

REQUEST FOR PROPOSAL

CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR ORION CENTER CONSTRUCTION AND FLEET MAINTENANCE BUILDING REFURBISHMENT



RFP19-533TRAN

**PROPOSALS MUST BE RECEIVED CLEARLY MARKED ON THE OUTSIDE WITH:
"RFP – CM&I SERVICES FOR
ORION CENTER CONSTRUCTION AND
FLEET MAINTENANCE BUILDING REFURBISHMENT"**

PROPOSALS DUE:

2 P.M.

THURSDAY, SEPTEMBER 27, 2018

**CITY OF CARLSBAD
PUBLIC WORKS - CONTRACT ADMINISTRATION
1635 FARADAY AVENUE
CARLSBAD, CA 92008-7314
ATTENTION: ELEIDA FELIX YACKEL**

**PROPOSALS MAY BE SUBMITTED BY US MAIL OR HAND DELIVERY TO THE ABOVE ADDRESS AND
DEPOSITED TO THE FARADAY OFFICE FIRST-FLOOR BID BOX. PRIOR TO THE DATE AND TIME
SPECIFIED ABOVE.**

TABLE OF CONTENTS

1.0	GENERAL INFORMATION	3
2.0	PROJECT DESCRIPTION	3
3.0	SCOPE OF SERVICES	4
4.0	PROJECT SCHEDULE	4
5.0	CONTENTS OF THE PROPOSAL	4
6.0	INFORMATION TO OFFERROS	6
7.0	REQUEST FOR INFORMATION	6
8.0	SELECTION PROCEDURE	6
9.0	TENTATIVE SELECTION SCHEDULE	7
10.0	SUBMITTAL	7

EXHIBITS

- A. SCOPE OF SERVICES**
- B. CONSULTANT’S STATEMENT OF COMPLIANCE WITH CITY OF CARLSBAD’S INSURANCE REQUIREMENTS**
- C. Agreement for Professional Services (Sample)**

1.0 GENERAL INFORMATION:

The City of Carlsbad is requesting proposals from qualified firms to provide construction management and inspection services during pre-construction and construction activities on two projects - the Orion Center (formerly called the Maintenance and Operations Center) and the Fleet Maintenance Building Refurbishment.

The firm to be awarded the construction management and inspection services contract shall be known as the "Consultant", and shall be retained through the completion of the projects, including any contract time extensions. The Consultant shall provide one lead individual, the Construction Manager (CM) who shall assume overall responsibility for all construction management services, and who shall be available to report directly to the city's designated Municipal Projects Manager. Construction management services may be performed by the CM or as a team approach consisting of highly-qualified and experienced individuals. It is the Consultant's responsibility through this proposal process to describe how the Consultant will optimize the cost-effective and time-efficient use of firm personnel and sub-consultants.

The Consultant will provide construction management and quality assurance inspection services for all on-site and off-site improvements. Special inspections and testing related to the construction work will be contracted for and coordinated by the Consultant as part of this Agreement. Environmental monitoring services including biological, paleontological and archeological will not be included in the construction management and inspection services Agreement but will be contracted for separately by the city. The city may retain the project bridging document Consultant team during the design development and construction processes for basis of design conformance review.

The construction management and inspection services agreement will be for a period of three (3) years term with an option to renew or extend for an additional two (2) one six (6) month term or any parts thereof. The expected award date of this agreement will be in November 2018.

2.0 PROJECT DESCRIPTION:

The two projects are both design-build projects - one for the city's Orion Center and the other for the refurbishment of the city's Fleet Maintenance Building. The Orion Center is a ground-up construction project intended to house four city departments that are currently located elsewhere in the city. This project has been envisioned by the city for many years and has many stakeholders. The construction budget/guaranteed maximum price for the Orion Center is \$27.6M (exclusive of FF&E and contingency). The Fleet Maintenance Building is an existing structure with 6 vehicle maintenance bays. The purpose of the refurbishment project is to add 2 bays,

to reorganize the building layout and to upgrade interior building finishes. The construction budget/guaranteed maximum price for the Fleet Maintenance Building is \$1.5M (exclusive of FF&E and contingency).

3.0 SCOPE OF SERVICES:

The scope of services requested are described in Exhibit “A” and are intended to summarize the minimum scope of work needed. Each Consultant may modify the scope of services to be provided; however, all modifications shall be clearly identified in the Consultant’s proposal.

4.0 PROJECT SCHEDULE:

Tentative Design-Build Project Schedule

	Date
Bridging Documents Completed for CM Review	December 2018
Project Advertised with Design Build SOQ solicitation	April 2019
SOQ’s evaluated and Short-List of 3 Contractors Determined	May 2019
RFP’s from Short-Listed Contractors due and Selection Made	July 2019
Recommendation to Council to Award Contract	September 2019
Notice to Proceed	November 2019
Complete Construction of Facility	August 2021

5.0 CONTENTS OF THE PROPOSAL:

The proposal should be double-sided, spiral bound and no longer than 15 pages in length, exclusive of appendices.

The proposal must include the following items in the order listed:

- 5.1 Executive Summary** – A one or two-page overview of the entire proposal describing the highlights of the proposal.
- 5.2 Consultant Experience** – An outline of the Consultant’s background, qualifications, and detailed description of the Consultant’s ability to perform the services required. Include summary of construction projects. Summary should include projects managed by Consultant, which are similar in scope and complexity. The list should include a brief description of the projects, location, status of completion, the name of the construction manager and staff that worked on the project, and the name, current phone number and email address of the client’s project manager.

5.3 Project Team – A list of the names and qualifications of the key personnel and sub-consultants responsible for the project, their respective roles and their availability for the duration of the project, as well as an explanation regarding the organizational structure of the team. Rating considerations will be given to firms assigning personnel to this project who possess a Certified Construction Manager credential, issued by the Construction Management Association of America (CMAA) and Design Build Institute of America (DBIA) credential issued by the DBIA. Project Team must have some level of storm water certification (e.g., CESPE and/or CISEC) to review quality of contractors work in the field.

5.4 Project Approach – A summary of the Consultant's proposed approach to efficiently manage the project. The scope of work of this RFP should be addressed in the summary, but can also include other approaches, items or considerations that the Consultant considers to be warranted. The project approach should demonstrate a thorough understanding of the issues that may be anticipated during construction, how potential problems can be minimized and how the Consultant will address Quality Assurance throughout the project.

5.5 Schedule – A response to the tentative schedule provided above with comments on Consultant's ability to provide the required services. This response should describe Consultant's current workload and the availability of key personnel that will be assigned to this project.

5.6 Hours – An estimate of hours for the prime and sub-consultant(s), if any. This estimate shall include the personnel classification for the anticipated level of effort to complete the work. The hourly estimate will be used as a basis for determining Consultant's understanding of the scope of work.

5.7 Appendix

- A complete resume for each team member.
- An Hourly Rate Schedule that will be used as a basis for payment under the contract.

5.8 Proposed Fee for Services

Provide a proposed fee for each of the following items:

- Total fee for each task listed in the scope of work
- Labor (personnel classifications, estimated hours and hourly rates)
- Direct costs
- Subcontracts

The proposed fee is to be submitted in a separate envelope with the following information clearly marked on the outside of the package.

- Name of responder
- Name of project

6.0 INFORMATION TO OFFERORS:

A sample copy of the city's standard Consultant agreement is attached as Exhibit B for review. Please do not respond to this RFP if in conflict with any term of the city's agreement. The city will not change or modify the hold harmless and liability clauses included in the agreement.

7.0 REQUEST FOR INFORMATION (RFI):

All questions regarding the RFP shall be sent in writing via an e-mail to Eleida Felix Yackel, Senior Contract Administrator at Eleida.felixyackel@carlsbadca.gov.

Questions shall be submitted as soon as possible, but no later than 1 P.M. local time, on Thursday, September 20, 2018. Responses which constitute changes to any part of the RFP, will be posted via addendum on PlanetBids at the following web address <https://www.planetbids.com/portal/portal.cfm?CompanyID=27970>, and thereby made available to all registered holders of the RFP documents. It is the proposer's responsibility to acknowledge all addendums.

8.0 SELECTION PROCEDURE:

Proposing Consultants should prepare complete proposals that fully present their firm's capabilities. Proposals will be reviewed and ranked by a selection committee composed of city staff using the weighted criteria listed below. Scores will be applied to each criterion and final scores tallied to achieve a weighted average approach:

Criteria	Weight	Score	Total
Adherence to content and submission requirements	5%	1-5	
Overall Consultant <u>company</u> qualifications and experience	10%	1-5	
Consultant's <u>team</u> qualifications and experience	20%	1-5	
Project staffing approach and work plan	20%	1-5	
Client References from relevant projects	15%	1-5	
Recent experience and local presence	15%	1-5	
Panel Interview (if conducted)	15%	1-5	
Total Potential Points	100%		TBD

After discussion and ranking by the selection committee, and at the sole discretion of the city, the top two or three Consultants may be invited for an interview prior to the final selection. If the city selects this approach, sufficient time will be given to the Consultants to prepare an appropriate presentation and to coordinate schedules. If conducted, interviews will each receive a weighted score as indicated in the table above.

The Consultant selected will be asked to enter into negotiations for the Construction Management and Inspection Services contract. If a fee cannot be agreed upon with the highest-ranking Consultant, the city will terminate negotiations and enter negotiations with the next highest-ranking Consultant.

Please note that the city reserves the right to take any or no action based on responses to this request for proposal, including the acceptance or rejection of proposals and the inclusion and deletion of any combination of the work items for the project.

9.0 TENTATIVE SELECTION SCHEDULE:

	Date
Request for Proposals (RFP) Issued	August 27, 2018
Request for Information (RFI) must be received by 1pm	September 20, 2018
Proposals Due by 2 P.M.	September 27, 2018
Selection Panel Recommends Consultant	October 11, 2018
Recommendations to City Council/Contract Award	November 27, 2018

10.0 SUBMITTAL:

As stated above, proposal should be double-sided, spiral bound and no longer than 15 pages in length, exclusive of appendices. Please submit six (6) original copies of proposal with an electronic (.pdf) copy on a flash drive. In a separate envelope, please submit one (1) copy of the proposed fee. **Both submissions are due no later than 2 P.M. on Thursday, September 27, 2018**, addressed to:

**CITY OF CARLSBAD
PUBLIC WORKS - CONTRACT ADMINISTRATION
1635 FARADAY AVENUE
CARLSBAD, CA 92008-7314
ATTENTION: ELEIDA FELIX YACKEL**

Proposals received after the specified due time will not be considered and will be returned to the Consultant unopened.

Consultant shall be required to comply with all requirements as stipulated in Exhibit "C", Agreement for Professional Services, including the following:

- 10.1** Compliance with prevailing wage – Section 6
- 10.2** Compliance with insurance requirements – Section 11 (see Exhibit "B")
- 10.3** Current City Business License – Section 12

Thank you for your interest, and we look forward to hearing from you regarding this project.

Attachments:	Exhibit "A"	Scope of Services
	Exhibit "B"	CONSULTANT'S STATEMENT OF COMPLIANCE WITH CITY OF CARLSBAD'S INSURANCE REQUIREMENTS
	Exhibit "C"	Agreement for Professional Services (Sample)

EXHIBIT "A"

SCOPE OF SERVICES

Task 1: Preconstruction Services

TASK 1.1 Constructability Review of Bridging Documents

The Construction Manager (CM) will be expected to review the project bridging documents for each project and provide comments and recommended corrections for the plans and specifications.

TASK 1.2 Project Bid Documents

The CM will be expected to review and provide comments and corrections for the project bridging documents which will consist of the city's General Provisions, design-build contract, basis of design and design plans and specifications. Any inconsistencies between the documents shall be identified.

TASK 1.3 Opinion of Probable Cost

The CM will be expected to review the estimate of probable construction costs prepared by bridging document architects to identify any recommended refinements or modifications that can be incorporated into the final solicitation documents to ensure that the projects can be constructed within the established budget. The review shall take into consideration area and quantity take-offs applied to labor and material cost, allowances for general conditions, Contractor's profit and overhead, city costs, and contingencies. Prior to final approval of bid documents, review the updated estimate to reflect any changes in cost resulting from design, materials, or quantity changes.

TASK 1.4 Design Build Proposal Solicitation Phase

The CM will be expected to assist city's Municipal Projects Manager with the development of a Statement of Qualification (SOQ) document for soliciting interest from design-build teams; Review statements received and provide input regarding qualifications of teams that should be short-listed based on past experience, industry knowledge and SOQ's submitted for each project; Assist city with the development of a Request for Proposal (RFP) document and participate in discussions with short-listed design-build firms brought in to advise city during RFP development and assist city during panel discussions and selection process to determine best design-build firm to be awarded each project.

Task 2: Construction Services

TASK 2.1 Contract Administration/Management

The CM shall be responsible for assisting the city's Municipal Projects Manager with all aspects of Public Works contract compliance, change/claims negotiations and processing, and contract interpretations and enforcement. The CM shall utilize the field offices provided by the Contractor. Furniture and basic office equipment shall be provided by the Contractor per the

specifications.

The CM shall oversee, perform, and coordinate work included in the scope of services, as directed by the city. The CM shall: prepare reports, letters and memoranda; conduct project meetings; prepare meeting agendas and minutes; monitor and track the expiration of insurance requirements and obtain updated certificates from the Contractor; coordinate sub-consultant testing and specialty services; review daily inspection notes and identify and report nonconforming items; notify the city of significant problems and discrepancies; assist the city with interpreting drawings, specifications and reference standards; monitor construction activities and schedules; assist the city with resolving constructability problems; coordinate connections and operations; perform quality assurance inspections, prepare change orders (including cost estimating services); review and notify the Contractor of test results; investigate claims; review the Contractor's Record Drawings periodically and concurrently with Contractor progress payments; prepare project punch lists; and coordinate commissioning and close out document submission.

The CM shall incorporate and maintain a document management system and procedure for contract documents and any other project documents with either Procore or Submittal Exchange.

TASK 2.2 Reports and Communications

The CM shall ensure that all relevant project communications are documented and promptly distributed to the city and applicable parties. All original project documents and final project reports shall be furnished to the city within 60 days following the city's determination of Substantial Completion.

The CM shall maintain field memoranda, transmittals, updated schedules, logs of shop drawings and other submittals, logs of RFI's, change orders, progress payment requests, progress meeting reports, daily inspection reports, dates of utility service interruptions, and all other project correspondence.

The CM shall prepare monthly progress reports and submit them to the city's Municipal Projects Manager inclusive of the following elements:

- a) Summary of the prior month's main accomplishments and current construction activities.
- b) Overall Contractor's conformance to contract schedule and quality requirements.
- c) Identification of key problems, action items, and issues. Recommendation for solutions.
- d) Summary of progress payments, proposal and final change orders, disputes, submittals, RFIs, and Notices of Noncompliance.
- e) Photographs of representative project activities printed and electronically stored.

TASK 2.3 Photo Documentation

The CM shall review the Contractor's videotape of preconstruction site conditions prior to any construction operation to confirm existing conditions within the limits of work, adjacent areas, and along haul roads to document and clearly depict pre-existing conditions and prepare additional videotape and/or photographs to document site conditions as required to supplement the Contractor's videotape.

The CM shall take and share construction documentation photographs on a regular basis; maintain a digital photographic library of all significant construction activities available for review on at least a weekly basis via project management software; provide unique file names for photos with date and location information included; take additional photographs to document differing site conditions, change order and claim items, and any special or unique conditions as they arise.

The CM shall incorporate new software capabilities (Blue Beam, etc.) that allow photographs taken in the field to be linked to a PDF of the site plan/drawing/detail of the photographed location, and provide a report of these photos linked to their location on a weekly basis, with photos uploaded to the approved project document management site regularly.

TASK 2.4 Construction Progress Meetings

The CM shall schedule and conduct weekly construction progress meetings with the Contractor and the city; provide meeting agendas and discuss the schedule, near-term activities, clarifications and problems which need resolution and coordination with other Contractors; provide status of change orders, safety issues, etc.; prepare minutes of the meetings with identified action items; prepare and distribute the minutes to the attendees within two working days and include minutes in the monthly progress reports.

TASK 2.5 Shop Drawings and Submittal Reviews

Submittal review and approval are the responsibility of the project bridging document architect and the city's Municipal Project Manager. The CM shall be responsible for processing and monitoring the status of all submittals.

The CM shall provide cursory review of the Contractor's submittals for general conformance with the contract document requirements prior to sending the submittals to the bridging document architect and city Municipal Project Manager. Submittals of a general nature (General Provisions & Division 1 Requirements) are to be reviewed and processed by the CM. Review of the Contractor's construction schedule and monthly updates shall be the sole responsibility of the CM with input provided from the architect and city.

The CM shall log, track, and monitor the bridging document architect and design build architect's roles regarding the review of shop drawings, calculations, data samples, submittals, warranties and manuals from the Contractor. Shop drawings and submittals which significantly do not satisfy the project criterion shall be returned to the Contractor by the CM with

comments for corrections and resubmittal. Exception reports, that identify outstanding submittals or reviews needed, shall be prepared periodically by the CM. Preliminary lists of initial submittal requirements shall be prepared by the CM and issued at the Preconstruction Conference.

TASK 2.6 Plans and Specifications Interpretation

The CM shall review and respond to Contractor RFIs if of a general nature. Technical RFIs shall be submitted to the bridging document architect and city for response. The CM shall maintain a log of RFIs and provide written clarification to the Contractor in a timely manner. Responses to requests for changes to the design require prior approval from the bridging document architect and city's Municipal Projects Manager.

The CM shall obtain and maintain specification referenced standards including: local and regional specifications, codes, standards, publications, regulations, applicable permitting criteria from local, state, and federal agencies, standard drawings and specifications of the local agencies, and related documents, as referenced in the contract documents and as required to perform the work.

TASK 2.7 Construction Inspection Services

The CM will be responsible for the overall quality assurance of the project and work with city staff responsible for code compliance. Provide full time inspection to ensure that the Contractor's work is compliant with the bridging document project criterion. Prepare daily reports of the construction activities including weather conditions, Contractor's equipment and manpower, work performed, materials used, site visitors, delays in work and reasons for the delays, and deficiencies. Prepare daily reports of deviations and non-conformance to bridging document project criterion and provide a timely response.

The CM shall coordinate and supervise, under subcontract, all special inspections at the job site as required of materials and workmanship, and discuss with the Contractor appropriate revisions to the methods and procedures used in performing the work. The special inspectors may not authorize extra work or approve of work that deviates from the bridging document project criterion.

The CM will inspect materials as they arrive on site and verify that all materials and equipment meet project criteria requirements and are properly stored. The CM will inspect the site daily, including any site SWPPP measures, manage special inspectors, and coordinate with any geotechnical and material testing consultants, coordinate with any FF&E vendors and be responsible for the overall quality assurance for each project.

TASK 2.8 Progress Payments

The city will provide a format for monthly progress payments based on the Contractor's Proposal in the contract. The CM shall review project-related invoices and progress payments; submit all invoices to the city's Municipal Projects Manager with a recommendation stating the proper amount for payment.

TASK 2.9 Contractor's Claims and Change Orders

In accordance with the city's Standard Public Works Contract and General Provisions, the CM shall identify, prepare, log, and monitor all Contractor or city initiated claims, changes, extra work and change orders; assist the city's Municipal Projects Manager by working to negotiate all claims to an agreed Contractor/CM/city conclusion and submit potential change orders to the city for approval. The CM shall prepare a report providing statement of claim, extra work, or change; background leading to issue; resolution alternatives; and resolution recommendation for action by the city; prepare written justification and independent cost estimates for each change order after negotiating costs with the Contractor; and prepare claims, extra work, and change orders that require design criteria modifications or clarifications, including revisions to the drawings, details, and specifications.

The CM shall provide the lead role and support to the city in resolving claims and disputes. This shall include: written responses to Contractors and private parties, giving depositions, assisting with arbitration and litigation, serving as an expert witness, investigating claims for damages by private sources, design services for replacement of damaged work, and services made necessary by Contractor default.

TASK 3: Project Closeout

The CM shall prepare detailed project punch lists at closeout of the project. Upon correction of deficiencies, the CM shall schedule, coordinate, and conduct a final walk-through prior to the acceptance of work with the city and verify that work, testing, cleanup and demobilization is complete. Two working days after final walk-through, the CM shall check and submit final payment requests and review and certify that the Contractor's project record drawings and operation/maintenance manuals are complete and accurate.

EXHIBIT "B"
CONSULTANT'S STATEMENT OF COMPLIANCE WITH CITY OF CARLSBAD'S INSURANCE REQUIREMENTS
(Please see Contract, Section 11)

The Consultant must attach either of the following items to this page, and submit with his/her proposal:

- 1) Certificates of insurance showing conformance with the city's contract insurance requirements herein for:

Comprehensive General Liability
Insurance Automobile Liability
Insurance
Workers' Compensation
Insurance Employer's Liability
Insurance

OR

- 2) Statement with an insurance carrier's notarized signature stating that the carrier can, and upon payment of fees and/or premiums by the Consultant, will issue to the Consultant policies of insurance for Comprehensive General Liability, Automobile Liability, Workers' Compensation and Employer's Liability in conformance with the requirements herein and Certificates of Insurance to the city showing conformance with the requirements herein.

All certificates of insurance and statements of willingness to issue insurance for auto policies offered to meet the specification of this contract must:

- 1) Meet the conditions stated in the included contract for each insurance company that the Consultant proposes.
- 2) Cover any vehicle used in the performance of the contract, used onsite or offsite, whether owned, non-owned or hired, and whether scheduled or non-scheduled. The auto insurance certificate must state the coverage is for "any auto" and cannot be limited in any manner.

Within ten (10) working days after city's notification of award of contract to Consultant all required insurance documents must be submitted to Contract Administration. Consultant's failure to provide the city-required insurance certificates showing specified coverage within this time frame may be cause for the contract award to be rescinded at the city's sole discretion.

Consultant's Acknowledgement (signature)

SAMPLE AGREEMENT

AGREEMENT FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR ORION CENTER CONSTRUCTION AND FLEET MAINTENANCE BUILDING REFURBISHMENT SERVICES (NAME OF CONTRACTOR)

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20____, by and between the CITY OF CARLSBAD, a municipal corporation, ("City"), and _____, a _____, ("Contractor").

RECITALS

- A. City requires the professional services of a _____ that is experienced in _____.
- B. Contractor has the necessary experience in providing professional services and advice related to _____.
- C. Contractor has submitted a proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, City and Contractor agree as follows:

1. SCOPE OF WORK

City retains Contractor to perform, and Contractor agrees to render, those services (the "Services") that are defined in attached Exhibit "A", which is incorporated by this reference in accordance with this Agreement's terms and conditions.

2. STANDARD OF PERFORMANCE

While performing the Services, Contractor will exercise the reasonable professional care and skill customarily exercised by reputable members of Contractor's profession practicing in the Metropolitan Southern California Area, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

3. TERM

The term of this Agreement will be effective for a period of _____ from the date first above written. The City Manager may amend the Agreement to extend it for _____ additional _____ year periods or parts thereof. Extensions will be based upon a satisfactory review of Contractor's performance, City needs, and appropriation of funds by the City Council. The parties will prepare a written amendment indicating the effective date and length of the extended Agreement.

4. TIME IS OF THE ESSENCE

Time is of the essence for each and every provision of this Agreement.

City Attorney Approved Version 6/12/18

5. COMPENSATION

The total fee payable for the Services to be performed during the initial Agreement term will be _____ dollars (\$_____). No other compensation for the Services will be allowed except for items covered by subsequent amendments to this Agreement. If the City elects to extend the Agreement, the amount shall not exceed _____ dollars (\$_____) per Agreement year. The City reserves the right to withhold a ten percent (10%) retention until City has accepted the work and/or Services specified in Exhibit "A".

Incremental payments, if applicable, should be made as outlined in attached Exhibit "A".

6. PREVAILING WAGE RATES

Any construction, alteration, demolition, repair, and maintenance work, including work performed during design and preconstruction such as inspection and land surveying work, cumulatively exceeding \$1,000 and performed under this Agreement are subject to state prevailing wage laws. The general prevailing rate of wages, for each craft or type of worker needed to execute the contract, shall be those as determined by the Director of Industrial Relations pursuant to the Section 1770, 1773 and 1773.1 of the California Labor Code. Pursuant to Section 1773.2 of the California Labor code, a current copy of applicable wage rates is on file in the office of the City Engineer. Contractor shall not pay less than the said specified prevailing rates of wages to all such workers employed by him or her in the execution of the Agreement. Contractor and any subcontractors shall comply with Section 1776 of the California Labor Code, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall require any subcontractors to comply with Section 1776.

7. STATUS OF CONTRACTOR

Contractor will perform the Services in Contractor's own way as an independent contractor and in pursuit of Contractor's independent calling, and not as an employee of City. Contractor will be under control of City only as to the result to be accomplished, but will consult with City as necessary. The persons used by Contractor to provide services under this Agreement will not be considered employees of City for any purposes.

The payment made to Contractor pursuant to the Agreement will be the full and complete compensation to which Contractor is entitled. City will not make any federal or state tax withholdings on behalf of Contractor or its agents, employees or subcontractors. City will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of Contractor or its employees or subcontractors. Contractor agrees to indemnify City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which City may be required to make on behalf of Contractor or any agent, employee, or subcontractor of Contractor for work done under this Agreement. At the City's election, City may deduct the indemnification amount from any balance owing to Contractor.

City Attorney Approved Version 6/12/18

8. SUBCONTRACTING

Contractor will not subcontract any portion of the Services without prior written approval of City. If Contractor subcontracts any of the Services, Contractor will be fully responsible to City for the acts and omissions of Contractor's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Contractor and City. Contractor will be responsible for payment of subcontractors. Contractor will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

9. OTHER CONTRACTORS

The City reserves the right to employ other Contractors in connection with the Services.

10. INDEMNIFICATION

Contractor agrees to indemnify and hold harmless the City and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorneys fees arising out of the performance of the work described herein caused

by any negligence, recklessness, or willful misconduct of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

The parties expressly agree that any payment, attorney's fee, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

11. INSURANCE

Contractor will obtain and maintain for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the services by Contractor or Contractor's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A-:VII"; **OR** with a surplus line insurer on the State of California's List of Approved Surplus Line Insurers (LASLI) with a rating in the latest Best's Key Rating Guide of at least "A:X"; **OR** an alien non-admitted insurer listed by the National Association of Insurance Commissioners (NAIC) latest quarterly listings report.

11.1 Coverage and Limits.

Contractor will maintain the types of coverage and minimum limits indicated below, unless the Risk Manager or City Manager approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Contractor's indemnification obligations under this Agreement. City, its officers, agents and employees make no representation that the limits of the insurance specified to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage, as Contractor deems adequate, at Contractor's sole expense. The full limits available to the named insured shall also be available and applicable to the City as an additional insured.

11.1.1 Commercial General Liability (CGL) Insurance. Insurance written on an "occurrence" basis, including 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 or the general aggregate limit shall be twice the required occurrence limit.

11.1.2 Automobile Liability. (if the use of an automobile is involved for Contractor's work for City). \$2,000,000 combined single-limit per accident for bodily injury and property damage.

11.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code. Workers' Compensation will not be required if Contractor has no employees and provides, to City's satisfaction, a declaration stating this.

11.1.4 Professional Liability. Errors and omissions liability appropriate to Contractor's profession with limits of not less than \$1,000,000 per claim. Coverage must be maintained for a period of five years following the date of completion of the work.

11.2 Additional Provisions. Contractor will ensure that the policies of insurance required under this Agreement contain, or are endorsed to contain, the following provisions:

11.2.1 The City will be named as an additional insured on Commercial General Liability which shall provide primary coverage to the City.

11.2.2 Contractor will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage.

11.2.3 This insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent by certified mail pursuant to the Notice provisions of this Agreement.

11.3 Providing Certificates of Insurance and Endorsements. Prior to City's execution of this Agreement, Contractor will furnish certificates of insurance and endorsements to City.

City Attorney Approved Version 6/12/18

11.4 Failure to Maintain Coverage. If Contractor fails to maintain any of these insurance coverages, then City will have the option to declare Contractor in breach, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Contractor is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Contractor or deduct the amount paid from any sums due Contractor under this Agreement.

11.5 Submission of Insurance Policies. City reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.

12. BUSINESS LICENSE

Contractor will obtain and maintain a City of Carlsbad Business License for the term of the Agreement, as may be amended from time-to-time.

13. ACCOUNTING RECORDS

Contractor will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Contractor will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Contractor will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

14. OWNERSHIP OF DOCUMENTS

All work product produced by Contractor or its agents, employees, and subcontractors pursuant to this Agreement is the property of City. In the event this Agreement is terminated, all work product produced by Contractor or its agents, employees and subcontractors pursuant to this Agreement will be delivered at once to City. Contractor will have the right to make one (1) copy of the work product for Contractor's records.

15. COPYRIGHTS

Contractor agrees that all copyrights that arise from the services will be vested in City and Contractor relinquishes all claims to the copyrights in favor of City.

16. NOTICES

The name of the persons who are authorized to give written notice or to receive written notice on behalf of City and on behalf of Contractor under this Agreement.

For City

Name _____

Title _____

Department _____

For Contractor

Name _____

Title _____

Address _____

City Attorney Approved Version 6/12/18

City of Carlsbad

Address _____ Phone No. _____

Email _____
Phone No. _____

Each party will notify the other immediately of any changes of address that would require any notice or delivery to be directed to another address.

17. CONFLICT OF INTEREST

Contractor shall file a Conflict of Interest Statement with the City Clerk in accordance with the requirements of the City of Carlsbad Conflict of Interest Code. The Contractor shall report investments or interests in all categories.

Yes ☐ No ☐

18. GENERAL COMPLIANCE WITH LAWS

Contractor will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of the Services by Contractor. Contractor will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of Contractor's services with all applicable laws, ordinances and regulations.

Contractor will be aware of the requirements of the Immigration Reform and Control Act of 1986 and will comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants whose services are required by this Agreement.

19. DISCRIMINATION AND HARASSMENT PROHIBITED

Contractor will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

20. DISPUTE RESOLUTION

If a dispute should arise regarding the performance of the Services the following procedure will be used to resolve any questions of fact or interpretation not otherwise settled by agreement between the parties. Representatives of Contractor or City will reduce such questions, and their respective views, to writing. A copy of such documented dispute will be forwarded to both parties involved along with recommended methods of resolution, which would be of benefit to both parties. The representative receiving the letter will reply to the letter along with a recommended method of resolution within ten (10) business days. If the resolution thus obtained is unsatisfactory to the aggrieved party, a letter outlining the disputes will be forwarded to the City Manager. The City Manager will consider the facts and solutions recommended by each party and may then opt to direct a solution to the problem. In such

City Attorney Approved Version 6/12/18

cases, the action of the City Manager will be binding upon the parties involved, although nothing in this procedure will prohibit the parties from seeking remedies available to them at law.

21. TERMINATION

In the event of the Contractor's failure to prosecute, deliver, or perform the Services, City may terminate this Agreement for nonperformance by notifying Contractor by certified mail of the termination. If City decides to abandon or indefinitely postpone the work or services contemplated by this Agreement, City may terminate this Agreement upon written notice to Contractor. Upon notification of termination, Contractor has five (5) business days to deliver any documents owned by City and all work in progress to City address contained in this Agreement. City will make a determination of fact based upon the work product delivered to City and of the percentage of work that Contractor has performed which is usable and of worth to City in having the Agreement completed. Based upon that finding City will determine the final payment of the Agreement.

Either party upon tendering thirty (30) days written notice to the other party may terminate this Agreement. In this event and upon request of City, Contractor will assemble the work product and put it in order for proper filing and closing and deliver it to City. Contractor will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

22. COVENANTS AGAINST CONTINGENT FEES

Contractor warrants that Contractor has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

23. CLAIMS AND LAWSUITS

By signing this Agreement, Contractor agrees that any Agreement claim submitted to City must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Contractor acknowledges that if a false claim is submitted to City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Contractor acknowledges that the filing

City Attorney Approved Version 6/12/18

of a false claim may subject Contractor to an administrative debarment proceeding as the result of which Contractor may be prevented to act as a Contractor on any public work or improvement for a period of up to five (5) years. Contractor acknowledges debarment by another jurisdiction is grounds for City to terminate this Agreement.

24. JURISDICTION AND VENUE

Any action at law or in equity brought by either of the parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of San Diego, State of California, and the parties waive all provisions of law providing for a change of venue in these proceedings to any other county.

25. SUCCESSORS AND ASSIGNS

It is mutually understood and agreed that this Agreement will be binding upon City and Contractor and their respective successors. Neither this Agreement nor any part of it nor any monies due or to become due under it may be assigned by Contractor without the prior consent of City, which shall not be unreasonably withheld.

26. ENTIRE AGREEMENT

This Agreement, together with any other written document referred to or contemplated by it, along with the purchase order for this Agreement and its provisions, embody the entire Agreement and understanding between the parties relating to the subject matter of it. In case of conflict, the terms of the Agreement supersede the purchase order. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

27. AUTHORITY

The individuals executing this Agreement and the instruments referenced in it on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions of this Agreement.

CONTRACTOR

CITY OF CARLSBAD, a municipal
corporation of the State of California

By:

By:

(sign here)

[INSERT TITLE OF PERSON AUTHORIZED TO
SIGN (City Manager or Mayor or Division
Director as authorized by the City
Manager)]

(print name/title)

ATTEST:

By:

City Attorney Approved Version 6/12/18

(sign here)

BARBARA ENGLESON
City Clerk

(print name/title)

If required by City, proper notarial acknowledgment of execution by contractor must be attached. If a corporation, Agreement must be signed by one corporate officer from each of the following two groups.

Group A

Chairman,
President, **or**
Vice-President

Group B

Secretary,
Assistant Secretary,
CFO **or** Assistant Treasurer

Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

APPROVED AS TO FORM:
CELIA A. BREWER, City Attorney

BY: _____
Deputy City Attorney

City Attorney Approved Version 6/12/18