### POLICY

All individuals, contractors, agencies, and organizations conducting business either for the City of El Cajon (or the El Cajon Redevelopment Agency) or pursuant to an ordinance, resolution, agreement or policy requiring the maintenance of liability insurance shall provide proof of liability insurance in the following amounts and written on an occurrence basis (claims made coverage will be accepted only after verifying that occurrence coverage is not available):

1. A combined single limit policy with aggregate limits in the amount of \$2 million for all construction projects and for carnivals, subdivisions, and pollution coverage subject to section 5.c. under the heading "**INSURANCE STANDARDS**," with a maximum deductible or self-insurance retention ("SIR") of \$500,000; otherwise minimum limits in amounts as follows:

Bodily Injury:	\$	1,000,000	each person
	\$	1,000,000	each occurrence
	\$	2,000,000	aggregate products and completed operations
Property Damage:	\$	250,000	each occurrence
	\$	500,000	aggregate

Unless staff determines that circumstances (i.e. high risk project, etc.) require the higher limit, the \$2,000,000 limit shall be decreased to \$1,000,000 with a maximum deductible or SIR of \$150,000, when:

#### POLICY (continued)

- a. The public improvements portion of a subdivision project is less than \$50,000; or
  - b. A construction project (in accordance with the Standard Specifications for Public Works Construction—and the Standard Special Provisions, the “Green Book”) is for less than \$50,000.
2. Except as otherwise provided in this policy, a combined single limit policy with aggregate limits in the amount of \$2 million for all others, including, but not limited to, athletic leagues, recreation groups, towing companies and public service agencies; otherwise minimum limits in amounts as follows:
- |                |    |           |  |
|----------------|----|-----------|--|
| Bodily Injury: | \$ | 500,000   | each person  |
|                | \$ | 1,000,000 | each occurrence  |
|                | \$ | 2,000,000 | aggregate including products<br>and completed operations |
- |                  |    |         |                 |
|------------------|----|---------|-----------------|
| Property Damage: | \$ | 100,000 | each occurrence |
|                  | \$ | 250,000 | aggregate       |
3. A combined single limit policy with aggregate limits in the amount of \$250,000 for homeowners insurance or for comprehensive general liability insurance for small business owners, in either event only where the insurance is required for work in the public right-of-way. “Small business owners” are defined as commercial businesses, or a professional or administrative office uses, where the owners of the business work on-site as their primary calling or vocation, and having no more than two (2) employees not related by blood or marriage.
  4. Selected high-risk activities that would otherwise fall under the criteria for category 2 shall be evaluated by staff on a case-by-case basis to determine whether or not the above limits are sufficient. The imposition of liability limits exceeding \$2 million for such high-risk activities is appealable to the City Council.
  5. \$1,000,000 for taxicab companies.
  6. \$500,000 or actual value, whichever is greater, for “valuable papers” and “in transit” insurance where City records or personal property is being transported or stored outside of City property.
  7. Exceptions to the above limits may be made for non-profit, charitable, political, community and religious organizations.
  8. The policy or policies of insurance may be for all operations or activities of the party purchasing the policy or policies provided, however, that the City or the Agency may require a separate policy exclusively for operations of the purchaser where the City Manager (or Executive Director), in her sole discretion, determines that a single policy would be inadequate to protect the City or Agency in the event of multiple catastrophes.

**POLICY (continued)**

## INSURANCE STANDARDS

### 1. ADMITTED CARRIER / BEST'S RATING B+, CLASS VII

- a. Insurers must be "admitted" carriers pursuant to the provisions of the California Insurance Code and in accordance with all requirements of the State Insurance Commission and must be listed in the:

"OFFICIAL PUBLICATION  
DEPARTMENT OF INSURANCE  
STATE OF CALIFORNIA  
45 Fremont Street  
San Francisco, California 94105

INSURANCE ORGANIZATIONS AUTHORIZED BY THE INSURANCE  
COMMISSION TO TRANSACT BUSINESS OF INSURANCE  
IN THE STATE OF CALIFORNIA DURING  
[the most recent year for which  
the publication is available]."

or

"California Department of Insurance Company Profile."

- b. Insurers must have a Best's rating of B+, Class VII or higher (this rating includes those insurers with a minimum policyholder's surplus of \$50 to \$100 million). Exceptions to the Best's rating may be considered when an insurance carrier meets all other standards and can satisfy surplus amounts equivalent to a B+, Class VII rating.

### 2. NON-ADMITTED CARRIER / BEST'S RATING B+, CLASS VII

Exceptions to the "admitted" requirement may be considered when a non-admitted insurance carrier meets all other standards herein and:

- a. is listed in:

California Department of Insurance  
List of Eligible Surplus Line Insurers

#### LISTING OF FILINGS

- b. has a Best's rating of B+, Class VII or higher (this rating includes those insurers with a minimum policyholder's surplus of \$50 to \$100 million);
- c. has ten years or more experience in the business of insurance; and
- d. if applicable, the reinsurance carrier has a qualified rating.

### 3. GENERAL – INSURANCE CERTIFICATES / ADDITIONAL INSURED

All insurers (including those insuring against pollution or discharges of hazardous materials) must provide certificates of insurance and endorsements evidencing coverage prior to the start of any contract. All certificates or endorsements must include:

- Name of insurance company issuing each policy.
- All insurers must provide an original endorsement naming the City of El Cajon (and/or the El Cajon Redevelopment Agency), and its (their) elected and appointed officials, officers, employees and volunteers (for purposes of this Policy, individually and collectively, the “City Insureds”) as additional insureds. This inclusion as additional insureds shall not be required of Workers’ Compensation or professional liability policies of insurance, and may be waived for “valuable papers” coverage with the approval of the City Attorney.
- Address of named insured.
- Description of coverage, including any special coverage required by the contract.
- Policy numbers.
- Policy periods (If claims made basis, must include retroactive date and length of time allowed as extended reporting period).
- Coverage type (occurrence form vs. claims made).
- Authorized signature and date of issuance. An original signature is required: a digital signature is acceptable so long as it complies with the requirements of Government Code §16.5.
- Unless approved by the City Manager or her designee, no certificate shall be accepted that qualifies the obligation of the carrier to provide 30 days written notice of cancellation of the policy. With the approval of the City Attorney the obligation to provide notice of cancellation may be reduced to ten (10) days, but only for termination due to the non-payment of any premium.

### 4. PUBLIC WORKS PROJECTS

In addition to the standards set forth above, insurance policies for public works projects must also meet the following insurance requirements set out in the most recent edition of the Green Book adopted by the City Council:

- a. All insurance certificates shall bear an endorsement or shall have attached a rider whereby it is provided that, in the event of expiration or proposed cancellation of such policy for any reason whatsoever, the City shall be notified by certified mail, return receipt requested, giving a sufficient time before the date thereof to comply with any applicable law or statute, but in no event less than thirty (30) days before expiration or cancellation is effective, the provisions of section 3 herein notwithstanding; and
- b. Compliance with Labor Code §§3700 and 3800 relating to Worker’s Compensation.
- c. Requirements of the Green Book shall prevail.

5. PUBLIC RIGHT-OF-WAY

An applicant for permit(s) to do work within the public right-of-way may establish satisfactory proof of liability insurance in the following manner:

a. CONTRACTORS

Contractors must furnish the City with a certificate of liability insurance, which meets the requirements set forth above and any other City requirements contained in this policy.

b. HOMEOWNERS / PROPERTY OWNERS

Homeowners/Property owners requesting a permit to do work within City rights-of-way or easements immediately adjacent to their respective owned or occupied property, solely for the owner's personal benefit, shall be required to furnish the City with a copy of their homeowner's/property owner's liability insurance policy, which meets the requirements set forth above, with the minimum limits described in category 3 under the heading "**POLICY**," above. The policy must be effective during the entire period of the proposed work, plus two (2) calendar years, and must provide coverage for claims arising from the work performed, or improvements owned, by the homeowner in the right-of-way or easement. If the encroachment is ongoing, annual proof of insurance shall be required. The requirement to name the City as an additional insured, and the requirement for a policy for two (2) additional calendar years, may each be waived by the City Council or the City Manager (or her designee) in cases of extreme hardship, in their discretion.

c. POLLUTION EXCLUSION

Applications for the installation of monitoring wells for the evaluation of groundwater pollution or for the discharge of formerly polluted groundwater into the City sewer system must be accompanied by a certificate of liability insurance provided by the property owner. Such liability insurance may not contain a pollution exclusion clause and must explicitly indemnify the City against all hazards which may result from either of these activities, including a worsening of pollution, either within the subsurface adjacent to the original pollution or within the City sewer system.

If the property owner is unable to provide insurance which addresses both general liability and pollution liability, the environmental company or other appropriately qualified entity contracting with the property owner for either monitoring well installation or groundwater pollution remediation, may furnish pollution liability insurance on behalf of the property owner.

Any insurance approved under this subsection c. shall be an occurrence policy, and shall otherwise comply with the provisions of this Policy.

**INSURANCE STANDARDS (continued)**

d. PUBLIC UTILITIES

This policy as it relates to work in the public rights-of-way shall not be applicable to Cable TV, Helix Water District, Padre Dam Municipal Water District, SBC, San Diego Gas & Electric, or any other public utility.

e. TRANSPORTATION / OVERSIZE LOADS – PERMITS – See Chapter 10.24 of the El Cajon Municipal Code.

**TIME LIMITS / CANCELLATION PROVISIONS**

All liability insurance required pursuant to this policy shall provide coverage for a sufficient time period to protect the City from liability. The insurer is required to provide a minimum of a thirty (30) day-notice of cancellation of any policy. With the approval of the City Attorney (except as provided in section 4, herein) this obligation may be reduced to not less than ten (10) days written notice, but only for termination due to the non-payment of any premium. In no event shall a policy be accepted which terminates prior to the completion of the activity to be covered.

In certain circumstances, it may be impracticable to obtain continuing insurance coverage due to the duration of the activity or the cost of premature renewal. Under such circumstances, an exception to the coverage period may be made so long as the policy is renewed or replaced with an acceptable insurance carrier and there is no lapse in coverage. Maintenance of proper insurance coverage is a material term of any contract with the City and failure to maintain or renew coverage or to provide evidence of renewal may be treated as a material breach of contract.

**ALTERNATIVE RISK MANAGEMENT PRACTICES; SELF-INSURANCE; RISK-POOLING**

Alternative risk management practices, such as self-insurance, risk pooling, risk retention groups, and other such programs, will be accepted in lieu of commercial insurance policies provided that the coverage meets the requirements of this Policy. Any such alternative risk management practices must meet the financial strength and surplus requirements reflected by the Best's Ratings required of commercial insurance under this Policy.

## APPENDIX B

### City Ordinance Selecting Professionals

#### **3.22.010 Selection of professionals.**

- A. Unless otherwise provided, the city's selection of private architectural, engineering, environmental, land surveying, or construction project management firms for professional service shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.
- B. The provisions of this chapter shall not apply where the city manager determines that the services needed are of a technical nature and involve little professional judgment, and that selecting the lowest responsible bidder would be in the public's best interest.

(Ord. 4528 § 15 (part), 1997.)

#### **3.22.040 Selection procedures.**

For each proposed professional contract:

A. The contracting agent shall establish the professional competence and qualifications necessary to be possessed by a firm in order to be awarded the proposed professional services contract. Professional competence and qualification may be determined in accordance with, but not limited to, the following factors:

1. The firm's experience and expertise in the field;
2. The quality of the firm's work;
3. The firm's ability to meet project deadlines; and
4. The firm's past performance on similar projects.

B. The contracting agent may publish a notice that the city is proposing to award a contract to obtain specified, professional services or, in the alternative, may directly solicit proposals from appropriate firms. Requests for proposals shall require the following information (when applicable):

1. The scope of work;
2. Plans and specifications;
3. A time schedule for the project;
4. An estimate or range for total cost;
5. Proof of insurance and/or other surety;
6. Proof of city business license or ability to obtain such license;
7. A list of employees who will be assigned to the project and their qualifications; and
8. Other special conditions related to the contract.

C. The contracting agent may discuss with one or more firms the alternative methods for providing the required services and may conduct further negotiations with one or more of the most qualified firms to fully clarify each firm's offer to provide services.

(Ord. 4528 § 15 (part), 1997.)

## **APPENDIX C**

### **Standard Form Professional Services Agreement**

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN  
THE CITY OF EL CAJON AND**

---

This Agreement for Professional Services ("AGREEMENT") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the CITY OF EL CAJON, a California municipal corporation, ("CITY") and \_\_\_\_\_, a \_\_\_\_\_, ("CONSULTANT").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**Section 1. Term of Agreement.**

Subject to the provisions of Section 19 "Termination of Agreement" of this AGREEMENT, the term of this AGREEMENT shall be for a period of one (1) year from the date of execution of this AGREEMENT, as first shown above. Such term may be extended upon written agreement of both parties to this AGREEMENT.

**Section 2. Scope of Services.**

CONSULTANT agrees to perform the services set forth in that certain proposal entitled "\_\_\_\_\_", dated \_\_\_\_\_, 2011, ("Scope of Services") attached hereto as Exhibit "A" and incorporated herein as if fully set forth; provided, however, that should any covenant, requirement, provision or condition of the Scope of Services be in conflict with any covenant, requirement, provision or condition of this AGREEMENT, the terms of this AGREEMENT shall prevail.

**Section 3. Additional Services.**

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in Exhibit "A" (Scope of Services), unless such additional services are authorized in advance and in writing by the City Council or City Manager of CITY. CONSULTANT shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Manager.

**Section 4. Compensation and Method of Payment.**

(a) Subject to any limitations set forth in this AGREEMENT, CITY agrees to pay, and CONSULTANT agrees to accept for said services the total compensation (including reimbursement for actual expenses) in an amount not to exceed \_\_\_\_\_ (\$\_\_\_\_\_), unless additional compensation is approved in writing by the City Council or City Manager.

(b) Each month CONSULTANT shall furnish to CITY an **original** invoice for all services performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment,

supplies, subcontractor contracts and miscellaneous expenses. CITY shall independently review each invoice submitted by CONSULTANT to determine whether the services performed and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event CITY disputes any charges or expenses, CITY shall return the original invoice to CONSULTANT for correction and resubmission.

(c) Except as to any charges for services performed or expenses incurred by CONSULTANT, which are disputed by CITY, CITY will use its best efforts to cause CONSULTANT to be paid within thirty (30) days of receipt of CONSULTANT's invoice.

(d) Payment to CONSULTANT for services performed pursuant to this AGREEMENT shall not be deemed to waive any defects in services performed by CONSULTANT.

### **Section 5. Inspection and Final Acceptance.**

CITY may inspect and accept or reject any of CONSULTANT's services under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept CONSULTANT's services within sixty (60) days after submitted to CITY. CITY shall reject services by a timely written explanation, otherwise CONSULTANT's services shall be deemed to have been accepted. CITY's acceptance shall be conclusive as to such services except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of CONSULTANT's services by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, sections 15 and 16, pertaining to indemnification and insurance, respectively.

### **Section 6. Ownership of Documents.**

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this AGREEMENT shall become the sole property of CITY and may be used, reused or otherwise disposed of by CITY without the permission of CONSULTANT. Upon completion, expiration or termination of this AGREEMENT, CONSULTANT shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

### **Section 7. Consultant's Books and Records.**

(a) CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks or other documents or records evidencing or relating to services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for three years from the date of execution of this

AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by CITY or its designated representative. Copies of such documents or records shall be provided directly to CITY for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT's business, CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to CITY, as well as to its successors-in-interest and authorized representatives.

#### **Section 8. Status of Consultant.**

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of CITY. CONSULTANT shall have no authority to bind CITY in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY.

(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, employees or agents of CITY.

(c) Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits, which may otherwise accrue, to CITY's employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights, and shall indemnify and protect CITY from and against any claims to such rights made by CONSULTANT's officers, employees or agents.

#### **Section 9. Standard of Performance.**

CONSULTANT represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONSULTANT shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.

**Section 10. Compliance with Applicable Laws; Permits and Licenses.**

CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

**Section 11. Nondiscrimination.**

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, sexual orientation, age, physical handicap, medical condition or marital status in connection with or related to the performance of this AGREEMENT.

**Section 12. Unauthorized Aliens.**

*[Intentionally omitted.]*

**Section 13. Conflicts of Interest.**

(a) CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder CONSULTANT's performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. CONSULTANT agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT.

(b) If applicable, CONSULTANT shall at all times comply with the terms of the Political Reform Act and CITY's Conflict of Interest Code (Chapter 2.75 of the El Cajon Municipal Code). Application of this subdivision (b) shall be determined by CITY and shall be set forth in Exhibit "B" (Conflict of Interest Determination). The level of disclosure categories shall be set by CITY and shall reasonably relate to the Scope of Services provided by CONSULTANT under this AGREEMENT.

(c) CITY understands and acknowledges that CONSULTANT is, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONSULTANT is unaware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

**Section 14. Confidential Information; Release of Information.**

(a) All information gained by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain. All instruments of service provided by CONSULTANT in performance of this AGREEMENT shall

be considered a public record under California law. CONSULTANT shall not release or disclose any such information or instruments of service to persons or entities other than CITY without prior written authorization from the City Manager, except as may be required by law.

(b) CONSULTANT, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

(c) If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or instruments of service in violation of this AGREEMENT, then CITY shall have the right to reimbursement and indemnity from CONSULTANT for any damages, costs and fees, including attorneys' fees, caused by or incurred as a result of CONSULTANT's conduct.

(d) CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

#### **Section 15. Indemnification.**

(a) CITY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, protect and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of CONSULTANT's negligent performance of any services under this AGREEMENT, or by the negligent or willful acts or omissions of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT.

(b) The foregoing obligations of CONSULTANT shall not apply to the extent that the CLAIMS arise from the sole negligence or willful misconduct of CITY or its elected and appointed boards, officials, officers, agents, employees and volunteers.

#### **Section 16. Insurance.**

(a) CONSULTANT agrees to obtain and maintain in full force and effect, during the term of this AGREEMENT, commercial general liability insurance of not less than \$2,000,000. Such insurance policy shall comply with El Cajon City Council Policy D-3, which is attached hereto as Exhibit "C" and made a part of this AGREEMENT. If there is any conflict between Exhibit "C" and this section 16, the terms of Exhibit "C" shall apply. All insurance policies shall be subject to approval by CITY as to form and content.

(b) CONSULTANT shall furnish properly executed endorsements and certificates of insurance to CITY prior to commencement of services under this AGREEMENT. Such endorsements and certificates shall:

1. Clearly evidence all coverages required above, including specific evidence of a separate endorsement naming CITY as an additional named insured;
2. Indicate whether coverage provided is on claims-made or occurrence basis; and
3. Provide that such insurance shall not be materially changed, terminated, or allowed to expire except on thirty (30) days prior written notice, via first class mail to CITY.
4. CONSULTANT agrees to provide CITY with copies of all required policies upon request.

(c) CONSULTANT shall also obtain and maintain professional liability insurance coverage in an amount not less than \$1,000,000.

(d) CONSULTANT shall maintain Workers' Compensation insurance with statutory limits, and employer's liability insurance with limits of not less than \$1,000,000 per accident.

#### **Section 17. Assignment.**

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CITY has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer this AGREEMENT or any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that CONSULTANT, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

#### **Section 18. Continuity of Personnel.**

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT's staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall notify CITY of any changes in CONSULTANT's staff assigned to perform the services required under this AGREEMENT, prior to any such performance.

## **Section 19. Termination of Agreement.**

(a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(b) CITY may terminate this AGREEMENT at any time if funds are no longer appropriated for the work to be performed by CONSULTANT.

(c) CONSULTANT may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to CITY.

(d) If either CONSULTANT or CITY fails to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either CONSULTANT or CITY may terminate this AGREEMENT immediately upon written notice.

(e) Upon termination of this AGREEMENT by either CONSULTANT or CITY, all property belonging exclusively to CITY, which is in CONSULTANT's possession, shall be returned to CITY. CONSULTANT shall furnish to CITY a final invoice for services performed and expenses incurred by CONSULTANT, prepared as set forth in Section 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 of this AGREEMENT.

## **Section 20. Default.**

In the event that CONSULTANT is in default under the terms of this AGREEMENT, CITY shall not have any obligation or duty to continue compensating CONSULTANT for any services performed after the date of default and may terminate this AGREEMENT immediately by written notice to CONSULTANT.

## **Section 21. Excusable Delays.**

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of CITY, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

## **Section 22. Cooperation by City.**

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the services as outlined in the Exhibit "A" (Scope of Services), shall be furnished to CONSULTANT in every reasonable way to facilitate, without undue delay, the services to be performed under this AGREEMENT.

## **Section 23. Notices.**

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To CITY:

\_\_\_\_\_  
City of El Cajon  
200 Civic Center Way  
El Cajon, CA 92020

To CONSULTANT:

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

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, five (5) days after deposit of the same in the custody of the United States Postal Service.

**Section 24. Authority to Execute.**

The person or persons executing this AGREEMENT on behalf of CONSULTANT represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONSULTANT to the performance of its obligations hereunder.

**Section 25. Binding Effect.**

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**Section 26. Modification of Agreement.**

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by CONSULTANT and by the City Council or City Manager. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

**Section 27. Waiver.**

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

**Section 28. Law to Govern; Venue.**

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts

shall lie exclusively in the County of San Diego, East County Division. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Southern District of California, in San Diego. CONSULTANT hereby expressly waives any right to remove any action from San Diego County as is otherwise permitted by Code of Civil Procedure section 394.

**Section 29. Dispute Resolution.**

The parties hereby mutually agree that should any dispute arise out of or relate to this AGREEMENT, or its alleged breach thereof, said parties shall first attempt to settle such dispute or alleged breach by good faith negotiation. If, after good faith negotiation the parties are unable to resolve the dispute, the parties may, but are not obligated to submit the dispute to mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to arbitration, litigation, or other action.

**Section 30. Attorneys' Fees, Costs and Expenses.**

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled.

**Section 31. Entire Agreement.**

This AGREEMENT, including the attached Exhibits "A," "B" and "C," is the entire, complete, final, and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party, which are not embodied herein shall be valid and binding. To the extent that the terms and conditions of this AGREEMENT conflict with, or are in any way inconsistent with, the terms and conditions of Exhibits "A," "B" and "C," the terms and conditions of this AGREEMENT will prevail. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

**Section 32. Severability.**

If a term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

**CITY OF EL CAJON,  
a California municipal corporation.**

**[Company/Person],  
type of entity.**

By \_\_\_\_\_  
Douglas Williford, City Manager

By \_\_\_\_\_  
Name & Title

**ATTEST:**

By \_\_\_\_\_  
Secretary

\_\_\_\_\_  
Kathie J. Rutledge, CMC, City Clerk

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
\_\_\_\_\_, Director of \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Morgan L. Foley, City Attorney

Council Date: \_\_\_/\_\_\_/\_\_\_  
Item #: \_\_\_\_\_

**CONFLICT OF INTEREST DETERMINATION**

CONSULTANT shall at all times comply with the terms of the Political Reform Act and the local conflict of interest ordinance. CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before CITY in which CONSULTANT has a financial interest as defined in Government Code Section 87103. CONSULTANT represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for CITY.

“CONSULTANT<sup>1</sup>” means an individual who, pursuant to a contract with a state or local agency:

- (A) Makes a governmental decision whether to:
  - 1. Approve a rate, rule or regulation;
  - 2. Adopt or enforce a law;
  - 3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
  - 4. Authorize CITY to enter into, modify, or renew a contract provided it is the type of contract that requires CITY approval;
  - 5. Grant CITY approval to a contract that requires CITY approval and to which CITY is a party, or to the specifications for such a contract;
  - 6. Grant CITY approval to a plan, design, report, study, or similar item;
  - 7. Adopt, or grant CITY approval of, policies, standards, or guidelines for CITY, or for any subdivision thereof; **or**
  
- (B) Serves in a staff capacity with CITY and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for CITY that would otherwise be performed by an individual holding a position specified in CITY’s Conflict of Interest Code.

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<sup>1</sup> The City’s Conflict of Interest Code and the Political Reform Act refer to “consultants,” not “contractors.” The City’s professional services agreements might refer to the hired professional as a “contractor,” not a “consultant,” in which case the Conflict of Interest Code may still apply. The Conflict of Interest Code, however, does not cover public works contractors.

DISCLOSURE DETERMINATION:

1. CONSULTANT/CONTRACTOR will not be “making a government decision” or “serving in a staff capacity” as defined in Sections A and B above.

No disclosure required.

2. CONSULTANT/CONTRACTOR will be “making a government decision” or “serving in a staff capacity” as defined in Sections A and B above. As a result, CONSULTANT/CONTRACTOR shall file, with the City Clerk of the City of El Cajon in a timely manner as required by law, a Statement of Economic Interest (Form 700) as required by the CITY of El Cajon Conflict of Interest Code, and the Fair Political Practices Commission, to meet the requirements of the Political Reform Act. \*

Dept. Director  
Signature \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Department \_\_\_\_\_

City Attorney Approval of Determination \_\_\_\_\_

City Manager Approval \_\_\_\_\_

\*CONSULTANT’s disclosure of investments, real property, income, loans, business positions and gifts, shall be limited to those reasonably related to the project for which CONSULTANT has been hired by CITY. The scope of disclosure for CONSULTANT is attached hereto as Exhibit B-1.

**CONFLICT OF INTEREST SCOPE OF DISCLOSURE**

(For use in preparing California Form 700)

Investments: “Investment” means a financial interest in any business entity engaged in the business of [insert types of businesses, e.g., if CONSULTANT is working on a public works project, CONSULTANT should disclose investments in contracting firms, building material suppliers, design firms, etc.]

Real Property: “Real property” interests are limited to real property in the City of El Cajon, wherever located.

Sources of Income: “Sources of income” means income (including loans, business positions, and gifts) of CONSULTANT, or CONSULTANT’s spouse or domestic partner in excess of \$500 or more during the reporting period from sources that are business entities engaged in the business of [insert types of businesses, e.g., if CONSULTANT is working on a public works project, CONSULTANT should disclose investments in contracting firms, building material suppliers, design firms, etc.]