

NOTICE INVITING BIDS OR PROPOSALS (NIB) NO. 030816

HVAC MAINTENANCE AND REPAIR SERVICES



**CITY OF RANCHO SANTA MARGARITA
22112 El Paseo
Rancho Santa Margarita, CA 92688
(949) 635-1800**

**Kurt Wiemann
Maintenance Manager
kwiemann@cityofrsm.org**

Important Dates and Deadlines

Notice Inviting Bids/Proposals Posting/Mailing:	Tuesday March 8, 2016
Pre Proposal Job Walk:	Tuesday March 22, 2016 8:00 am
Submittal Deadline and Public Bid Opening:	Tuesday March 29, 2016 (4:00 PM)
Tentative City Council Award:	Wednesday April 20, 2016
Tentative Contract Effective date:	Sunday May 1, 2016

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HVAC MAINTENANCE AND REPAIR SERVICES
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March 8, 2016

RE: **NOTICE INVITING BIDS OR PROPOSALS FOR HVAC
MAINTENANCE AND REPAIR SERVICES**

Dear Bidders:

NOTICE IS HEREBY GIVEN that sealed bids will be received by the City of Rancho Santa Margarita (City) for furnishing all materials, equipment, tools, labor and incidentals as required for the above stated maintenance services in accordance with the requirements set forth in the NIB, including the Scope of Services, sample draft agreement, and all attachments and appendices.

Bids will be received at the office of the City Clerk, City of Rancho Santa Margarita, until 4:00 p.m. on the twentieth day of March 2016, at which time and place the bids will be publicly opened. Bids shall be submitted in sealed envelopes marked on the outside, **"SEALED BID FOR HVAC MAINTENANCE AND REPAIR SERVICES - DO NOT OPEN WITH REGULAR MAIL."**

The work to be performed hereunder is located in the City of Rancho Santa Margarita and generally includes maintain and repairing the HVAC equipment at City Hall and the Bell Tower Regional Community Center (BTRCC).

In accordance with Section 3.07.060 of the Rancho Santa Margarita Municipal Code (RSMCC), the City Council may reject any and all bids for any reason or for no reason, and may suspend, delay, or otherwise cancel the procurement, or may order the re-advertisement of the request for bids. The contract will be awarded by the City Council to the lowest responsible bidder consistent with the best qualified vendor selection criteria set forth in Section 3.07.111 of the RSMCC.

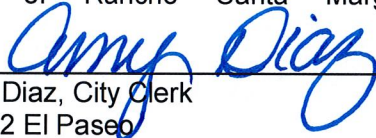
At the time of contract award, the Contractor shall possess a Class C20 Contractor's License necessary to perform the work herein described.

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This NIB and its attachments and appendices are available in an electronic format and may be obtained by request at no charge from the City of Rancho Santa Margarita, 22112 El Paseo, Rancho Santa Margarita, CA 92688, or by accessing the City's Web site at www.cityofrsm.org, clicking on "Departments", "Public Works", "Bids, RFPs, RFQs". You may also access the Web site after the bid submission deadline to obtain information regarding the award of bid.

BIDS ARE DUE NO LATER THAN:
4:00 PM, Tuesday, March 29, 2016

Dated: March 8, 2016
California

City of Rancho Santa Margarita,
BY 
Amy Diaz, City Clerk
22112 El Paseo
Rancho Santa Margarita, CA 92688

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NO. 030816**

SECTION I

INTRODUCTION AND INSTRUCTIONS TO BIDDERS

A: Introduction

The CITY OF RANCHO SANTA MARGARITA is seeking a qualified company to provide a comprehensive heating-ventilation-air conditioning (HVAC) maintenance and repair program for two municipal facilities: City Hall and the Bell Tower Regional Community Center (BTRCC). The work will include the provision of a total maintenance/management program including, but not limited to the inspection, preventative maintenance, repair, programming and other tasks and services necessary to insure safe, well maintained HVAC systems providing quality air for City employees and the public.

B: Proposed Time Schedule

Notice Inviting Bids/Proposals Posting/Mailing:	Tuesday March 8, 2016
Pre Proposal Job Walk:	Tuesday March 22, 2016 8:00 am
Submittal Deadline and Public Bid Opening:	Tuesday, November 17, 2015 (4:00 PM)
Tentative City Council Award:	Tuesday March 29, 2016
Tentative Contract Effective date:	Sunday May 1, 2016

C: Instructions to Bidders and Procedures for Submittal

One printed original bid must be submitted in a sealed envelope or box bearing the name of the Bidder, marked **“SEALED BID FOR HVAC MAINTENANCE AND REPAIR SERVICES - DO NOT OPEN WITH REGULAR MAIL”**, and submitted only to the following address:

**City of Rancho Santa Margarita
Attn: City Clerk's Office
22112 El Paseo
Rancho Santa Margarita CA 92688**

Bidders are solely responsible for ensuring their submitted bid is received by the City in accordance with the solicitation requirements, before the Submittal Deadline, and at

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the place specified. Postmarks will not be accepted in lieu of actual delivery. No oral, telegraphic, electronic mail, facsimile, or telephonic proposals or modifications will be considered unless specified. The City shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Delivery of proposals shall be made at the office and address specified in this Notice Inviting Bids. Deliveries made before the Submittal Deadline, but to the wrong City office or address, will not be considered unless re-delivery is made to the office and address specified before the Submittal Deadline. All bids shall become the property of the City.

Late bids will not be accepted and will be returned to the Bidder unopened.

D: General Conditions

ADDITIONAL INFORMATION, RIGHT TO REQUEST. The City reserves the right, where it may serve the City's best interest, to request additional information or clarification from bidders.

AUTHORIZED SIGNATURES. Every bid must be signed by the person or persons legally authorized to bind the Bidder to a contract for the execution of the work. Upon request of the City, any agent submitting a bid on behalf of a Bidder shall provide a current power of attorney certifying the agent's authority to bind the Bidder. If an individual makes the bid, his or her name, signature, and post office address must be shown. If a firm or partnership makes the bid, the name and post office address of the firm or partnership and the signature of at least one of the general partners must be shown. If a corporation makes the bid, the bid shall show the name of the state under the laws of which the corporation is chartered, the name and post office address of the corporation and the title of the person signing on behalf of the corporation. Upon request of the City, the corporation shall provide a certified copy of the bylaws or resolution of the board of directors showing the authority of the officer signing the bid to execute contracts on behalf of the corporation.

AWARD OF CONTRACT. Award of contract will be made in accordance with Sections 3.07.060 and 3.07.111 of the Rancho Santa Margarita Municipal Code (RSMCC). Contracts will be awarded by the City Council to the lowest responsible bidder consistent with the best qualified vendor selection criteria set forth in Section 3.07.111 of the RSMCC.

BID RESPONSE REQUIREMENT FORMS. "Bid" also means "proposals", "bid proposals" and "bids/proposals". Bids/Proposals shall be submitted in writing on the Bid Response Requirement Forms provided by the City, (Appendix 1-A through 1-G). All information requested therein must be clearly and legibly set forth in the manner and form indicated. The City will not consider any submission not meeting these requirements.

BID, REJECTION OF. The City reserves the right to reject any or all bids or any part of a bid. The City reserves the right to reject the bid of any Bidder who previously failed to

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perform adequately for the City or any other governmental agency. The City expressly reserves the right to reject the bid of any Bidder who is in default on the payment of taxes, licenses or other monies due the City.

COMPLIANCE WITH LAWS. All bids shall comply with current federal, state, and other laws relative thereto.

CANCELLATION OF SOLICITATION. In accordance with Section 3.07.060 of the RSMC, the City Council may reject any and all bids for any reason or for no reason, and may suspend, delay, or otherwise cancel the procurement, or may order the re-advertisement of the request for bids.

COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM (CMMS). The City will be instituting a web based CMMS for work orders, cost tracking, and asset management. The contractor must be willing to use this system (at no cost to the City) for all work performed under this contract.

CONFLICT OF INTEREST. By signing the Bid Proposal Certification (Appendix 1-A), the Bidder represents and warrants that no elected or appointed official, officer or employee of the City has been or shall be compensated, directly or indirectly, in connection with this bid or any work connected with this bid. Should any agreement be approved in connection with this Notice Inviting Bids or Proposals, Bidder represents and warrants that no elected or appointed official, officer or employee of the City, during the term of his/her service with the City shall have any direct interest in that agreement, or obtain any present, anticipated or future material benefit arising therefrom.

COSTS. The City is not liable for any costs incurred by Bidders before entering into a formal contract. Costs of developing the bids, or any other such expenses incurred by the Bidder in responding to this NIB, are entirely the responsibility of the Bidder and shall not be reimbursed in any manner by the City. No reimbursable cost may be incurred in anticipation of award.

DISQUALIFICATION OF BIDDER. If there is reason to believe that collusion exists among the Bidders, the City may refuse to consider bids from participants in such collusion. No person, firm, or corporation under the same or different name, shall make, file, or be interested in more than one bid for the same work unless alternate bids are requested. Reasonable grounds for believing that any Bidder is interested in more than one bid for the same work will cause the rejection of all bids for the work in which a Bidder is interested. If there is reason to believe that collusion exists among the Bidders, the City may refuse to consider bids from participants in such collusion. Bidders shall submit as part of their bid documents the completed Non-Collusion Affidavit provided as Appendix 1-F.

DOCUMENTS, EXAMINATION OF. It is the responsibility of the Bidder to carefully and thoroughly examine, understand and be familiar with these NIB documents, general

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conditions, all forms, specifications, maps, plans, sample draft agreement, and any and all attachments and appendices. Bidder shall satisfy himself as to the character, quantity, and quality of work to be performed and materials, labor, supervision, necessary to perform the work as specified by this NIB. The failure or neglect of the Bidder to examine documents shall in no way relieve him from any obligations with respect to the solicitation and/or subsequent contract that may be awarded. The submission of a bid shall constitute an acknowledgment upon which the City may rely that the Bidder has thoroughly examined and is familiar with the NIB documents. The failure or neglect of a Bidder to receive or examine any of the documents shall in no way relieve him from any obligations with respect to the bid. No claim will be allowed for additional compensation that is based upon a lack of knowledge of any solicitation document.

INTERPRETATION OF NIB DOCUMENTS. City reserves the right to make corrections or clarifications of the information provided in this NIB. If any person is in doubt as to the true meaning of any part of the specifications or other NIB documents, or finds discrepancies or omissions in the specifications, he may submit to the City a written request for an interpretation or correction.

Oral statement(s), interpretations or clarifications concerning meaning or intent of the contents of this NIB by any person are unauthorized and invalid. Modifications to the NIB, including, but not limited to, the scope of work can be made only by formal written addendum issued by the City.

The requesting party is responsible for prompt delivery of any requests. When the City considers interpretations necessary, interpretations will be in the form of an addendum to the NIB documents and, when issued, will be sent as promptly as is practical to all parties recorded by the City as having received NIB documents. All such addenda shall become a part of the NIB document. It is the responsibility of each Bidder to ensure the City has their correct business name and address on file. Any prospective Bidder who obtained a set of NIB documents is responsible for advising the City that they have a set of NIB documents and wish to receive subsequent Addenda.

IRREGULARITIES. Unauthorized conditions, limitations, or provisions attached to a Bid Proposal may cause its rejection. The completed Bid Proposal forms shall be without interlineations, alterations or erasures. Alternative proposals will not be considered unless specifically requested. No oral, telegraphic, or telephonic bid proposal, modification, or withdrawal will be considered.

NIB PART OF AGREEMENT. Should an agreement be awarded, this Notice Inviting Bids or Proposals and Scope of Services and all conditions may become part of the agreement between the City of Rancho Santa Margarita and the successful Bidder.

NON-DISCRIMINATION. Bidder represents and warrants that it does not and will not discriminate against any employee or applicant for employment because of race, religion, gender, color, national origin, sexual orientation, ancestry, material status,

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physical condition, pregnancy or pregnancy related conditions, political affiliation or opinion, age or medical condition.

NON-EXCLUSIVE. Should the City make an award, the successful Proposer will enter into a non-exclusive maintenance services agreement and the City reserves the right to enter into agreements with other firms for street sweeping and roadway cleaning maintenance services.

NO OBLIGATION. The release of this NIB does not obligate or compel the City to enter into a contract or agreement.

OFFERS OF MORE THAN ONE PRICE. Bidders are NOT allowed to submit more than one bid.

OWNERSHIP. All data, documents and other products used or developed during the NIB process shall become the property of the City upon submission.

PREVAILING WAGE. The Contractor shall ensure that the prevailing wage requirement is applied to anyone performing work on this project. Contractor/Contractor shall comply with the provisions of Section 1775 and 1813 of the Labor Code of the State of California and price their proposal response accordingly. Further information concerning Prevailing Wage rates can be found at: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

PROPOSAL BID SHEETS. Bidder shall give unit prices for each and all of the items set forth. No aggregate bid proposal(s) will be considered. The Bidder shall set forth for each item of work, in clearly legible figures, a unit item price and a total for the item in the respective spaces provided for this purpose. The quantities listed in the Proposal Bid Sheet are supplied to give an indication of the general scope of work, but the accuracy of figures is not guaranteed and the Bidder shall make his own estimates. In case of a variation between the unit price and the totals shown by the Bidder, the unit price will be considered to be the bid.

PROPRIETARY INFORMATION. All bid proposals and documents submitted in response to this NIB shall become the property of the City and a matter of public record pursuant to Government Code sections 6250 et seq. Bids should not be marked as confidential or proprietary, and City may refuse to consider a bid so marked. All information contained within the bid proposals will become a matter of public record. It is the responsibility of each bidder to clearly identify any and all information contained within their bid proposal that it considers to be confidential and/or proprietary. To the extent that the City agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public. In the event that a demand for disclosure of information designated as "confidential and/or proprietary" by a bidder is made, the City will notify the bidder in writing of such demand and shall furnish a copy of the City's written response to the requestor. Bidder

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may then pursue, at its sole cost and expense, any and all appropriate legal action necessary to maintain the confidentiality of such information.

PUBLIC RECORD. All proposals submitted in response to this NIB will become the property of the City upon submittal and a matter of public record pursuant to applicable law.

REPRESENTATIONS. Bidder understands and acknowledges that the representations made in their submitted proposal are material and important, and will be relied on by the City in evaluation of the bid. Bidder misrepresentation shall be treated as fraudulent concealment from the City of the facts relating to the bid.

SEVERABILITY. If any provisions or portion of any provision of this Notice Inviting Bids are held invalid, illegal or unenforceable, they shall be severed from the Notice Inviting Bids and the remaining provisions shall be valid and enforceable.

SUBCONTRACTOR INFORMATION. If the bid includes the use of subcontractors, Bidder must identify specific subcontractors and the specific requirements of this NIB for which each proposed subcontractor would perform services.

SUBCONTRACTOR REFERENCES. For all subcontractors that will be used for providing services as part of the bid, Bidders must provide a minimum of two references from similar services performed for any local government clients within the last five years. Information provided shall include:

- a. Client name;
- b. Description of services;
- c. Dates (starting and ending);
- d. Client project manager's name and telephone number.

VALIDITY. Bid must be valid for a period of 180 days from the due date.

WITHDRAWAL OF BID. Bidder's authorized representative may withdraw a bid only by written request received by the City Engineer before the Submittal Deadline.

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SECTION II

BID RESPONSE REQUIREMENTS

One printed original bid must be submitted in a sealed envelope or box bearing the name of the Bidder, marked **“SEALED BID FOR HVAC MAINTENANCE AND REPAIR SERVICES - DO NOT OPEN WITH REGULAR MAIL”**, and submitted only to the following address:

**City of Rancho Santa Margarita
Attn: City Clerk's Office
22112 El Paseo
Rancho Santa Margarita CA 92688**

All bids shall be submitted using the Bid Response Requirement Forms and Proposal Bid Sheets contained herein. Electronic documents may be obtained by accessing the City's Web site at <http://www.cityofrsm.org/171/Bids-Request-For-Proposals>. Response items must be submitted in the following order:

A. Bid Proposal Certification:

Proposal must be accompanied by a signed “Bid Proposal Certification” (Appendix 1-A), signed by an individual authorized to bind the proposing entity.

B. Contractor/Company Information:

Please complete, sign and submit the “Contractor/Company Information” form included as Appendix 1-B.

C: Proposal Bid Sheets:

Bidder must complete and submit with the bid “Proposal Bid Sheets” (Appendix 1-C), identifying unit price rates for all bid items, along with estimated annual pricing in accordance with the City's requirements as set forth in the Scope of Work and listed in Appendix 1-C.

E: References:

Bidder must provide three (3) references for which Bidder has provided similar services performed in California of the nature and scope as set forth in the NIB within the last

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five (5) years. Information shall be submitted on the “References” form included as Appendix 1-E.

F: Non-collusion Affidavit:

Bidder must complete, sign and submit with the bid proposal the “Non-collusion Affidavit” included as Appendix 1-F.

G: Insurance Requirements Acknowledgment:

Bidder shall demonstrate the willingness and ability to submit proof of the required insurance coverage as set forth in the *Sample Draft Agreement* (attached as Appendix 3) prior to execution of the contract. The “Insurance Requirements Acknowledgment” is included as Appendix 1-G.

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SECTION III

PROPOSAL REVIEW AND SELECTION

Section 3.07.060 of the RSMMC sets forth the competitive formal bidding procedures. Submission of all proposals shall be by sealed bid as identified in this NIB. Sealed bids shall be stored by the City Clerk in a secure location until opening. After the submission deadline, which is listed in the NIB, the City Clerk shall open all bids in public. A tabulation of all bids received shall be open for public review and inspection in the office of the City Clerk during regular business hours for a period of not less than 30 calendar days after the bid opening.

If two or more formal bids received are the same and are the lowest, the City Council may accept the one it chooses. Contracts will be awarded by the City Council to the lowest responsible bidder consistent with the best qualified vendor selection criteria set forth in Section 3.07.111 of the RSMMC, which states:

“In determining the best qualified vendor, consideration is to be given to price, quality, and performance of the goods and supplies, equipment, or nonprofessional services to be provided by the vendor. Criteria for determining the best qualified vendor shall include but not be limited to the following:

- (1) The cost and quality of the goods and supplies, equipment, or nonprofessional services;
- (2) The ability, capacity, and skill of the vendor to perform and to provide the goods and supplies, equipment, or nonprofessional services requested;
- (3) The ability of the vendor to provide the goods and supplies, equipment, or nonprofessional services requested promptly or within the time specified, without delay, interference, or service interruption;
- (4) The ability of the vendor to demonstrate the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform;
- (5) The character, integrity, reputation, judgment, references, experience, and efficiency of the vendor;
- (6) The quality of the vendor's performance history and record on previous purchases or contracts with the City;
- (7) The ability of the vendor to provide future maintenance, repair parts, and services for the use of the goods and supplies, equipment, or materials purchased; and
- (8) The ability of the vendor to demonstrate its prior, current, and continued compliance during the contract term with all applicable federal, state, and local laws, statutes, ordinances and all lawful orders, rules, and regulations promulgated thereunder.

The decision of the City Council shall be final.

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SECTION IV

**SCOPE OF SERVICES FOR
HVAC MAINTENANCE AND REPAIR SERVICES**

Section A: General Specifications

SERVICES TO BE PROVIDED

It is the Proposer's responsibility to provide an appropriate level of on-site staffing as needed, provide appropriate tools and vehicles necessary to support all facility HVAC maintenance functions during hours of maintenance and for response after normal working hours. Proposer's services are to be compliant with all Federal, State, CARB, AQMD, OSHA and all other applicable regulatory requirements.

PRICING TABULATION SHEETS

Prices as stated on the Building HVAC Maintenance Pricing Sheet (Appendix 1-C) shall be all inclusive for routine maintenance services specified in this Proposal.

HVAC MAINTENANCE STAFFING LEVELS

The Contractor shall provide a staffing level that will provide the desired level of customer service, program support, HVAC maintenance and repair at designated City facilities.

Staffing levels should include staff that is certified and proficient in the complete maintenance and repair of a variety of package HVAC units and commercial kitchen equipment. Additionally, service levels shall provide the ability to respond immediately to situations involving the health and safety of employees and/or the public; comfort and operational capability of any public meeting space. Routine repairs, service requests or other non-urgent tasks shall be completed by journey level staff within one (1) working day from the date of the automated request or assignment by the Public Works Director.

The journey-level worker(s) shall be proficient in the following trades:

- Package HVAC units.
- All mechanical, electronic aspects of HVAC systems.
- Multi zone air handling systems
- A comprehensive understanding of HVAC control systems.
- Commercial Kitchen Equipment

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SECURITY BACKGROUND CHECK OF PERSONNEL

At the City's discretion, the Contractor may be required to provide security checks for all personnel assigned to work under this contract. Additional checks may be required for all new employees during the lifetime of the contract and all expenses shall be borne exclusively by the contractor. The City reserves the right to approve/refuse any prospective employees of the contractor as a result of the background check.

The following information must be used for the contractor's background checks.

Full Legal Name
Social Security Number
California Driver's License or Identification Number
Birth Date
Current Valid Address

Upon request, the contractor shall furnish the City with the results of the background checks for all employees to be assigned to contract.

SUBCONTRACTING

No portion of the work covered by these specifications may be subcontracted or assigned without prior approval of the Public Works Director. Requests to subcontract all or any portion of services required by this contract will be submitted to the Public Works Director, at least fourteen (14) days in advance of the proposed effective date of the subcontract. Proposer shall include in this written request a detailed description of how the Contractor plans to oversee the services performed by the proposed subcontractor. Contractor shall be responsible for services provided by any subcontractor as if Contractor were providing the services with its own organization. Any subcontractor providing services shall have successfully passed a background check prior to commencing work and must meet the City's insurance requirements. Contractor shall bear all expenses of any subcontractor background checks and any required insurance.

The City may make reasonable investigations deemed necessary and proper to determine the ability of a contractor to perform the work, and the contractor shall furnish the City all information requested for this purpose.

DAMAGES

The Contractor will be responsible for all damages to the facility or contents caused by Contractor, their staff or subcontractors during the performance of their duties.

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TOOLS AND EQUIPMENT

The Contractor shall furnish and maintain all equipment necessary for properly maintaining HVAC systems in City buildings. The City Of Rancho Santa Margarita reserves the right to inspect equipment to be used to perform services under this contract. Any equipment determined to be in poor condition must be replaced immediately, at the contractor's expense. Failure to provide suitable equipment for carrying out all requirements of this contract may be grounds for termination.

INSPECTIONS AND REMEDIES

So as to ensure consistent quality of the work being performed, The Maintenance Manager, or his representative, shall inspect any work performed by the Contractor to ensure that the materials and workmanship are in accordance with the specifications prior to accepting and approving invoice for payment of work performed.

EMERGENCY CALL OUT SERVICE

Contractor shall provide 24 hour emergency service as needed in all aspects of HVAC emergency repair for the City facilities included in this specification. Hours shall be Monday through Friday 5:00 p.m. to 6:00 a.m. and 24 hours each day on weekends and Holidays. Contractor shall have working personnel on-site within 1 hour of the call-out, or respond by telephone to the Public Works Director or his designee within ½ hour if the problem is capable of being corrected through the use of a computer/modem to alleviate the source of complaint. Labor rates for emergency call out work and overtime shall be paid at 1 ½ times the fixed rate shown on the Bid.

SUPPLEMENTAL WORK (Extraordinary Maintenance)

Contractor shall be expected to be capable of repairing or replacing failed or worn moving parts (such as: bearings, motor rotors, motor starters, seals, gears, burners, actuators, controls and switches). Prior to beginning any repair or replacement, Contractor will troubleshoot the system to diagnose the system's problems and provide a written analysis of such troubleshooting. The City shall not incur any extra charge for this analysis which will include an itemized listing of the equipment/parts that are proposed to be repaired or replaced. All work beyond and in addition to the routine maintenance scope of the contract shall be considered Extraordinary Maintenance and will require that an estimate for that proposed work be provided to the Public Works Director or his designee for consideration.

The Contractor shall provide a written estimate to the City for approval prior to performing any extraordinary maintenance. All written estimates shall include labor costs as shown on bid sheet and a 15% mark up for parts, materials, and equipment. Final invoices shall contain original estimate and actual receipts for parts, materials, and equipment. Mileage will not be reimbursable.

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ADDITIONAL CONTRACTOR REQUIREMENTS

- Contractor shall show evidence of having served municipal customers in similar contracts.
- Contractor shall hold a current C20 license.
- Contractor shall provide HVAC employees that possess a State of California Joint Journeyman Apprentice Training Center certification or equivalent; Automation specialists that are continually factory trained on a variety of HVAC control systems, and must be able to provide operator coaching and on-site training of select personnel as needed.
- Contractor shall have full-time journeymen-level mechanical personnel and factory-trained automation specialists.
- Contractor shall provide the Public Works Director or his designee with a comprehensive monthly tracking report of HVAC services and repairs. Report will be generated on a nonproprietary software program and given to the representative electronically at the first of every month.
- Contractor shall implement measures to remotely access generic HVAC control systems as needed for emergency service.
- Service Automation specialists shall demonstrate familiarity with a variety of generic HVAC control systems.
- Contractor shall advise the Public Works Director or his designee of the availability of generic HVAC control system upgrades, as they become available.
- Contractor shall provide emergency service 24 hours a day / 7 days a week, Monday through Sunday.
- Contractor shall supply their staff with their company uniform and photo identification tags that will be worn at all times. Uniforms shall display the Contractor logo and employee first or last name shall be clearly visible.
- Contractor shall provide MSDS sheets to City in a complete "Right to Know" binder for all products used in City facilities. City will determine location of "Right to Know" books.

Section B: Routine Maintenance Specifications

The Contractor shall retain qualified personnel who have successfully and competently provided municipal facility HVAC maintenance and repair services on projects of similar scope and complexity. It shall be the Contractor's responsibility to develop and implement a routine maintenance program to effectively maintain, to the satisfaction of the Public Works Director, all aspects of HVAC systems in City defined facilities. For the purpose of this contract, routine preventative HVAC maintenance shall be defined as scheduled routine inspection and proactive servicing of HVAC systems so as to facilitate heating/cooling with a minimal downtime. The routine maintenance and all repairs shall be provided in accordance with the highest standards of the industry, skill, workmanship, applicable trade practices, meet warranties and in conformance to all applicable laws, codes and regulations. The successful Proposer's maintenance

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program and repairs shall, at a minimum, include but not limited to the specifications outlined herein.

HEATING-VENTILATION-AIR CONDITIONING (HVAC) MAINTENANCE AND MONITORING

Contractor shall provide expeditious correction and record complaints and corrections at all City facilities. Contractor shall inspect all HVAC systems at least twice each year, with start-up and run inspections performed and documented.

- Contractor shall provide documentation to the Public Works Director or his designee at the first of every month of Preventive Maintenance on all HVAC systems.
- Contractor shall inspect all support structures, and provide documentation of maintenance and repairs to the Public Works Director.
- Contractor shall inspect all moving parts or components, investigate noises: belts; bearings; drives; and fans, and lubricate and adjust as recommended per manufacturers specifications.
- Contractor shall perform air-handling unit maintenance which includes but is not limited to; all services recommended by manufacturer; replacing air filters at least quarterly, at both City facilities.
- Contractor shall inspect, provide documentation that all City owned facilities under contract with Contractor are receiving required work.
- Contractor shall perform quarterly walkthroughs of HVAC systems for preventative maintenance work requests.

Proof of Work Documentation

The Contractor will provide a standard proof of work documentation following completion of all work. The document must include sufficient information to identify facility where work was performed, equipment and/or components on which work was performed, purpose of work, date and time work was performed, parts used, type and amount of chemicals/refrigerants, and the name/cert # of technician(s) executing the work.

Annual Maintenance

Proposer will perform scheduled annual preventive maintenance in accordance with a program of standard routines as determined by your experience, equipment application, and equipment operating hours that are recommended by each equipment manufacturer and location. This service is designed to optimize the reliability and efficiency of the equipment, extend the useful life of the City's equipment, and provide proactive indications of excessive wear and damage to HVAC systems before a catastrophic failure occurs during the next operating season. Proposer will also provide recommendations for additional service(s) that will better enhance equipment performance. The equipment included under this service is itemized in the equipment

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included under this service is itemized in the HVAC Equipment List; see Appendix 2 of this document.

Temperature Controls Maintenance

Preventative maintenance of all zone controls including but not limited to thermostats, VAV's, actuators, valves, relays, pneumatic control lines, switches, motors, and related equipment will be covered under Contractor's proposal. Calibration of thermostats, actuators, and velocity controllers will be performed annually.

HVAC Air Filter Changing Service

This service will maintain indoor air quality by changing filters quarterly and minimizing dust and particles from collecting on ductwork. This service will insure proper flow through cooling and heating coils, thus preventing restrictions in airflow, leading to higher system and energy efficiency. In the event the air filter material or cleaning requires different frequencies than indicated (due to experience or changes in operating conditions), the Contractor shall make necessary adjustment at no additional cost to the City. The equipment included under this service is itemized in the AC Equipment List; see Appendix 2 of this document.

HVAC Belt Inspection & Changing Service

This service will maintain reliability and functionality of the units by inspecting drive belts quarterly and replacing belts that are worn or damaged. This service will insure proper tension and friction on the belts, maintaining the efficiency and reliability of the equipment. In the event a belt fails between maintenance periods, it will be assumed the Contractor failed to inspect/replace it properly and the contractor will be required to replace it at no extra cost to the City. The equipment included under this service is itemized in the AC Equipment List; see Appendix 2 of this document.

Air Cooled Condenser Coil Cleaning

This service will improve airflow across condenser coils, improve heat transfer and extend the life of the compressors. Coil cleaning consists of cleaning the outside surface of the condensing unit coils to remove any airborne particles, dirt build-up by using a brush, high pressure air, chemical with low pressure wash or chemical with high pressure wash based on the condition of outside environment and coil accessibility. The equipment included under this service is itemized in the AC Equipment List; see Appendix 2 of this document.

Evaporator Coil and Cleaning

Proposer will clean air handling unit evaporator coils that will help improve air circulation in the air distribution system, and reduce dust and dirt that is in the system. Coils will be cleaned bi-annually. Coil cleaning consists of cleaning the surface of the

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evaporator coil to remove dust and dirt particles that have collected on the evaporator coil. Coils will be cleaned using a vacuum cleaner and or other devices that allow the proper cleaning of the coil. The equipment included under this service is itemized in the AC Equipment List; see Appendix 2 of this document.

Operating Inspection

Proposer will provide this service to assure that mechanical equipment continues to operate efficiently with little operating disruptions during the operating season. Proposer will provide routine operating inspection(s) to check system performance in accordance with a program of standard routines as determined by our experience, the equipment manufacturer's published recommendations, equipment application, and location. A detailed list of the tasks included with this service in the Equipment Tasking section of this service agreement. This service will focus on equipment operation, fluid levels, operating and safety controls, and safe equipment operation. The equipment included under this service is itemized in the provided HVAC Equipment List; see Appendix 2 of this document.

Operating Inspection – Heating

This service will help to assure mechanical equipment continues to operate efficiently, safely and with little operating disruptions during the operating season. Proposer will provide routine operating inspection(s) to check system performance in accordance with a program of standard routines as determined by our experience, the equipment manufacturer's published recommendations, equipment application, and location. A detailed list of the tasks included with this service is in the Equipment Tasking section of this service agreement (see Page 9). This service will focus on equipment operation, fluid levels, operating and safety controls, and safe equipment operation. The equipment included under this service is itemized in the AC Equipment List; see Appendix 2 of this document.

Operating Inspection - Cooling

This service will help to assure mechanical equipment continues to operate efficiently, safely and with little operating disruptions during the operating season. Proposer will provide routine operating inspection(s) to check system performance in accordance with a program of standard routines as determined by our experience, the equipment manufacturer's published recommendations, equipment application, and location. A detailed list of the tasks included with this service is in the Equipment Tasking section of this service agreement (see below). This service will focus on equipment operation, fluid levels, operating and safety controls, and safe equipment operation. The equipment included under this service is itemized in the AC Equipment List; see Appendix 2 of this document.

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Equipment Tasking

The following tasks listed herein for each equipment type will be performed at the intervals planned. These tasks are designed to place the equipment into prime operating condition so that the equipment will operate effectively, reliably, and efficiently.

SPECIFIC ROUTINE MAINTENANCE SERVICES

Rooftop Packaged Units

Preventative maintenance service to be performed quarterly:

- Filters changed quarterly on a minimum basis or as required.
- Lock out and tag out equipment as required.
- Check all electrical wiring & connections; tighten as required.
- Check all motor starter contactor surfaces for wear.
- Clean electrical control enclosures.
- Lubricate air handling unit motor bearings and fan bearings, if applicable.
- Check air handling unit belts for wear.
- Check belt tension and sheave alignment.
- Change belt and change as required.
- Check all mounting hardware, tighten as needed.
- Check and calibrate controls.
- Check condition of evaporator coils. Chemically clean as required.

Preventative maintenance service to be performed annually:

- Check and clean condensate drains, drain line and pan.
- Inspect air handling unit fan assembly.
- Lubricate condenser motors as required.
- Chemically clean condenser coil and fan blades.
- Check structural integrity of unit.
- Check and calibrate controls.

Exhaust Fans

Preventative Maintenance to be performed annually:

- Check all electrical wiring and connections and tighten.
- Check all motor starter contactor surfaces for wear.
- Clean starter and electrical control enclosures.
- Lubricate motor bearings and fan bearings.
- Check exhaust fan belts for wear, replace as required.
- Check belt tension and sheave alignment. Adjust as required.

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- Inspect exhaust fan unit assembly.
- Check all mounting hardware. Tighten as required.

Package, Gas Heat/ Electric Cool

Preventive maintenance; Same as Package units except add:

- Check and adjust burners for proper flames.
- Check for proper combustion and flue gas relief.
- Record discharge temperature, heating and cooling modes.
- Record return air temperature.
- Check and adjust operating and safety controls.

Dampers

- Perform maintenance quarterly.
- Clean and lubricate components.
- Check operation of dampers.
- Check and adjust operating and safety controls.

City of Rancho Santa Margarita
HVAC MAINTENANCE AND REPAIR SERVICES
NOTICE INVITING BIDS OR PROPOSALS

NOTICE INVITING BIDS NO. 030816

SECTION V

COMPENSATION

Compensation will be provided in accordance with Section 2 of the Sample Draft Agreement (Appendix 3). Compensation will be made at the rates contained in the Contractor's Proposal/Scope of Work and subject to a Maximum Annual Contract Amount as agreed upon by Contractor and City.

Contractor shall submit an invoice to City on a monthly basis, no later than the 10th working day of each month. Invoices shall be in a form approved by the City's Finance Director. Invoices shall be based upon the amount and value of the work or services performed and shall include reporting data, including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice. Payment will generally be made within forty-five (45) days after receipt of an invoice.

Additional Services or Extra Work shall only be compensated when performed in accordance with Section 1.8 of the Sample Draft Agreement.

City of Rancho Santa Margarita
HVAC MAINTENANCE AND REPAIR SERVICES
NOTICE INVITING BIDS OR PROPOSALS

APPENDIX 1-A

CERTIFICATION OF BID PROPOSAL (page 1 of 2)

The undersigned hereby submits its proposal and agrees to be bound by the terms and conditions of this Notice Inviting Bids (NIB) **NO. 030816**

The undersigned hereby proposes to furnish all materials, equipment, tools, labor, and incidentals required for the above stated services as set forth in the Notice Inviting Bids (NIB), and to perform all work in the manner and time prescribed therein.

Bidder represents that this Bid Proposal is based upon careful examination of the work site, bid response requirements, specifications, scope of work, and sample draft agreement. If this Bid Proposal is accepted for award, Bidder agrees to enter into the attached Street Sweeping and Roadway Cleaning Maintenance Services Agreement with City at the unit and/or lump sum prices set forth in the Proposal Bid Sheets.

Bidder has carefully reviewed its bid proposal and understands that the City is not responsible for any errors or omissions on the part of the Bidder and that the Bidder is responsible for them. It is understood and agreed that the City reserves the right to accept or reject any or all bid proposals and to waive any informality or irregularity in any bid proposal received by the City.

Bidder understands that a bid is required for the entire work, that the estimated quantities set forth in the Proposal Bid Sheet are solely for the purpose of comparing proposal(s), and that final compensation under the contract will be based upon the actual quantities of work satisfactorily completed. It is agreed that the unit and/or lump sum prices bid include all expenses, taxes, royalties, and fees. In the case of discrepancies in the amounts bid, unit prices shall govern over extended amounts.

Bidder represents that no elected or appointed official, officer or employee of the City has been or shall be compensated, directly or indirectly, in connection with this bid proposal or any work connected with this bid proposal. Should any agreement be approved in connection with this Notice Inviting Bids, Bidder represents and warrants that no elected or appointed official, officer or employee of the City, during the term of his/her service with the City shall have any direct interest in that agreement, or obtain any present, anticipated or future material benefit arising therefrom.

Bidder acknowledges that it is the City's intention to Award a Contract for Street Sweeping and Roadway Cleaning Maintenance Services for a five-year term commencing on or about January 1, 2016 and ending on December 31, 2021. Bidder agrees that the bid proposal shall be valid for 120 days from submission.

- Signatures and Certification on Page 2 -

City of Rancho Santa Margarita
HVAC MAINTENANCE AND REPAIR SERVICES
NOTICE INVITING BIDS OR PROPOSALS

APPENDIX 1-A

CERTIFICATION OF BID PROPOSAL (page 2 of 2)

CONTRACTOR'S NAME: _____ DATE _____, 20____.

CONTRACTOR'S ADDRESS: _____ BY _____

(Print Name) (Signature)

PHONE: () _____ TITLE _____

Subscribed and sworn to before me
this _____ day of _____, 20____ BY _____
(Print Name)

(Signature of Notary Public) (Signature)

Title: _____

Date: _____

City of Rancho Santa Margarita
HVAC MAINTENANCE AND REPAIR SERVICES
NOTICE INVITING BIDS OR PROPOSALS

APPENDIX 1-B

CONTRACTOR'S INFORMATION

CONTRACTOR certifies that the following information is true and correct:

CONTRACTOR's Name _____

Business Address _____

Telephone: () _____

Email Address: _____

The following are the names, titles, addresses, and phone numbers of all individuals, firm members, partners, joint ventures, and/or corporate officers having a principal interest in this proposal:

The dates of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this proposal are as follows:

All current and prior DBA's, alias, and/or fictitious business names for any principal having an interest in this proposal are as follows:

Subscribed and sworn to before me

this _____ day of _____, 20____. By _____
(Print Name)

(Signature of Notary Public)

(Signature)

Title _____

(SEAL)

Date _____, 20____

City of Rancho Santa Margarita
HVAC MAINTENANCE AND REPAIR SERVICES
NOTICE INVITING BIDS OR PROPOSALS

APPENDIX 1-C
PROPOSAL BID SHEETS (page 1 of 2)

Award will be based on Total Bid. Provide Unit Price rates for all bid items:

Routine Maintenance		est. qty.	Unit price	Extended Cost
Quarterly Maintenance BTRCC	Each Occurrence	4	\$	\$
Quarterly Maintenance City Hall	Each Occurrence	4	\$	\$
Annual Maintenance BTRCC	Each Occurrence	1	\$	\$
Annual Maintenance City Hall	Each Occurrence	1	\$	\$
Sub-Total Routine Maintenance				\$
Emergency and Extraordinary Maintenance		Est. Annual Qty.	Unit price	Extended Cost
Certified Technician	Hour	50	\$	\$
Apprentice Technician	Hour	25	\$	\$
Computerized Management System (CMS) Technician	Hour	15	\$	\$
Sub-Total Extraordinary Maintenance				\$
Total Bid (Routine + Extraordinary)				\$
<p>The quantities shown herein are approximate and are to be used only for comparison of bids. For emergency and extraordinary maintenance, the quantities shown above will be used for comparison of bids. Payment for quantities will be made for actual quantities of work. The city reserves the right to adjust these quantities without change in the unit price.</p>				

Total Bid in words

City of Rancho Santa Margarita
HVAC MAINTENANCE AND REPAIR SERVICES
NOTICE INVITING BIDS OR PROPOSALS

APPENDIX 1-C

PROPOSAL BID SHEETS (page 2 of 2)

THE CITY RESERVES THE RIGHT TO INCREASE OR DECREASE THE AMOUNT OF ANY QUANTITY SHOWN, ADJUST THE FREQUENCY AND DAYS/HOURS OF OPERATION AND TO DELETE ANY OR ALL ITEMS FROM THE CONTRACT WITH NO ADDITIONAL COST OR ESCALATION OF RATES TO THE CITY. IF THERE IS A CONFLICT BETWEEN THE UNIT PRICE PROVIDED AND TOTAL COST, THE UNIT PRICE SHALL PREVAIL.

NOTE: CONTRACTOR MAY, AT THEIR SOLE DISCRETION, PROVIDE A LISTING AND DESCRIPTION OF ADDITIONAL CLEANING SERVICES THEY OFFER, ADDITIONAL REFERENCES, ADDITIONAL EQUIPMENT AND ADDITIONAL COMPANY INFORMATION BY ATTACHING UP TO 10 ADDITIONAL PAGES TO THIS BID PROPOSAL. CITY MAY UTILIZE THIS INFORMATION IN ITS EVALUATION OF THE "BEST QUALIFIED VENDOR" IN ACCORDANCE WITH THE CITY OF RANCHO SANTA MARGARITA MUNICIPAL CODE SECTION 3.07.111. - BEST QUALIFIED VENDOR SELECTION CRITERIA.

CONTRACTOR NAME _____

By _____
(Print)

(Signature)

Title

City of Rancho Santa Margarita
HVAC MAINTENANCE AND REPAIR SERVICES
NOTICE INVITING BIDS OR PROPOSALS

APPENDIX 1-D

REFERENCES

CONTRACTOR'S NAME: _____

REFERENCES

The following are the names, addresses, and phone numbers for three (3) public agencies for which CONTRACTOR has performed similar work within the past two years:

1. Agency: _____
Address: _____
Telephone: _____
Primary Contact Person/Title: _____
Years of service with this Agency: _____
Term of Agreement: _____ Expiration Date: _____
2. Agency: _____
Address: _____
Telephone: _____
Primary Contact Person/Title: _____
Years of service with this Agency: _____
Term of Agreement: _____ Expiration Date: _____
3. Agency: _____
Address: _____
Telephone: _____
Primary Contact Person/Title: _____
Years of service with this Agency: _____
Term of Agreement: _____ Expiration Date: _____

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HVAC MAINTENANCE AND REPAIR SERVICES
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APPENDIX 1-E

NON-COLLUSION AFFIDAVIT

The undersigned declares, states and certifies that:

1. Bidder has not made this proposal in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.
2. Bidder's proposal is genuine and not collusive or sham.
3. Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid proposal and I have not directly or indirectly colluded, conspired, connived, or agreed with any other Bidder or anyone else to put in a sham bid proposal or to refrain from submitting to this NIB.
4. Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price or to fix any overhead, profit or cost element of the proposal price or to secure any advantage against the City of Rancho Santa Margarita or of anyone interested in the proposed contract.
5. Bidder represents that all statements contained in the Bid Proposal and related documents are true.
6. Bidder has not directly or indirectly submitted the bid proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay any fee to any person, corporation, partnership, company, association, organization, depository, or to any member or agent thereof to effectuate a collusive or sham bid proposal.
7. Bidder has not entered into any arrangement or agreement with any City of Rancho Santa Margarita public officer in connection with this bid proposal.
8. Bidder understands that collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards.

I declare under penalty of perjury pursuant to the laws of the State of California and the United States that the foregoing facts are true and correct.

Executed this _____ day of _____, 2015 at _____,
California.

Signature of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative

City of Rancho Santa Margarita
HVAC MAINTENANCE AND REPAIR SERVICES
NOTICE INVITING BIDS OR PROPOSALS

APPENDIX 1-G

**ACKNOWLEDGEMENT OF COMPLIANCE
WITH INSURANCE REQUIREMENTS**

Contractor agrees, understands, acknowledges and is fully aware of the insurance requirements as specified in **Section 5. Insurance Requirements** of the Street Sweeping and Roadway Cleaning Maintenance Services Agreement and accepts all conditions and requirements as contained therein.

Contractor: _____
Name (Please Print or Type)

By: _____
Contractor's Signature

Date: _____

This executed form must be submitted with Scope of Work proposal.

APPENDIX 2

EQUIPMENT LIST

City Hall											
Package Units											
Unit Number	Manuf.	Model	Cooling (TONS)	EER	SEER	Heating (Btu/hr)	Exhaust Fan HP	Supply Air CFM	OSA CFM	VVT	Economizer
A1	Carrier	50JX024	2		12.0	23,200		800	80	No	
A2	Carrier	50HJQ006	5		11.9	60,000		2000	180	Yes	
A3	Carrier	50HJQ006	5		11.9	60,000		2000	615	No	
A4	Carrier	50HJQ007	6	10.5		69,000	0.5	2400	265	Yes	Yes
A5	Carrier	50HJQ008	8	10.3		85,000	1	3000	700	Yes	Yes
A6	Carrier	50JX030	3		12.0	28,200		1000	300	No	
A7	Carrier	50HJQ005	4		12.0	46,000		1600	325	No	
A8	Carrier	50HJQ008	7.5	10.3		85,000	1	3000	900	No	Yes
A9	Carrier	50HJQ012	10		10.3	114,000	2	4000	660	No	Yes
A10	Carrier	50HJQ008	8	10.3		85,000	1	3000	200	No	Yes
A11	Carrier	50HJQ005	4		12.0	46,000		1600	435	No	
A12	Carrier	50HJQ006	5		11.9	60,000		2000	300	Yes	
A13	Carrier	50HJQ006	5		11.9	60,000		2000	600	Yes	
A14	Carrier	50HJQ007	6	10.5		69,000	0.5	2400	375	Yes	Yes
A15	Carrier	50HJQ005	4		12.0	46,000		1600	140	No	
A16	Carrier	50HJQ006	5		11.9	60,000		1800	400	Yes	
A17	Carrier	50HJQ006	5		11.9	60,000		2000	50	No	
A18	Carrier	50HJQ006	5		11.9	60,000		2000	50	No	
Exhaust Fans						ByPass Damper Schedule					
Unit Number	Manuf.	Model	ESP (IN)	CFM	HP	Unit Number	Manuf.	Model	Max CFM	ByPass CFM	Inlet size
A1	Greenheck	GB-101-4	0.50	840	0.25	B01	Pottoroff	CD-25-RS	1600	1010	16
A2	Greenheck	GB-101-4	0.50	680	0.25	B02	Pottoroff	CD-25-RS	1920	1150	18
A3	Greenheck	GB-070-6	0.50	225	0.17	B03	Pottoroff	CD-25-RS	2400	1750	20
A4	Greenheck	GB-090-4	0.50	500	0.25	B04	Pottoroff	CD-25-RS	1600	1025	16
A5	Greenheck	GB-070-6	0.50	200	0.17	B05	Pottoroff	CD-25-RS	1600	1025	16
Electric Duct Heater						B06	Pottoroff	CD-25-RS	1920	1250	18
Unit Number	Manuf.	Duct Size	CFM			B07	Pottoroff	CD-25-RS	1440	900	16
DHA1	Delta Flo	14x10	300								

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Bell Tower Regional Community Center 25,275 SF

BTRCC											
Package Units											
Unit Number	Manuf.	Model	Cooling (TONS)	EER	SEER	Heating (Btu/hr)	Exhaust Fan HP	Supply Air CFM	OSA CFM	VVT	Economizer
B1	Carrier	50HJQ006	5		11.9	60,000		2000	435	No	
B2	Carrier	50HJQ006	5		11.9	60,000		2000	430	No	
B3	Carrier	50HJQ012	10		10.3	114,000	2	4040	1205	No	Yes
B4	Carrier	50HJQ008	8	10.3		85,000		3000	640	No	
B5	Carrier	50HJQ012	10		10.3	114,000	2	3960	860	No	Yes
B6	Carrier	50HJQ006	5		11.9	60,000		2000	500	No	
B7	Carrier	50HJQ005	4		12.0	46,000		1600	265	No	
B8	Carrier	50HJQ006	5		11.9	60,000		2000	300	No	
B10	Carrier	50HJQ005	4		12.0	46,000		1600	280	No	
B11	Carrier	50HJQ004	3		12.0	34,000		1200	230	No	
B12	Carrier	50HJQ004	3		12.0	34,000		1200	540	No	
B14	Carrier	50HJQ008	8	10.3		85,000		2990	600	No	
B15	Carrier	50HJQ006	5		11.9	60,000		2010	400	No	
B16	Carrier	50HJQ012	10		10.3	114,000	2	4000	1000	No	Yes
B17	Carrier	50HJQ006	5		11.9	60,000		2000	525	No	
Exhaust Fans						Make up Air Unit					
Unit Number	Manuf.	Model	ESP (IN)	CFM	HP	Unit Number	Manuf.	Model	Input BTUH	Output BTUH	
B1	Greenheck	GB-141-4	0.50	1485	0.50	MAB1	REZNOR	HCRGB-75	75000	6000	
B2	Greenheck	GB-070-6	0.50	100	0.50	Condensing Unit					
B3	Greenheck	Cube-141-10	0.50	2000	1.50	Unit Number	Manuf.	Model	SEER		
B4	Greenheck	GB-090-4	0.50	300	0.50	CUB1	Carrier	38HDC018	12		
ByPass Damper Schedule						Fan Coil					
Unit Number	Manuf.	Model	Max CFM	ByPass CFM	Inlet size	Unit Number	Manuf.	Model	CFM		
B08	Pottoroff	CD-25-RS	3200	2005	22	FCB1	Carrier	FB4A018	600		
B09	Pottoroff	CD-25-RS	1920	1195	18						

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VVT ZONE DAMPER SCHEDULE						
City Hall						
Zone #	Manuf	Model	Box Size	Max CFM	Min CFM	System #
V1	Pottorff	CD-25-RS	12	820	400	HP-A2
V2	Pottorff	CD-25-RS	14	1180	590	HP-A2
V3	Pottorff	CD-25-RS	10	400	200	HP-A4
V4	Pottorff	CD-25-RS	16	1480	700	HP-A4
V5	Pottorff	CD-25-RS	12	520	250	HP-A4
V6	Pottorff	CD-25-RS	14	920	450	HP-A5
V7	Pottorff	CD-25-RS	10	310	150	HP-A5
V8	Pottorff	CD-25-RS	18	1640	800	HP-A5
V9	Pottorff	CD-25-RS	8	130	60	HP-A5
V10	Pottorff	CD-25-RS	12	750	375	HP-A12
V11	Pottorff	CD-25-RS	12	750	375	HP-A12
V12	Pottorff	CD-25-RS	12	620	300	HP-A12
V13	Pottorff	CD-25-RS	14	100	500	HP-A13
V14	Pottorff	CD-25-RS	14	900	450	HP-A13
V15	Pottorff	CD-25-RS	16	1320	650	HP-A14
V16	Pottorff	CD-25-RS	12	550	250	HP-A14
V17	Pottorff	CD-25-RS	12	530	250	HP-A14
V18	Pottorff	CD-25-RS	8	200	100	HP-A16
V19	Pottorff	CD-25-RS	16	1600	800	HP-A16
BTRCC						
Zone #	Manuf	Model	Box Size	Max CFM	Min CFM	System #
V20	Pottorff	CD-25-RS	10	340	170	HP-B9
V21	Pottorff	CD-25-RS	18	1805	900	HP-B9
V22	Pottorff	CD-25-RS	18	1845	925	HP-B9
V23	Pottorff	CD-25-RS	18	1950	1000	HP-B13
V24	Pottorff	CD-25-RS	8	240	120	HP-B13
V25	Pottorff	CD-25-RS	8	210	100	HP-B13

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Kitchen Equipment

Kitchen Equipment		
Fixture Type	Manuf.	Model
Refrigerators (2)	Traulsen	AHT232NUT
Freezer	Traulsen	ACT232WUT
DBL Convection Oven	Southbend	SLGS-22SC
Range	Wolf	CHRSS-6-9
Air Curtain	Mars	42CH
Heated Cabinets (2)	Alto Sham	
Ice Maker	Manitowac	QY-0604A

City of Rancho Santa Margarita
HVAC MAINTENANCE AND REPAIR SERVICES
NOTICE INVITING BIDS OR PROPOSALS

APPENDIX 3

SAMPLE DRAFT AGREEMENT

MAINTENANCE SERVICES AGREEMENT

THIS _____ MAINTENANCE SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into, to be effective this ____ day of _____, by and between the CITY OF RANCHO SANTA MARGARITA, a municipal corporation organized and existing under the laws of the State of California (hereinafter referred to as "City"), and _____, a California corporation, (hereinafter referred to as "Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and are hereinafter collectively referred to as the "Parties."

RECITALS

A. City has determined that there is a need to retain the services of _____ company to perform _____ services for the _____, in a manner acceptable to City (the "Project").

B. Contractor has submitted to City a formal written bid proposal, dated _____, in response to City's Notice Inviting Bids or Proposals No. _____ to provide _____ services to City for the Project pursuant to the terms of this Agreement.

C. Contractor represents and maintains that it is uniquely qualified by virtue of its experience, training, education, reputation, labor and equipment, and expertise to provide the _____ services and has agreed to provide such services to City for the Project as provided herein. City does not have the personnel, specialized equipment, or technical expertise able to perform the work and services contracted for herein.

D. City desires to retain Contractor to provide such _____ services for the Project.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. MAINTENANCE SERVICES

1.1 Scope of Services and Standard of Performance. In compliance with all terms and conditions of this Agreement, Contractor promises and agrees to provide, furnish, and perform _____ services for the Project as set forth in Contractor's Bid Proposal/Scope of Work, dated _____ and as set forth in City's _____ Specifications, which are attached hereto as Exhibit " " and Exhibit " ", respectively, and are incorporated herein by reference (hereinafter referred to as the "Services" or "Work"). As a material inducement to the City entering into this Agreement, Contractor acknowledges and

understands that the Services and Work contracted for under this Agreement require specialized skills, equipment, labor, and abilities and that, consistent with this understanding, Contractor's Services and Work shall be performed in a skillful and competent manner and shall be held to a standard of quality and workmanship prevalent in the industry for such service and work and with the standards recognized as being employed by contractors in the same discipline in the State of California. Contractor represents and warrants that it is skilled in the discipline necessary to perform the Services and Work and that it holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. Contractor represents and warrants that it and all of its employees and subcontractors providing services under this Agreement shall have sufficient skill and experience to perform the Services and Work assigned to them. All Services and Work shall be completed to the reasonable satisfaction of the City.

1.2 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the City's Notice Inviting Bids or Proposals No. _____, including the City's _____ Specifications, dated _____; and, (3) the Contractor's signed, original Bid Proposal/Scope of Work, dated _____, including the Contractor's Schedule of Performance and Schedule of Compensation/Fees/Rates and Unit Prices ("Contractor's Proposal") submitted to City in response to City's notice and request inviting bids or proposals for the Project, which shall all be referred to collectively hereinafter as the "Contract Documents." The Contractor's Proposal and the City's notice and request inviting bids or proposals, including the City's Project specifications, which are both attached hereto as Exhibit " " and Exhibit " " respectively, are hereby incorporated by reference and are made a part of this Agreement. All provisions of this Agreement, the Contractor's Proposal, and the City's notice and request inviting bids or proposals, including the City's Project specifications, shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1st) the terms and conditions of this Agreement; (2nd) the terms, conditions, requirements, and provisions of the City's Notice Inviting Bids or Proposals No. _____, including the City's _____ Specifications (Exhibit " "); and (3rd) the provisions of the Contractor's Proposal (Exhibit " ").

1.3 Compliance with Law. Contractor shall comply at all times during the term of this Agreement with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder, including without limitation all applicable fair labor standards, Cal/OSHA, and South Coast Air Quality Management District ("SCAQMD") regulations and requirements, including SCAQMD Rule 1186. Contractor shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Work and Services, including all Cal/OSHA and SCAQMD regulations and requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with performing the Work and Services. If Contractor performs any work or services in violation of such laws, rules, and regulations, Contractor shall be solely responsible for all penalties and costs arising therefrom. Contractor shall defend, indemnify, and hold City, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules, or regulations.

1.4 Licenses, Permits, Fees, and Assessments. Prior to performing any Services or Work hereunder, Contractor shall obtain all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its trade and perform the street cleaning and maintenance Work and Services required by this Agreement. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement and any extension, any license, permit, qualification, or approval that is legally required for Contractor to perform the Work and Services under this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the Work and Services required by this Agreement, and Contractor shall defend, indemnify, and hold the City, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to obtain such licenses, permits, and approvals of whatever nature that are legally required to perform the Work or Services.

1.5 Familiarity with Work. By executing this Agreement, Contractor represents and warrants that it (a) has thoroughly investigated and considered the Scope of Work or Services to be performed, (b) has carefully considered how the Services should be performed and has carefully examined the location or locations at or with respect to where such Services or Work is to be performed, and (c) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Contractor represents and maintains that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any Services hereunder. Should the Contractor discover any latent or unknown conditions that will materially affect the performance of the Services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the City.

1.6 Care of Work. Contractor shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to the Work and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by the City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

1.8 Additional Services. City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in Contractor's Proposal/Scope of Work (**Exhibit " "**) or to make changes by altering, adding to, or deducting from such Work. No such extra work may be undertaken unless a written order is first given by the City to the Contractor, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Contractor. It is expressly understood by Contractor that the provisions of this section shall not apply to the Work and Services specifically

set forth in the Scope of Work or reasonably contemplated therein, regardless of whether the time or materials required to complete any Work or Services identified in the Scope of Work exceeds any time or material amounts or estimates provided therein.

1.9 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. Contractor agrees to fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws). It is agreed by the Parties that, in connection with the Work or Services provided pursuant to this Agreement, Contractor shall bear all risks of payment or non-payment of prevailing wages under California law, and Contractor hereby agrees to defend, indemnify, and hold the City, its elected and appointed officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement.

1.10 Water Quality Management and Compliance.

1.10.1 Storm Water Management. Storm, surface, nuisance, or other waters may be encountered at various times during performance of the Services or Work. Contractor hereby acknowledges that it has investigated the risk arising from such waters, has prepared its bid or proposal accordingly, and assumes any and all risks and liabilities associated with and arising therefrom.

1.10.2 Compliance with Water Quality Laws, Ordinances, and Regulations. Contractor shall keep itself and any subcontractors, staff, agents, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by, the performance of the Services or Work, including, without limitation, all applicable provisions of: the City’s ordinances regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the California Porter-Cologne Water Quality Control Act (Cal. Water Code § 1300 et seq.); and any and all regulations, policies, or permits issued pursuant to any such authority. Contractor shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local or state agency having jurisdiction over the location where the Services or Work are to be performed, conducted, or provided, regarding discharges of storm water to separate storm drain systems or other watercourses, including applicable requirements in municipal storm water management programs.

1.10.3 Compliance with DAMP and LIP. In addition to compliance with the laws, ordinances, and regulations listed in subsection 1.10.2, Contractor shall comply with all applicable requirements of the Orange County Drainage Area Management Plan (“DAMP”), the City of Rancho Santa Margarita Local Implementation Plan (“LIP”), and the applicable Water Quality Management Plan (“WQMP”). Such documents contain the Model Maintenance Procedures with Best Management Practices (“BMPs”). These Model Maintenance Procedures contain pollution prevention and source control techniques to minimize the impact of those activities upon dry-weather urban runoff, storm water runoff, and receiving water quality. Contractor hereby

acknowledges and agrees to be familiar with the DAMP, the LIP, and the WQMP, and agrees to comply with the requirements specified therein.

1.10.4 Standard of Care. Contractor represents and warrants that all employees and subcontractors performing any Services or Work hereunder shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations, and policies described in Sections 1.10.2 and 1.10.3 of this Agreement. Contractor further represents and warrants that it, its employees and subcontractors will receive appropriate training regarding the requirements of the laws, regulations, and policies described in subsections 1.10.2 and 1.10.3 of this Agreement as they may relate to the Services.

1.10.5 Liability for Water Quality Non-Compliance.

(A) Indemnity: Failure to comply with laws, regulations, and ordinances listed in subsections 1.10.2 and 1.10.3 of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Contractor agrees to indemnify and hold harmless the City, its elected and appointed officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its elected and appointed officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed in subsections 1.10.2 and 1.10.3 of this Agreement arising out of or in connection with the Services, except for liability resulting from the sole negligence, willful misconduct or active negligence of the City, its elected and appointed officials, officers, agents, employees or authorized volunteers.

(B) Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(C) Damages: City may seek damages from Contractor for delay in completing the Services caused by Contractor's failure to comply with the laws, regulations, and policies described in subsections 1.10.2 and 1.10.3 of this Agreement, or any other relevant water quality law, regulation, or policy.

1.11 Unauthorized Aliens. Contractor hereby represents and warrants that it will comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of any Work and/or Services under this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to reimburse City for any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, or penalties which arise out of or are related to such employment, together with any and all costs, including attorneys' fees, incurred by City.

1.12 Contractor Work Rules. Contractor shall be familiar with, observe, and comply at all times during the term of this Agreement with any work rules for Contractors as may be established and promulgated by the City Manager, which work rules shall be additional terms and conditions for providing the Work and Services to the City pursuant to this Agreement, as may be updated and/or amended at the sole discretion of the City Manager from time to time.

1.13 Non-Exclusive Agreement. Contractor acknowledges that City may enter into agreements with other contractors, Contractors, or vendors for services similar to the services that are the subject of this Agreement. Contractor further acknowledges that City may have its own employees perform services similar to the services that are the subject of this Agreement.

2. COMPENSATION

2.1 Maximum Contract Amount. For the Services and Work rendered pursuant to this Agreement, Contractor shall be compensated by City in accordance with the Schedule of Compensation/Fees/Rates/Unit Prices set forth in Contractor's Proposal/Scope of Work, but not exceeding the total maximum contract amount of [REDACTED] (hereinafter referred to as the "Maximum Contract Amount") for all non-recoverable work, except as may be provided pursuant to §1.08 above. Except as otherwise provided in this Agreement, compensation shall be payable according to the fees and at the rates and unit prices set forth in Exhibit "___" attached hereto. The maximum amount of City's payment obligation under this Agreement is the amount specified in this section. (hereinafter referred to as the "Annual Maximum Contract Amount"). Contractor hereby acknowledges that it accepts the risk that the services identified in the Scope of Work may be more costly and/or time-consuming than Contractor anticipates, that Contractor shall not be entitled to additional compensation therefore, and that the provisions of Section 1.8 shall not be applicable to the services identified in the Scope of Work.

For the purposes of this Agreement, "non-recoverable" work" shall refer to any work for which the City is not reimbursed through means of a claim or other reimbursements paid by a private entity, government agency or grant, insurance companies or other sources.

2.2. Method of Payment. Unless some other method of payment is specified in the Contractor's Proposal/Scope of Work (Exhibit "___"), in any month in which Contractor wishes to receive payment, no later than the 10th working day of such month, Contractor shall submit to the City, in a form approved by the City's Finance Director, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the Work or Services performed by Contractor and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the City. City shall use reasonable efforts to make payments to Contractor within forty-five (45) days after receipt of the invoice or a soon thereafter as is reasonably practical.

2.3 CPI Adjustment of Compensation/Fees/Billing Rate Schedule The proposal bid shall be guaranteed for the term of the agreement which shall be three (3) years pending City Council approval of the agreement and shall not be subject to adjustments. Any and all requests for pricing adjustments for follow-on contract renewal periods shall be provided no later than sixty

(60) days prior to the end of the contract period. Any such proposed price adjustments shall not exceed the Bureau Of Labor Statistics Consumer Price Index (CPI) data for Los Angeles-Riverside-Orange County, Ca, all items, not seasonally adjusted, "annualized change comparing the original proposal month and the same month in the subsequent year. (this information may be found on the U.S. Department of Labor's website at www.bls.gov.)

2.4 Changes in Scope. In the event any change or changes in the Scope of Work or Services is requested by the City, the Parties shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional fees for services. An amendment may be entered into: (a) to provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work; and/or (b) to provide for additional work or services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Contractor's profession.

2.5 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the Rancho Santa Margarita City Council for each fiscal year covered by the term of this Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the City.

3. SCHEDULE OF PERFORMANCE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the services to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the Work of this Agreement according to the agreed upon Schedule of Performance set forth in Contractor's Proposal/Scope of Work (Exhibit " ") and as set forth in City's _____ Specifications (Exhibit " ").

3.2 Schedule of Performance. Contractor shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services or Work within the time period(s) established in the Schedule of Performance set forth in Contractor's Proposal (Exhibit " ") and as set forth in City's _____ Specifications (Exhibit " "). When requested by Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer; however, the City shall not be obligated to grant such an extension.

3.3 Term. Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall commence upon the effective date of this Agreement and shall continue in full force and effect for a period of three (3) years, commencing on _____ and ending on _____ ("Initial Term"). The City Council shall have the option, at its sole discretion, to renew and extend the term of this Agreement for no more than one (1) additional three-year term ("Renewal Option").

3.4 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the

3.5 Task Orders. Contractor hereby agrees and acknowledges that any and all "recoverable work" pursuant to this Agreement shall be based upon the issuance of a project task order by the City. Further, that execution of this Agreement by the City does not in any way guarantee that a task order will be issued to Contractor. Moreover, execution of this Agreement by the City shall not entitle Contractor to any form of payment or compensation from the City without City first having issued a project task order.

4. COORDINATION OF WORK

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the City Manager of City, and is subject to change by the City Manager. It shall be the Contractor's responsibility to ensure that the Contract Officer is kept fully informed of the progress of the performance of the Services, and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the

terms of this Agreement.

4.3 Prohibition Against Subcontracting or Assignments. The experience, knowledge, capability, expertise, and reputation of Contractor, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written consent of City. Contractor shall not contract with any other entity to perform the Services required without prior written consent of City. If Contractor is permitted to subcontract any part of this Agreement by City, Contractor shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the Work will be considered employees of Contractor. City will deal directly with and will make all payments to Contractor. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written consent of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Contractor or any surety of Contractor from any liability hereunder without the express written consent of City.

4.4 Independent Contractor.

4.4.1. The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Contractor a City employee. During the performance of this Agreement, Contractor and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officials, officers, employees, agents and volunteers shall have control over the conduct of Contractor or any of its officers, employees, or agents, except as set forth in this Agreement. Contractor, its officers, employees, or agents shall not maintain a permanent office or fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Contractor's officers, employees, representatives or agents, or in fixing their number, compensation, or hours of service. Contractor shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Contractor in its business or otherwise a joint venturer or a member of any joint enterprise with Contractor.

4.4.2. Contractor shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

4.4.3. No City benefits shall be available to Contractor, its officers, employees, or agents in connection with the performance of any services under this Agreement. Except for fees paid to Contractor as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Contractor for the performance of any services under this Agreement. City shall not be liable for compensation or indemnification to Contractor, its officers, employees, or agents, for injury or sickness arising out of performing any services hereunder. If for any reason any court or governmental agency determines that the City has financial obligations, other than pursuant to Section 2 and Subsection 1.8 herein, of any nature relating to salary, taxes, or benefits of Contractor's officers, employees, representatives, subcontractors, or agents, Contractor shall defend, indemnify, and hold harmless the City for all such financial obligations.

4.5 PERS Eligibility Indemnification.

4.5.1 In the event that Contractor or any employee, agent, or subcontractor of Contractor providing any Work or Services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employee Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the City.

4.5.2 Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing any Work or Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

5. INSURANCE

5.1 Compliance with Insurance Requirements. Contractor shall obtain, maintain, and keep in full force and effect during the term of this Agreement, at its sole cost and expense, and in a form and content satisfactory to City, all insurance required under this section. Contractor shall not commence any Work or Services under this Agreement unless and until it has provided evidence satisfactory to City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subContractor or subcontractor to commence any Work or Services until it has provided evidence satisfactory to City that the subContractor or subcontractor has secured all insurance required under this section. If Contractor's existing insurance policies do not meet the insurance requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

5.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement, and without limiting the indemnity provisions set forth in this Agreement, Contractor shall obtain and maintain in full force and effect during the term of this Agreement, including any extension thereof, the following policies of insurance:

5.2.1 Commercial General Liability Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Commercial General Liability Insurance written on an occurrence basis with limits of at least one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) in the general aggregate, and one million dollars (\$1,000,000.00) for products and completed operations. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

5.2.2 Automobile Liability Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Automobile Liability Insurance written on a per occurrence basis with limits of at least one million dollars (\$1,000,000.00) combined limit for each occurrence covering bodily injury and property damage. The policy shall specifically include coverage for owned, non-owned, leased, and hired automobiles.

5.2.3 Workers' Compensation Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Workers' Compensation Insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Contractor agrees to waive and obtain endorsements from its workers' compensation insurer waiving all subrogation rights under its workers' compensation insurance policy against the City, its officials, officers, employees, agents and volunteers, and to require each of its subContractors and subcontractors, if any, to do likewise under their workers' compensation insurance policies. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Employer's Liability Insurance written on a per occurrence basis with limits of at least one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

5.3 Acceptability of Insurers. Insurance required by this section shall be issued by a licensed company authorized to transact business in the state by the Department of Insurance for the State of California with a current rating of A:-VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Eligible Surplus Lines Insurers (LESLI), by the latest edition of A.M. Best's Key Rating Guide, except that the City will accept workers' compensation insurance from the State Compensation Fund. In the event the City determines that the Work or Services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City. Contractor shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein.

5.4 Insurance Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for written approval. Required insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

5.4.1 The policy or policies of insurance required by this section for Commercial General Liability and Automobile Liability Insurance shall be endorsed to provide the following:

(A) Additional Insured: The City, its officials, officers, employees, agents and volunteers, shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement; and

(B) Additional Insured Endorsements: Additional insured endorsements shall not (1) be restricted to “ongoing operations”, (2) exclude “contractual liability”, (3) restrict coverage to “sole” liability of Contractor, or (4) contain any other exclusions contrary to the Agreement; and, the coverage shall contain no special limitations on the scope of protection afforded to additional insureds.

5.4.2 For all policies of Commercial General Liability Insurance, Contractor shall provide endorsements for ongoing operations and completed operations to effectuate this requirement.

5.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City in advance and shall protect the City, its officials, officers, employees, agents and volunteers, in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

5.6 Primary and Non-Contributing Insurance. All policies of Commercial General Liability Insurance and Automobile Liability Insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents or volunteers, shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

5.7 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability Insurance shall contain or be endorsed to waive subrogation against the City, its officials, officers, employees, agents and volunteers, or shall specifically allow Contractor or others providing insurance evidence in compliance with the requirements set forth in this section to waive their right to recovery prior to a loss. Contractor hereby agrees to waive its own right of recovery against the City, its officials, officers, employees, agents and volunteers, and Contractor hereby agrees to require similar written express waivers and insurance clauses from each of its subContractors or subcontractors.

5.8 Evidence of Coverage. Concurrently with the execution of the Agreement, Contractor shall deliver certificates of insurance together with original endorsements affecting each of the insurance policies required by this section. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for written approval. The certificates of insurance and original endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the

required coverage, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. Contractor shall promptly furnish, at City's request, copies of actual policies including all declaration pages, endorsements, exclusions and any other policy documents City requires to verify coverage.

5.9 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this section are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by any insurance. Nothing in this section shall be construed as limiting in any way the indemnification provision contained in this Agreement, or the extent to which Contractor may be held responsible for payments of damages to persons or property.

5.10 Enforcement of Agreement (Non-Estoppel). Contractor acknowledges and agrees that actual or alleged failure on the part of the City to inform Contractor of any non-compliance with any of the insurance requirements set forth in this section imposes no additional obligation on the City nor does it waive any rights hereunder.

5.11 Insurance for SubContractors. Contractor shall include all subContractors or subcontractors engaged in any work or services for Contractor relating to this Agreement as additional insureds under the Contractor's insurance policies, or Contractor shall be responsible for causing its subContractors or subcontractors to procure and maintain the appropriate insurance in compliance with the terms of the insurance requirements set forth in this section, including adding the City, its officials, officers, employees, agents and volunteers, as additional insureds to their respective policies. All policies of Commercial General Liability Insurance provided by Contractor's subContractors or subcontractors performing any Work or Services related to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers, as additional insureds. Contractor shall not allow any subContractor or subcontractor to commence any Work or Services relating to this Agreement unless and until it has received satisfactory evidence of their compliance with all insurance requirements under this Agreement, to the extent applicable. Contractor agrees to provide satisfactory evidence of compliance with this subsection upon request of the City.

5.12 Other Insurance Requirements. The following terms and conditions shall apply to the insurance policies required of Contractor pursuant to this Agreement:

5.12.1 Contractor shall provide immediate written notice to City if (1) any of the insurance policies required herein are terminated, cancelled or suspended, (2) the limits of any of the insurance coverages required herein are reduced, or (3) the deductible or self-insured retention is increased.

5.12.2 All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.

5.12.3 None of the insurance coverages required herein will be in compliance with the requirements of this section if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City and approved in writing.

5.12.4 Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Contractor's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.

5.12.5 Contractor agrees to ensure that subContractors and subcontractors, if any, and any other parties involved with the Project who are brought onto or involved in the Project by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.

5.12.6 Contractor agrees to provide immediate written notice to City of any claim, demand or loss against Contractor arising out of the Work or Services performed under this Agreement and for any other claim, demand or loss which may reduce the insurance available to pay claims, demands or losses arising out of this Agreement.

6. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall defend (at Contractor's sole cost and expense with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City, its officials, officers, employees, agents and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Contractor's employees included), for damage to property, including property owned by City, or from any violation of any federal, state, or local law or ordinance, which Claims arise out of, pertain to, or are related to Contractor's performance under this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Contractor's indemnification obligation or other liability hereunder.

7. REPORTS AND RECORDS

7.1 Accounting Records. Contractor shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Contractor shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and to enable the Contract Officer to evaluate the performance of such Services. The Contract Officer shall have full and free access to such books

and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.2 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of the Work and Services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the Work or Services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of such fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

7.3 Ownership of Documents. All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Contractor, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be promptly delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of incomplete documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and the City shall indemnify the Contractor for all damages resulting therefrom. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. Contractor shall ensure that all its subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

7.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Contractor in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer. All information gained by Contractor in the performance of this Agreement shall be considered confidential and shall not be released by Contractor without City's prior written authorization.

7.5 Audit and Inspection of Records. After receipt of reasonable notice and during the regular business hours of City, Contractor shall provide City, or other agents of City, such access to Contractor's books, records, payroll documents, and facilities as City deems necessary to examine, copy, audit, and inspect all accounting books, records, work data, documents, and activities directly related to Contractor's performance under this Agreement. Contractor shall maintain such books, records, data, and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during the term of this Agreement and for a period of three (3) years from the date of final payment by City hereunder.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law and Venue. This Agreement shall be construed and interpreted both as to validity and as to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such County, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 Interpretation. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

8.3 Termination. City may terminate this Agreement for any reason, with or without cause, upon giving Contractor thirty (30) days written notice. Upon such notice, City shall pay Contractor for Services performed through the date of termination. Upon receipt of such notice, Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. Thereafter, Contractor shall have no further claims against the City under this Agreement. Upon termination of the Agreement pursuant to this section, Contractor shall submit to the City an invoice for work and services performed prior to the date of termination.

8.4 Default of Contractor.

8.4.1. Contractor's failure to comply with any provision of this Agreement shall constitute a default.

8.4.2. If the City Manager, or the City Manager's designee, determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, he/she shall notify Contractor in writing of such default. Contractor shall have ten (10) days, or such longer period as City may designate, to cure the default by rendering satisfactory performance. In the event Contractor fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity, or under this Agreement. Contractor shall be liable for any and all reasonable costs incurred by City as a result of such default. Compliance with the provisions of this section shall not constitute a waiver of any City right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 8.3.

8.4.3. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.4.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds

the Maximum Contract Amount (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated. The withholding or failure to withhold payments to Contractor shall not limit Contractor's liability for completion of the Services as provided herein.

8.5 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

8.6 Rights and Remedies Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

8.7 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

8.8 Attorney Fees. In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses, including but not limited to reasonable attorneys' fees, expert Contractor fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

8.9 Bonds.

8.9.1 Performance Bond. If specifically requested by City, Contractor shall prior to the commencement of any Services or Work under this Agreement execute and submit to City for its acceptance and approval a Performance Bond in the amount of the Maximum Contract Amount set forth in section 2.1 of this Agreement in the same format set forth in Exhibit "C" attached hereto. If such bond is required, no payment shall be made to Contractor until it has been received and approved by City.

8.9.2 Payment Bond. If required by law or otherwise specifically requested by City, Contractor shall prior to the commencement of any Services or Work under this Agreement

execute and submit to City for its acceptance and approval a Payment Bond in the amount of the Maximum Contract Amount set forth in section 2.1 of this Agreement in the same format set forth in Exhibit "D" attached hereto. If such bond is required, no payment shall be made to Contractor until it has been received and approved by City.

8.9.3 Bond Requirements and Surety Qualifications. Prior to approval of each bond, the City shall verify that the surety is an admitted surety in the State of California. If requested by City, the Contractor shall provide other information specified in Code of Civil Procedure Section 995.660 to enable City to verify the sufficiency of the bond. Should any bond become insufficient, Contractor shall correct the insufficiency within ten (10) calendar days after receiving notice from the City. The Contractor shall provide the City evidence of said correction within ten (10) calendar days of said correction. Should any surety at any time be unsatisfactory to the City, written notice will be given to the Contractor to that effect. No further payments shall be deemed due or will be made under the Agreement until the Contractor submits acceptable bonds from a surety or sureties accepted by the City. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City. To the extent available, the bonds shall further provide that no change or alteration to the Agreement (including, without limitation, an increase in the Maximum Contract Amount), extension of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond so requested by City, the City may terminate this Agreement for cause.

8.9.4 Provision of Bonds. If Contractor is unable to secure a single performance bond and a single payment bond for the full five (5) year term of this Agreement, Contractor may, with the approval of the City, submit a single performance bond and/or a single payment bond meeting all applicable requirements that are either renewable at the beginning of each year of the five (5) year term and any extension thereof, or may submit a new performance bond and/or new payment bond meeting all the applicable requirements at the beginning of each year of the five (5) year term of this Agreement and any extension thereof. Failure to submit the required bonds at the beginning of each year of the five (5) year term of the Agreement and any extension thereof shall be deemed a breach of the Contractor's obligations under the Agreement and may result in termination of this Agreement. Nonetheless, no payments shall be deemed due or will be made under the Agreement and Contractor shall not perform any Work or Services hereunder until the Contractor submits acceptable bonds to the City, if specifically requested by City. Both the performance bond and the payment bond shall remain in full force and effect during the entire term of the Agreement and any extension thereof.

9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

9.1 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Contractor, or any successor-in-interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his or her financial interest or the financial interest of any corporation, partnership, or association in which they are, directly or indirectly, interested in violation of any state statute or regulation. Contractor represents and warrants that is has not paid or given and will not pay or give any third party any money or other consideration in exchange for obtaining this Agreement.

9.3 Covenant Against Discrimination. In connection with its performance under this Agreement, Contractor shall not discriminate against any employee or applicant for employment because of race, disability, medical condition, religion, color, sex, sexual orientation, age, marital status, ancestry, or national origin. Contractor shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, disability, medical condition, religion, color, sex, sexual orientation, age, marital status, ancestry, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10. MISCELLANEOUS PROVISIONS

10.1 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) five (5) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Notices or other communications shall be addressed as follows:

To City:

City of Rancho Santa Margarita
Attention: City Manager
22112 El Paseo
Rancho Santa Margarita, California 92688
Telephone: (949) 635-1800
Facsimile: (949) 635-1667

To Contractor :

10.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the Parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing

by both Parties hereto, or their respective successors, assigns, or grantees.

10.3 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

10.4 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

10.5 Third Party Beneficiary. Nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party hereto.

10.6 Recitals. The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

10.7. Corporate Authority. Each of the undersigned represents and warrants that (i) the Party for which he/she is executing this Agreement is duly authorized and existing, (ii) he/she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he/she is signing, (iii) by so executing this Agreement, the Party for which he/she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he/she is signing is bound.

10.8 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the date first written above.

“CITY”

CITY OF RANCHO SANTA MARGARITA,
a California municipal corporation

By: _____

Name:

Title: Mayor

ATTEST:

AMY DIAZ,
City Clerk

APPROVED AS TO FORM:

GREGORY E. SIMONIAN,
City Attorney

“CONTRACTOR”

President

EXHIBIT “A”

**CONTRACTOR’S BID PROPOSAL/ SCOPE OF WORK
DATED:**

**SCOPE OF SERVICES FOR PROJECT
INCLUDING,
SCHEDULE OF PERFORMANCE
AND
SCHEDULE OF COMPENSATION/ FEES/ RATES/ UNIT PRICES**

EXHIBIT “B”

CITY OF RANCHO SANTA MARGARITA

NOTICE AND REQUEST INVITING BIDS OR PROPOSALS

AND CITY'S SPECIFICATIONS

FOR

SERVICES

DATED: _____

EXHIBIT “C”

PERFORMANCE BOND

[ATTACHED]

CITY OF RANCHO SANTA MARGARITA

FAITHFUL PERFORMANCE BOND

FOR

_____ MAINTENANCE SERVICES AGREEMENT NO. _____

KNOW ALL MEN BY THESE PRESENTS that,

_____ as
CONTRACTOR, _____ and

_____, as
SURETY, are held and firmly bound unto the **City of Rancho Santa Margarita**,
as AGENCY, in the penal sum of
_____ dollars

(\$ _____), which is one hundred (100%) of the yearly total contract amount, as set forth in Section 2.1 of the Agreement for the above stated project, for the payment of which sums, CONTRACTOR and SURETY agree to be bound, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that, whereas CONTRACTOR has been awarded and is about to enter into the annexed Contract Agreement with AGENCY for the above stated project, if CONTRACTOR faithfully performs and fulfills all obligations under the contract documents, which are incorporated herein by reference, in the manner and time specified therein, then this obligation shall be null and void, otherwise it shall remain in full force and effect in favor of AGENCY; provided that any alterations in the obligations or time for completion made pursuant to the terms of the contract documents shall not in any way release either CONTRACTOR or SURETY, and notice of such alterations is hereby waived by SURETY.

WITNESS our hands this _____ day of _____, 2015.

CONTRACTOR (CORPORATION)-TYPE

(SEAL)

By _____
President

By _____
Secretary/Treasurer

FAITHFUL PERFORMANCE BOND
(PAGE 2 OF 2)

SURETY'S NAME-TYPE

MAILING ADDRESS (SURETY)

BY: _____
Name

(SEAL) _____
Title

NOTE: SIGNATURES OF CORPORATE OFFICIALS AND SURETY
MUST BE NOTARIZED, ATTACH JURAT.

BOND APPROVED AS TO FORM:

GREGORY E. SIMONIAN, CITY ATTORNEY
CITY OF RANCHO SANTA MARGARITA

EXHIBIT “D”

PAYMENT BOND

[ATTACHED]

(PAGE 1 OF 2)

CITY OF RANCHO SANTA MARGARITA
PAYMENT BOND
FOR

_____ MAINTENANCE SERVICES AGREEMENT NO. _____

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, THE CITY OF RANCHO SANTA MARGARITA,
has _____ awarded _____ to
_____,
hereinafter designated as the "Contractor," a contract for the work described as
follows:

_____ and

WHEREAS, said Contractor is required by the provisions of said contract to
furnish a bond in connection with said contract, as hereinafter set forth.

NOW THEREFORE, WE, the undersigned Contractor, as Principal, and

(Name and Address of Surety)

duly authorized to transact business under the laws of the State of California, as
Surety, are held and firmly bound unto the City of Rancho Santa Margarita in the
sum of _____ dollars(\$
_____), said sum being not less than one hundred percent (100%) of the
yearly amount payable to the said Contractor under the terms of Section 2.1 of the
Agreement, for which payment will and truly be made, we bind ourselves, our
heirs, executors and administrators, successors and assigns, jointly and severally
firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION IS SUCH that, if said
Principal or his subcontractors, or heirs, executors, administrators, successors or
assigns thereof, shall fail to pay any of the persons named in Section 3181 of the
Civil Code of the State of California for any materials, provisions, provender or
other supplies used in, upon, for or about the performance of the amounts due
under the Unemployment Insurance Code with respect to work or labor performed
by any such claimant or any amounts required to be deducted, withheld, and paid
over to the Franchise Tax Board from the wages of employees of the Contractor
and his subcontractor pursuant to Section 18806 of the Revenue and Taxation
Code, with respect to such work and labor, then said Surety will pay for the same,
in an amount not exceeding the sum set forth hereinabove, and in addition, in case
suit is brought upon the bond, will pay a reasonable attorney's fee to be fixed by
the court. This bond shall insure to the benefit of any and all persons named in the

aforesaid Civil Code Section 3181 so as to give a right of action to them or their assigns in any suit brought upon the bond.

Further, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or modification of the contract documents or of the work to be performed thereunder shall in any way affect its obligations on this bond; and it hereby waives notice of any and all such changes, extensions of time, and alterations or modifications of the contract documents and /or of the work to be performed thereunder.

IN WITNESS WHEREOF, we have hereunto set our hand and seals this _____ day of _____, 2015.

CONTRACTOR

By: _____
President

(SEAL)

By: _____
Secretary/Treasurer

SURETY'S NAME-TYPE

MAILING ADDRESS (SURETY)

(SEAL)

BY: _____
Name

Title

NOTE: SIGNATURES OF CORPORATE OFFICIALS AND SURETY MUST BE NOTARIZED, ATTACH JURAT.

BOND APPROVED AS TO FORM:

GREGORY E. SIMONIAN, CITY ATTORNEY
CITY OF RANCHO SANTA MARGARITA