

REQUEST FOR PROPOSALS (RFP) NO. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES



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

Tentative RFP Dates

Request for Proposal Posting/Mailing:	February 19, 2021
Written Question Deadline:	March 11, 2021 at 10:00 am
Submittal Deadline:	March 18, 2021 at 10:00 am
Tentative Interview (if required):	March 29, 2021 (week of)
Tentative Final Selection/Negotiation:	April 12, 2021
Tentative City Council Approval:	April 28, 2021
Tentative Contract Effective Date:	May 6, 2021

Table of Contents

SECTION I - Introduction and Instructions to Proposers	Page 4
A. Introduction	
B. Proposed Time Schedule	
C. Instructions to Proposers and Procedures for Submittal	
D. General Conditions	
SECTION II - PROPOSAL RESPONSE REQUIREMENTS	Page 10
A. Cover Letter	
B. Company Data	
C. Organizational Chart	
D. Resumes and Qualifications of Personnel	
E. References	
F. Overview and Approach	
G. Compensation/Payment Schedule	
H. Proposal Forms	
SECTION III - PROPOSAL EVALUATION AND SELECTION	Page 15
SECTION IV - SCOPE OF SERVICES	Page 16
SECTION V – COMPENSATION	Page 21
APPENDIX 1 – NON-COLLUSION AFFIDAVIT	Page 23
APPENDIX 2 – CONSULTANT’S ACKNOWLEDGEMENT OF COMPLIANCE WITH INSURANCE REQUIREMENTS FOR PROFESSIONAL/CONSULTANT SERVICES	Page 24
APPENDIX 3 – CERTIFICATION OF PROPOSAL TO THE CITY OF RANCHO SANTA MARGARITA	Page 25
APPENDIX 4 - SAMPLE PROFESSIONAL/CONSULTANT SERVICES AGREEMENT	Page 27

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

City of Rancho Santa Margarita
22112 El Paseo • Rancho Santa Margarita • California 92688-2824
Phone: (949) 635-1800 • Fax: (949) 635-1840 • www.cityofrsm.org



February 19, 2021

SUBJECT: ON-CALL PLAN GEOTECHNICAL ENGINEERING SERVICES (RFP NO. PW 021921)

Dear Proposers:

The City of Rancho Santa Margarita invites qualified consultants to submit proposals to provide professional ON-CALL GEOTECHNICAL ENGINEERING SERVICES.

For this proposal solicitation, the City will be contracting with a limited number of firms for geotechnical engineering services. Proposals must embrace a concept that the successful Proposer will satisfy all of the objectives and work requirements specified in the Request for Proposal Scope of Services.

To be considered responsive to this Request for Proposals (RFP), Proposers must submit a written proposal in accordance with the requirements, specifications, conditions and provisions described in this RFP.

PROPOSALS ARE DUE BEFORE
10:00 a.m. on Thursday, March 18, 2021

If you have any questions regarding this RFP, please email them to: bdugan@cityofrsm.org and wleung@cityofrsm.org by the deadline noted in this RFP. Thank you for your interest.

Respectfully,

A handwritten signature in black ink, appearing to read "Brendan Dugan", is written over a horizontal line.

Brendan Dugan, P.E.
Public Works Director/City Engineer
City of Rancho Santa Margarita

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

SECTION I

INTRODUCTION AND INSTRUCTIONS TO PROPOSERS

A. Introduction

The City of Rancho Santa Margarita (City) invites qualified firms to submit written proposals for professional ON-CALL GEOTECHNICAL ENGINEERING SERVICES. Should an award be made, the selected Proposer(s) will enter into a Professional Services Agreement with the City of Rancho Santa Margarita to provide ON-CALL GEOTECHNICAL ENGINEERING SERVICES.

B. Proposed Time Schedule

Request for Proposal Posting/Mailing:	February 19, 2021
Written Question Deadline:	March 11, 2021 at 10:00 am
Submittal Deadline:	March 18, 2021 at 10:00 am
Tentative Interview (if required):	March 29, 2021 (week of)
Tentative Final Selection/Negotiation:	April 12, 2021
Tentative City Council Approval:	April 28, 2021
Tentative Contract Effective Date:	May 6, 2021

C. Instructions to Proposers and Procedures for Submittal

One (1) electronic copy on a Flash Drive (will not be returned) must be submitted in a sealed envelope or box bearing the name of the Proposer, marked **RFP No. PW 021921** and submitted only to the following address:

**City of Rancho Santa Margarita
ON-CALL GEOTECHNICAL ENGINEERING SERVICES
RFP No. PW 021921
Attn: Brendan Dugan, PE
Public Works Director / City Engineer
22112 El Paseo
Rancho Santa Margarita CA 92688**

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

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

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 specified in this Request for Proposal. Deliveries made before the Submittal Deadline, but to the wrong City office, will be considered non-responsive unless re-delivery is made to the office specified before the Submittal Deadline. All proposals shall become the property of the City.

Late proposals may be rejected and returned to the Proposer 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 clarifications from proposers during its review and evaluation of proposals submitted for consideration.

ADDITIONAL SERVICES. The Scope of Work describes the minimum work to be accomplished. Upon final selection of the firm, the Scope of Work may be modified and refined during negotiations with the City.

AUTHORIZED SIGNATURES. Every proposal must be signed by the person or persons legally authorized to bind the Proposer to a contract for the execution of the work. Upon request of the City, any agent submitting a proposal on behalf of a Proposer shall provide a current power of attorney certifying the agent's authority to bind the Proposer. If an individual makes the proposal, his or her name, signature, and post office address must be shown. If a firm or partnership makes the proposal, 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 proposal, the proposal 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 proposal to execute contracts on behalf of the corporation.

AWARD OF PROPOSAL. City reserves the right to negotiate final terms with the selected Proposer, if any. Award of contract, if any, will be made in accordance with Section 3.07.080 of the Rancho Santa Margarita Municipal Code (RSMC). An Evaluation Committee will be established by the City. The City shall not be obligated to accept the lowest priced proposal, but if an award is made, the City will make an award in the best interests of the City after all factors are considered, including but not limited to the demonstrated competence, experience and professional qualifications of the Proposer. Discussions may, at the City's option, be conducted with the most qualified proposers. Discussions may be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and written revision of

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

proposals. In conducting discussions, the City will not disclose information derived from proposals submitted by competing proposers.

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

CANCELLATION OF SOLICITATION. The City may cancel this solicitation at any time.

CANCELLATION OF TASKS. If a professional services agreement is awarded for the work described in this RFP, the City will authorize work on a Task Order basis. Task Orders may be issued in any sequence. The City is not obligated to issue a task order for all tasks listed in the scope of work and expressly reserves the right to cancel tasks.

CONFLICT OF INTEREST. By signing the Certification of Proposal (**Appendix 3**), the proposer declares 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 proposal or any work connected with this proposal. Should any agreement be approved in connection with this Request for Proposals, Proposer declares 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 Proposers before entering into a formal contract. Costs of developing the proposals, or any other such expenses incurred by the Proposer in responding to this RFP, are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by the City. No reimbursable cost may be incurred in anticipation of award.

DISQUALIFICATION OF PROPOSER. If there is reason to believe that collusion exists among the Proposers, the City may refuse to consider proposals 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 proposal for the same work unless alternate proposals are called for. Reasonable grounds for believing that any Proposer is interested in more than one Proposal for the same work will cause the rejection of all Proposals for the work in which a Proposer is interested. If there is reason to believe that collusion exists among the Proposers, the City may refuse to consider Proposals from participants in such collusion. Proposers shall submit as part of their Proposal documents the completed Non-Collusion Affidavit provided as **Appendix 1**.

DOCUMENTS, EXAMINATION OF. It is the responsibility of the Proposer to carefully and thoroughly examine and be familiar with these RFP documents, general conditions, all forms, specifications, drawings, plans, and addenda (if any). Proposer 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 these documents. The

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

failure or neglect of the Proposer to examine documents shall in no way relieve him from any obligations with respect to the solicitation or and subsequent contract that may be awarded. The submission of a proposal shall constitute an acknowledgment upon which the City may rely that the Proposer has thoroughly examined and is familiar with the RFP documents. The failure or neglect of a Proposer to receive or examine any of the documents shall in no way relieve him from any obligations with respect to the proposal. No claim will be allowed for additional compensation that is based upon a lack of knowledge of any solicitation document.

INTERPRETATION OF RFP DOCUMENTS. City reserves the right to make corrections or clarifications of the information provided in this RFP. If any person is in doubt as to the true meaning of any part of the specifications or other RFP 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 RFP by any person are unauthorized and invalid. Modifications to the RFP, including, but not limited to the scope of work, can be made only by written addendum issued by the City.

- All questions or requests for interpretations shall be made in writing and delivered to Brendan Dugan, P.E. - Public Works Director/City Engineer, City of Rancho Santa Margarita, 22112 El Paseo Rancho Santa Margarita CA 92688, or via email at bdugan@cityofrsm.org and wleung@cityofrsm.org by 10:00 a.m. on Thursday, March 11, 2021.

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 RFP documents, and when issued, will be sent as promptly as is practical to all parties recorded by the City as having received RFP documents. All such addenda shall become a part of the RFP document. It is the responsibility of each Proposer to ensure the City has their correct business name and address on file. Any prospective Proposer who obtained a set of RFP documents is responsible for advising the City that they have a set of RFP documents and wish to receive subsequent Addenda.

IRREGULARITIES. City reserves the right to waive non-material irregularities if such would be in the best interest of the City as determined by the City Manager. However, unauthorized conditions, limitations or provisions attached to a proposal may cause its rejection. The completed proposal shall be without interlineations, alterations or erasures. Alternative proposals will not be considered unless specifically requested. No oral, telegraphic or telephonic proposal, modification or withdrawal will be considered.

NON-DISCRIMINATION. Proposer 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, physical

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

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(s) will enter into a NON-EXCLUSIVE professional services agreement and the City reserves the right to enter into agreements with other firms or consultants for the services listed in this RFP.

OFFERS OF MORE THAN ONE PRICE. Proposers are NOT allowed to submit more than one proposal.

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

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

PROPOSAL, REJECTION OF. The City reserves the right to reject any or all proposals or any part of a proposal. The City reserves the right to reject the proposal of any Proposer who previously failed to perform adequately for the City or any other governmental agency. The City expressly reserves the right to reject the Proposal of any Proposer who is in default on the payment of taxes, licenses or other monies due the City.

PROPRIETARY INFORMATION. All bid proposals and documents submitted in response to this RFP shall become the property of the City and a matter of public record pursuant to Government Code sections 6250 et seq. Proposals should not be marked as confidential or proprietary, and City may refuse to consider a proposal so marked. All Information contained within the 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 may then pursue, at its sole cost and expense, any and all appropriate legal action necessary to maintain the confidentiality of such information.

NO PUBLIC BID PROPOSAL OPENING/PUBLIC RECORDS ACT. Bid proposals shall be opened and their contents secured by City staff to prevent disclosure during the evaluative process and the process of negotiating with competing proposers. Adequate precautions shall be taken to treat each proposer fairly and to insure that information gleaned from competing proposals is not disclosed to other proposers. Prices and other information concerning the proposals shall not be disclosed until finalists are selected to present proposals to the City Council, or a recommendation for award is made to the City Council, whichever comes first.

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

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

REPRESENTATIONS. Proposer 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 proposal. Proposer misrepresentation shall be treated as fraudulent concealment from the City of the facts relating to the proposal.

RFP PART OF AGREEMENT. Should an agreement be awarded, this Request for Proposal and Scope of Services and all conditions may become part of the agreement between the City of Rancho Santa Margarita and the successful Proposer.

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

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

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

- a. Client name;
- b. Project description;
- c. Dates (starting and ending);
- d. Technical expertise;
- e. Staff assigned to reference engagement that will be designated for work per this RFP;
- f. Client project manager's name and telephone number.

VALIDITY. Proposal must be valid for a period of 90 days from the due date.

WITHDRAWAL OF PROPOSAL. Proposers' authorized representative may withdraw Proposals only by written request received by the Project Manager before the Proposal Submittal Deadline.

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

SECTION II

PROPOSAL RESPONSE REQUIREMENTS

Proposers shall submit one (1) electronic copy on Flash Drive (will not be returned) on or before the Submittal Deadline to:

**City of Rancho Santa Margarita
ON-CALL GEOTECHNICAL ENGINEERING SERVICES
RFP No. PW 021921
Attn: Brendan Dugan
Public Works Director / City Engineer
22112 El Paseo
Rancho Santa Margarita CA 92688**

If no document submitted on the Flash Drive can be identified as an original, Proposer's proposal may be rejected at the discretion of the City.

It is imperative that all Proposers responding to the RFP comply exactly and completely with the instructions set forth herein. Proposals must be concise, but with sufficient detail to allow accurate evaluation and comparative analysis. Proposals should be straightforward and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. *Do NOT include marketing brochures or other promotional material not connected with this RFP.*

All proposals shall be submitted on standard 8.5" by 11" paper (folded 11" by 17" paper is allowed for exhibits) in hard-covered binders. All pages should be numbered and identified sequentially by section. Response items must be indexed in the following order with individual tabs:

A. Cover Letter

Proposal must be accompanied by a cover letter, signed by an individual authorized to bind the proposing entity. An unsigned proposal is grounds for rejection. The cover letter should include an introduction of the firm and summary statement of professional qualifications.

B. Company Data

Please submit the following information:

1. Official name and address.
2. Name, address, and telephone number of the Proposer's primary point of contact.

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

3. Indicate what type of entity (corporation, company, joint venture etc). Please enclose a copy of the Joint Venture Agreement if entity is a joint venture.
4. Federal Employer I.D. Number.
5. The address, telephone numbers and fax numbers of each of your firm's locations.
6. A detailed statement indicating whether Proposer is totally or partially owned by another business organization or individual.
7. Number of years Proposer has been in business under the present business name.
8. Number of years of experience the Proposer has had in providing required, equivalent, or related services.
9. All comparable contracts entered into during the last five (5) years, completed or not. Please indicate:
 - Year started and completed
 - Type of Contract
 - Contracting Agency
 - Project Description
 - Project Manager
 - Developer of project
10. Any failures or refusals to complete a contract and explanation.
11. Individuals/Firms who own an interest of 10% or greater in the proposing firm.
12. Financial interests in other lines of business.

C. Organizational Chart

Proposer shall include an organizational chart that reflects titles of key staff and management contacts of each individual assigned to provide services under this Proposal. Included in the organizational chart, please list all sub-contracted work to individuals/firms. The organizational chart shall identify which category (ies) are being proposed on.

It is the City's preference to have key personnel identified in the Organizational Chart to remain during the term of the agreement. The Proposer shall note concurrence on the restrictions to changes in key personnel. A transition plan shall be presented in this section in the event there are proposed changes in key personnel, including sub-Consultants, during the term of the agreement that are outside of the consulting firm's control or if the City requests such change.

After contract execution the Consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or sub-Consultants without prior written approval from the local agency. The Consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different sub-Consultant on the contract. The proposed substituted person must be as qualified as

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

the original, and at the same or lower cost. For engineering types of Consultant contracts, the Consultant's project manager must be a registered engineer in the State of California.

D. Resumes and Qualifications of Personnel

The Proposer shall furnish a personnel staffing plan with sufficient information for judging the quality and competence of the personnel dedicated to the account. In its assessment of the proposal, City will place considerable emphasis on the commitment by the Proposer to provide qualified personnel for the services being considered. The Proposer shall furnish resumes in outline form for the key personnel committed to this account. Proposer shall also include the number and type of additional support personnel who will be providing services. The substitution or addition of individuals shall be allowed only with prior written approval of the City.

Resume Format:

Name

Position

Education

Show degrees earned and certifications, school and year of completion. Exclude company courses or information that is not relevant to the person's functional job duties.

Summary of Experience

In chronological order, most recent date first, summarize experience as it relates to ON-CALL GEOTECHNICAL ENGINEERING SERVICES.

Professional Memberships/Registrations

If sub-contractors are to be used as part of this proposal, a resume of the sub-contractor and relevant experience is to be included in the same format.

E: References:

Proposer must provide three (3) references for whom Proposer has provided similar services performed in California of the nature and scope as set forth in the RFP within the last five (5) years. Include name of business, name of contact person, telephone number of contact person, and description of services provided.

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

F. Overview and Approach

- **Understanding:** Proposer must include in this section their understanding of plan checking services outlined in this Request for Proposal.
- **Approach:** Proposer must include in this section its approach to providing efficient and effective plan checking services. In this section, Proposer is to include:
 - Understanding and approach for the project
 - Strategy for plan checking comment transmittals and tracking
 - Interdisciplinary Review utilizing staff with qualifications that match specific disciplines involved and coordination between disciplines
 - Process of task order implementation
 - Process development and implementation of Geotechnical Engineering Services
 - Innovative and successful approaches to implementation of Geotechnical Engineering Services
 - Electronic transmittal of comments
- Proposer must reference **all** duties as listed in the SCOPE OF WORK. Proposer must note any services NOT provided by their firm.
- Proposer shall also list any resources, City assistance or other items expected to be provided by City (computer, office, etc).
- Proposer may additionally itemize those services which are further required in the servicing of the account but are not noted in the aforementioned paragraphs as requirements. Proposer will title this section as ADDITIONAL SERVICES.
- **Schedule:** Proposer must include in this section a detailed overall Gantt bar project schedule (critical path method) for each task and subtask illustrating critical path items, deliverables, and City review times (two weeks for each deliverable).
- **Project Controls:** Describe the firm's ability to control costs and provide accurate and timely invoices through internal control measures; to monitor and stay within budget; to monitor schedule and review times and describe the techniques used to complete projects within the proposed time frames.
- **Quality Control/Quality Assurance (QA/QC):** Describe the firm's QA/QC processes that will be adhered to during the term of the agreement. Describe the method of ensuring that the quality of work is high.

G. Compensation/Payment Schedule

Proposer is required to submit their cost proposal in the format as outlined in Section V.

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

Proposer must state if the proposed rate is guaranteed for the term of an agreement (if awarded) or if it is subject to adjustments. If subject to adjustments, Proposer must state the frequency of adjustments and how adjustments are determined.

H. Proposal Forms

NON-COLLUSION AFFIDAVIT. Proposer is required to sign and submit the *Non-Collusion Affidavit* (Appendix 1).

INSURANCE. Proposer is required to sign and submit the *Consultant's Acknowledgement of Compliance with Insurance Requirements for Agreement for Professional/Consultant Services* (Appendix 2).

CERTIFICATION OF PROPOSAL. Proposer is required to sign and submit the *Certification of Proposal* (Appendix 3).

Proposer shall demonstrate the willingness and ability to submit proof of the required insurance coverage as set forth in the *Draft Sample Professional Services Agreement* (Appendix 4) prior to execution of the contract.

I: Communication Plan:

Proposer must describe the method(s) of communication and how frequently the firm proposes to keep City staff and the City Council updated throughout the process.

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

SECTION III

PROPOSAL EVALUATION AND SELECTION

An Evaluation Committee will be established by the City. The Committee may be comprised of City staff or other personnel as determined by the City Manager and will evaluate all proposals received in accordance with Section 3.07.080 of the RSMMC. The City reserves the right to establish criteria and weight factors. The City shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City after all factors are considered, including but not limited to the demonstrated competence, experience and professional qualifications of the Proposer.

Selection of qualified proposers will be based on the following criteria as set forth herein. Criteria are listed in random sequence and are not considered in any rank or order of importance. The proposal will be evaluated by the Evaluation Committee on the basis of the response to all requirements of this RFP.

1. Experience of the firm, particularly of staff assigned to supervise and administer this agreement.
2. Education and experience of staff members assigned to account.
3. Demonstrated knowledge of public agencies, particularly municipalities.
4. Understanding of the needs and requirements of CITY.
5. Proposer's ability to perform the work within the timelines specified.
6. Location of firm and availability of staff assigned to CITY.
7. Quality of references.
8. Content, quality, completeness and form of submitted proposal.
9. Interviews (if necessary).
10. Descriptions of anticipated scope of services.

Following evaluation of written proposals, the Committee may hold interviews with the most qualified respondents to assist in the final determination of the most qualified firm(s).

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

SECTION IV

SCOPE OF SERVICES

The City of Rancho Santa Margarita (City) invites qualified firms to submit proposals for ON-CALL GEOTECHNICAL ENGINEERING SERVICES. Should an award be made, the successful Proposer will enter into a professional services agreement with the City of Rancho Santa Margarita to provide ON-CALL GEOTECHNICAL ENGINEERING SERVICES.

A. City Information

Rancho Santa Margarita is located in southern Orange County approximately 20 miles from Santa Ana and 45 miles south of Los Angeles. Rancho Santa Margarita incorporated on January 1, 2000 as the 33rd city in Orange County and has a current population of 49,718. The City is a general law city and operates under the council-manager form of government. The City has 21 full time staff and various part time staff.

Rancho Santa Margarita is a contract city. The City Manager is hired by the City Council and oversees all day to day operations. The City has five (5) departments: City Council, City Manager (includes City Clerk), Administrative Services (includes Finance, Human Resources, Community Services & Risk Management), Public Works, and Development Services (includes Planning, Building Safety & Code Enforcement). Police services are provided through contract with the Orange County Sheriff's Department. Fire Protection services are provided through the Orange County Fire Authority. The City also contracts for Animal Control Services, City Attorney, Economic Development and Public Relations. The City further contracts with companies for specific tasks such as permit processing, plan check, NPDES, street and facility maintenance. Rancho Santa Margarita currently owns no traditional parks or athletic fields as they are owned and maintained by homeowner associations.

For more information about the City, please visit the City website at www.cityofrsm.org

B. General Information/Background

The City's Capital Improvement Program includes various projects which the City will likely use consultant geotechnical engineering services for material testing, inspection, design submittals, as well as the Public Works portion of development and outside agency projects described herein. For this proposal solicitation, the City will be contracting with a limited number of firms for geotechnical engineering services.

C. Prevailing Wages

Consultants are advised to consider whether services to be performed include classifications subject to state or federal prevailing wage requirements. Certain

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

professional service providers such as, but not limited to, surveyors, field soils material testers, construction inspectors, and specialty inspectors are subject to prevailing wages. The prevailing wages applicable to this procurement are available on the DIR web page at www.dir.ca.gov. It is the Proposer's sole responsibility to incorporate the cost of complying with all prevailing wage and labor compliance requirements and all applicable laws for this Project. The successful Proposer and its subcontractors of any tier, if any, shall maintain active registration with DIR, as appropriate, for the duration of this Project. Additional Prevailing Wage requirements are set forth in the more detail as terms and conditions in the attached Sample Professional Services Agreement (Appendix 4). The City assumes no responsibility for Consultant's failure to properly pay prevailing wages in accordance with applicable laws.

D. Specific Items of Work/Tasks

Experience in geotechnical engineering services should include, but not limited to, to the following:

Pavement Evaluation

Core Sampling - The consultant shall collect core sampling at predetermined locations for purposes of analyzing the stability of the underlying native soil, as well as the composition of existing pavement subgrade and determination of the thickness of existing subgrade layers. The city shall provide the locations of the core samples to the consultant by marking the locations on an aerial photo or plan. The consultant shall follow proper traffic control procedures in order to protect the work area while collecting the core samples. The results of the core sampling shall be analyzed by a Caltrans-certified lab and summarized in a report to be submitted to the city as described in Task 4. When the core sampling is complete, the cores shall be backfilled with native soil and capped to match the existing pavement surface with hot mix asphalt. In addition, the consultant shall use chalk-based paint for all Underground Service Alert (USA) markings and shall remove all USA markings at the conclusion of the field core sample collection.

R-Value Testing - The consultant shall provide R-value testing from the collected core samples as described in the previous task as necessary at pre-determined locations in accordance with California Test 301 for purposes of determining the Resistance (R-value) of treated and untreated soils or aggregates. The city shall provide the locations of the R-value testing on an aerial photo or plan. The results of the R-value testing shall be summarized in a report to be submitted to the city as described in the Pavement Evaluation Report.

Pavement Deflection Analysis - The consultant shall provide non-destructive pavement deflection testing at predetermined locations using a falling weight deflectometer or other approved method per California Test 356. The city shall provide the locations of the deflection testing locations on an aerial photo or plan. The results of the deflection testing

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

shall be summarized in a report to be submitted to the city as described in the Pavement Evaluation Report.

Pavement Evaluation Report - Following the completion of the material sample and data collection through Core Sampling, R-Value Testing and Pavement Deflection Analysis, the consultant shall analyze the collected material samples through a Caltrans approved laboratory and provide a written summary of the results through a pavement evaluation report.

The pavement evaluation reports to be prepared by the consultant in conjunction with Core Sampling, R-Value Testing and Pavement Deflection Analysis and shall include options for the rehabilitation or reconstruction of the street section in question. The cost of the laboratory analysis needed to evaluate the samples collected in Core Sampling, R-Value Testing and Pavement Deflection Analysis shall be included in the cost of the preparation of the Pavement Evaluation Report. The city will furnish the consultant with the traffic index (T.I.) values for the pavement evaluations. As previously mentioned, the analyses shall be conducted by a Caltrans-approved laboratory.

The Pavement Evaluation Report shall be prepared in the following format:

- Introduction
- Scope of Services
- Summary of field exploration, site geology and findings
- Testing methodology
- Potential design alternatives
- Construction considerations
- Tables
- Figures
- Appendices
- References

Construction Material Testing

Acceptance Testing (AT) - AT is the basic sampling and testing procedure to be performed by representatives of the City on materials incorporated into the construction projects to insure compliance with specifications. The city does not have staff to perform such tests nor to certify testers. Therefore, it will enter into contracts with other qualified agencies or selected private laboratories or consultants to perform such tests.

- Collecting samples and testing their strength properties (soil, gravel, asphalt, concrete, slurry seal)
- Checking subgrade compaction for concrete and asphalt construction
- Perform tests for sieve analysis, sand equivalent, and cleanness, as needed
- Checking compaction of asphalt pavement and overlays
- Performing plant inspection at facilities supplying concrete and hot mix asphalt.

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

- Provide test results to the City
- Provide summary report of testing results
- Perform testing and sampling according to the City's Quality Assurance Plan (QAP) and Caltrans procedures
- Review and approved construction material submittals

Required Licenses and Certificates - The laboratory performing the construction materials and soils testing and all samplers and testers must possess valid certifications as may be required by law and by Caltrans.

Development Review (Plan Checking)

Review and evaluate engineering geology and geotechnical engineering reports. Provide the City staff with specific recommendations regarding the acceptability of such reports and provide detailed review comments to bring the report in compliance with City requirements as it relates to all levels of development ranging from commercial additions to master planned communities.

Review foundation and grading plans for proposed development projects to ensure compliance with applicable geotechnical recommendations.

Turn-Around Schedule - From the time of pick-up of plans from the City to delivery back to the City, the Consultant shall complete each plan check within the time specified below:

- First Check: Ten (10) working days
- Subsequent Checks: Five (5) working days

Geotechnical Investigation and Reporting

Field investigations –

- Review of available pertinent, published and unpublished geotechnical literature and maps
- Site reconnaissance of the existing onsite geologic/geotechnical conditions and mapping of the site
- Public utility clearance (USA)
- Subsurface soil sampling and boring by a geologist. Proposer to provide a preliminary plan showing proposed locations of pits and depths with the proposal
- Comply with Water Quality NPDES requirements

Geotechnical Analysis –

- Geotechnical laboratory testing of representative soil samples obtained. Geotechnical testing including: Atterberg Limits, maximum density/optimum moisture content, direct shear testing, expansion index testing, corrosion testing

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

(soluble sulfate, pH, chlorides and minimum resistivity testing), and R-value testing. Limited laboratory testing to support our field observations and provide engineering properties for analyses

- Prepare final drill logs and map for inclusion in our summary report
- Geologic analyses of findings made during our exploration
- Slope stability analyses to evaluate general buttress magnitude for landslides or other critical geotechnical conditions identified or confirmed during our exploration
- An evaluation of faulting and seismicity of the region, and the possible impact of regional seismicity on the site and the proposed construction

Summary Report –

- Analysis of the geotechnical data obtained from the field reconnaissance and laboratory testing
- Includes geologic summary of constraints identified during our investigation
- Includes recommendations for landslide constraints and general geotechnical conditions, based on our investigation
- Map showing exploration and potential constraints
- Other content and formats as required by the City

Provide 24-hour on-call emergency response services as necessary to evaluate existing or pending geological hazards (or damages resulting therefrom) to public or private property, including earthquakes, landslides, mud / debris flows, flooding, fires and other natural hazards. When requested, provide recommendations to the City Engineer and/or City Building Official regarding the necessity for yellow-tagging or red-tagging structures threatened by geological hazards.

E. Standards of Work

CITY OF RANCHO SANTA MARGARITA STANDARDS AND SPECIFICATION COMPLIANCE: Documents shall be reviewed to ensure compliance with the City's standards, specifications, procedures and standard drawings. The City of Rancho Santa Margarita currently uses the APWA Standard Plans for Public Works Construction and the Standard Specifications for Public Works Construction (Greenbook) as the City's main standards. The City also has a boiler plate specifications package, subject to updates at any time, and uses other industry standards and practices as warranted. Knowledge of these industry (county, state and federal) standards is required. Documents shall also be reviewed for compliance with the Americans with Disabilities Act (ADA). An evaluation shall be made for compliance with both the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) and Uniform Federal Accessibility Standards (UFAS).

COST ESTIMATE REVIEW: Consultant shall review construction cost estimates with relation to quantities, unit prices, and consistency with construction documents such as plans and specifications. Estimates may originate with a developer and used as a basis for establishing surety/bonding amounts. Cost estimates may also originate with the City.

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

WEB-BASED DOCUMENT CONTROL: In an effort to streamline review times and costs to developers for overnight mailing, project documents, such as developer submittals, Consultant review comments, and other documents, shall be shared through an electronic system via the internet and a secured sharing platform. Documents shall be available to City staff, developers, stake holders, other consultants, contractors, etc. as approved by the City. Each project shall have a secured access point with passwords provided to key persons with prior approval of the City.

STAFFING: It is the City's preference to have key personnel identified in the organizational chart to remain during the term of the agreement. The Proposer shall note concurrence on the restrictions to changes in key personnel. A transition plan shall be presented in this section in the event there are proposed changes in key personnel, including sub-Consultants, during the term of the agreement that are outside of the consulting firm's control or if the City requests such changes.

CONFLICTS / DESIGN EXCEPTIONS. In case of conflict, ambiguities, discrepancies, errors or omissions, Consultant shall submit the matter to City for clarification. Any work affected by such conflicts, ambiguities, discrepancies, errors or omissions which is performed by Consultant prior to clarification by City shall be at Consultant's risk and expense.

REFERENCE MATERIALS. Consultant may be required to utilize and reference the following documents in pursuit of their work. The Consultant shall make use of additional reference material as appropriate and ensure the appropriate version of reference materials are used, including any published addenda and/or errata.

- CEQA Determination
- Regulatory Permits
- Caltrans Highway Design Manual
- Caltrans Local Assistance Procedures Manual
- A Policy on Geometric Design and Highways and Streets (AASHTO)
- California Regional Water Quality Control Board Requirements
- California Manual of Uniform Traffic Control Devices (CA MUTCD)
- Standard Specifications for Public Work Construction, "Greenbook" (general, miscellaneous & roadway items)
- City Standard Drawings and Specifications
- Applicable State, Federal, and Local Codes and Manuals
- Construction Best Management Practices (BMPs)

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

- Caltrans Standard Specifications and Plans
- Caltrans Filing System
- Caltrans XS Sheets
- Caltrans Bridge Design Manuals
- Caltrans Standard Specifications, Standard Special Provisions and Reference Specifications
- AASHTO LRFD Bridge Design Specifications, as modified by Caltrans
- Caltrans Seismic Design Criteria
- Reports shall be in Microsoft Word format.

Note: The above listing of standards is not in order of precedence.

SECTION V

COMPENSATION

A. Compensation

Compensation will be provided in accordance with Section 2 of the *DRAFT Sample Professional Agreement* (Appendix 4), which shall be modified prior to award of the contract to read as follows:

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 May 11, 2021, and ending on May 10, 2024, unless extended by mutual written agreement of the Parties.

Compensation will be made according to the fees and schedule contained in the Proposer's Proposal/Scope of Work and is subject to a Maximum Contract Amount as agreed upon by Proposer and City. In order to facilitate comparison of proposals, the City requires all compensation proposals to be submitted in the format below. The contract will be administered on a time and materials basis where each capital improvement construction project will require a signed Task Order by the City prior start of Construction Management work. Once final construction documents are prepared, CONSULTANT will be requested to prepare a scope and fee for each project, based on the fee schedule provided in the proposal. The Fee Schedule shall include:

- Personnel consistent with the Organizational Chart.
- Licenses held.
- Position/title in Company.
- Hourly Rate.

Proposer must also state that rates are guaranteed for the three-year term of the contract. Other direct costs, intended to be charged to the City, need to be stated. No mark ups will be allowed for other direct costs and sub-consultant work, however, an appropriate number of hours for sub-consultant oversight will be allowed. Mileage will not be compensated.

B. Invoicing

Invoices are to be submitted monthly. The invoices shall reference the project title and task order number and list charges by task, worker classification, hours, billing rate and totals. Each invoice shall contain a progress report describing the work completed during the billing period and the following summary information:

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

CONTRACT					
Contract Amount	Total Prior Contract Billings	Contract Work Performed this Period	Total Contract Amount Performed To Date	Contract Percent Complete	Total Amount Remaining for the Contract

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES



APPENDIX 1
NON-COLLUSION AFFIDAVIT

The undersigned declares, states and certifies that:

1. This Proposal is not made in the interest of, or on behalf of any undisclosed person, partnership, company, association, organization or corporation.
2. This Proposal is genuine and not collusive or sham.
3. I have not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal and I have not directly or indirectly colluded, conspired, connived, or agreed with any other Proposer or anyone else to put in sham proposal or to refrain from submitting to this RFP.
4. I have 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. All statements contained in the Proposal and related documents are true.
6. I have not directly or indirectly submitted the 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, RFP depository, or to any member or agent thereof to effectuate a collusive or sham proposal.
7. I have not entered into any arrangement or agreement with any City of Rancho Santa Margarita public officer in connection with this proposal.
8. I understand collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards.

Signature of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

APPENDIX 2



CONSULTANT'S ACKNOWLEDGEMENT OF COMPLIANCE WITH INSURANCE REQUIREMENTS FOR AGREEMENT FOR PROFESSIONAL/CONSULTANT SERVICES

Consultant agrees, acknowledges and is fully aware of the insurance requirements as specified in **Section 5. Insurance Requirements** of the Agreement for Professional Services and accepts all conditions and requirements as contained therein.

Consultant: _____
Name (Please Print or Type)

By: _____
Consultant's Signature

Date: _____

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

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

APPENDIX 3



CERTIFICATION OF PROPOSAL TO THE CITY OF RANCHO SANTA MARGARITA

The undersigned hereby submits its proposal and agrees to be bound by the terms and conditions of this Request for Proposal (RFP). By signing the Certification of Proposal (**Appendix 3**) and submitting a proposal to the City in response to this Request for Proposals, the Proposer hereby represents and certifies that:

- A) No elected or appointed official, officer or employee of the City has been or shall be compensated, directly or indirectly, in connection with this proposal or for any work connected with this proposal; should any agreement be approved in connection with this Request for Proposals ("Agreement") 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 or indirect financial interest in the Agreement, or obtain any present, anticipated, or future financial interest or other material benefit arising therefrom;
- B) No elected or appointed official, officer or employee of the City shall have any financial interest, direct or indirect, in the Agreement nor shall any such official, officer or employee participate in any decision relating to the Agreement which effects his/her personal financial interest or the financial interest of any corporation, partnership, or association in which they are, directly or indirectly, interested in violation of state law;
- C) The Proposer and its principals do not have now, nor shall it acquire any financial or business interest that would conflict with the performance of services under the Agreement;
- D) Proposer shall represent and certify 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, marital status, physical condition, pregnancy or pregnancy related conditions, political affiliation or opinion, age or medical condition;
- E) By submitting the response to this request, Proposer agrees, if selected, to furnish services to the City in accordance with this RFP;
- F) Proposer has carefully reviewed its proposal and understands and agrees that the City is not responsible for any errors or omissions on the part of the Proposer and that the Proposer is responsible for them;

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES

- G) It is understood and agreed that the City reserves the right to accept or reject any or all proposals and to waive any informality or irregularity in any proposal received by the City;
- H) The proposal response includes all of the commentary, figures and data required by the Request for Proposal, dated February 19, 2021.
- I) The proposal shall be valid for 90 days from the due date of this RFP.

Name of Proposer: _____

By: _____
(Authorized Signature)

Type Name: _____

Title: _____

Date: _____

City of Rancho Santa Margarita
RFP No. PW 021921
ON-CALL GEOTECHNICAL ENGINEERING SERVICES



APPENDIX 4

**CITY OF RANCHO SANTA MARGARITA
REQUEST FOR PROPOSAL
NO. 021921**

**SAMPLE DRAFT PROFESSIONAL/CONSULTANT SERVICES
AGREEMENT**

SAMPLE DRAFT – SUBJECT TO CHANGE ON FINAL

PROFESSIONAL SERVICES AGREEMENT

_____, Inc.
*On-Call Professional Civil Engineering, Building & Safety,
Plan Review and Inspection Consulting Services*

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter “Agreement”) is made and entered into, to be effective this ___st day of _____ 2019, 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 “Consultant”). City and Consultant 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 professional services of a qualified _____ (the “Project”).

B. In response to City's Request for Proposals (RFP No. _____), dated _____, 2019, Consultant has submitted to City a proposal, dated _____, to provide professional _____ to City for the Project, pursuant to the terms of this Agreement.

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

D. City desires to retain Consultant to provide such professional 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:

SAMPLE DRAFT – SUBJECT TO CHANGE ON FINAL

AGREEMENT

1. SERVICES OF CONSULTANT

1.1 Scope of Services and Standard of Performance. In compliance with all terms and conditions of this Agreement, Consultant agrees to provide and perform the professional _____ to City for the Project as set forth in the Proposal/Scope of Work, dated _____, 2019, which is attached hereto as Exhibit “A” and is incorporated herein by reference (hereinafter referred to as the “Scope of Services,” the “Services” or “Work”). As a material inducement to the City entering into this Agreement, Consultant acknowledges and understands that the Services and Work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, Consultant’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 Services and Work and with the standards recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and warrants that it is skilled in the professional 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. Consultant represents and warrants that it and all of its employees, subconsultants and subcontractors providing any Work or 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; and, (2) the Consultant’s signed, original _____, 2019 proposal submitted to the City (“Consultant’s Proposal”), which shall each be referred to collectively hereinafter as the “Contract Documents.” The Consultant’s Proposal, attached hereto as Exhibit “A,” is hereby incorporated by reference and is made a part of this Agreement. All provisions of the Contract Documents 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 of this Agreement; and, (2nd) the provisions of the Consultant’s Proposal.

OPTION/ALTERNATIVE -- LANGUAGE FOR INCLUSION OF CITY’S RFP

The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the Consultant’s signed, original Proposal/Scope of Work dated _____ (“Consultant’s Proposal”) and submitted to City; and, (3) the City’s Request for Proposals dated _____, which shall all be referred to collectively hereinafter as the “Contract Documents.” The Consultant’s Proposal and the City’s Request for Proposals, which are both attached hereto as Exhibits “A” and “B,” respectively, are hereby incorporated by reference and are made a part of this Agreement. All provisions of this Agreement, the Consultant’s Proposal, and the City’s Request for Proposals 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

SAMPLE DRAFT – SUBJECT TO CHANGE ON FINAL

in the following order of priority: (1st) the terms and conditions of this Agreement; (2nd) the provisions of the City's Request for Proposals (Exhibit "B"); and (3rd) the provisions of the Consultant's Proposal (Exhibit "A").

1.3 Compliance with Law. Consultant 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 and Cal/OSHA requirements. Consultant 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 requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with performing the Work and Services. If Consultant performs any Work or Services in violation of such laws, rules, and regulations, Consultant shall be solely responsible for all penalties and costs arising therefrom. Consultant 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 Consultant shall obtain all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. Consultant represents and warrants to City that Consultant 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 Consultant to perform the Work and Services under this Agreement. Consultant 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 Consultant's performance of the Work and Services required by this Agreement, and shall defend, indemnify, and hold the City, its officials, officers, employees, agents and volunteers, free and harmless from and against any claim or liability arising out of any failure or alleged failure to obtain such license, 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, Consultant 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, Consultant represents and maintains that Consultant 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 Consultant discover any latent or unknown conditions that will materially affect the performance of the Services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the City.

SAMPLE DRAFT – SUBJECT TO CHANGE ON FINAL

1.6 Care of Work. Consultant 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 the Scope of Services (Exhibit "A") or 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 Consultant, 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 Consultant. It is expressly understood by Consultant that the provisions of this section shall not apply to the Work and Services specifically set forth in the Scope of Services or reasonably contemplated therein, regardless of whether the time or materials required to complete any Work or Service identified in the Scope of Services exceeds any time or material amounts or estimates provided therein.

1.9 Unauthorized Aliens. Consultant 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 Consultant 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, Consultant 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.

1.10 Consultant Work Rules. Consultant shall be familiar with, observe, and comply at all times during the term of this Agreement with any work rules for consultants 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.

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

2. COMPENSATION

SAMPLE DRAFT – SUBJECT TO CHANGE ON FINAL

2.1 Maximum Contract Amount. For the Services and Work rendered pursuant to this Agreement, Consultant shall be compensated by City for the services performed, including authorized reimbursements, in accordance with the professional hourly rates and charges as set forth in the Schedule of Compensation/Fees, which is attached hereto collectively as Exhibit “A” and is incorporated herein by reference, but not exceeding the total maximum contract amount of _____ Dollars (\$_____) (hereinafter referred to as the "Maximum Contract Amount"), except as may be provided pursuant to Section 1.8 above. The method of compensation shall be as set forth in Exhibit “A”. Compensation for necessary expenditures for reproduction costs, telephone expenses, and transportation expenses must be approved in advance by the Contract Officer designated pursuant to Section 4.2 and will only be approved if such expenses are also specified in the Schedule of Compensation/Fees. The maximum amount of City’s payment obligation under this Agreement is the amount specified in this section.

OPTIONAL LANGUAGE – SERVICES SHALL NOT EXCEED A FIXED AMOUNT

The Maximum Contract Amount shall include the attendance of Consultant at all Project meetings reasonably deemed necessary by the City. Consultant shall not be entitled to any increase in the Maximum Contract Amount for attending these meetings. Consultant hereby acknowledges that it accepts the risk that the services identified in the Scope of Services may be more costly and/or time-consuming than Consultant anticipates, that Consultant 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 Services. The maximum amount of City’s payment obligation under this Agreement is the amount specified in this section. If the City’s maximum payment obligation is reached before the Consultant’s Services under this Agreement are completed, Consultant shall nevertheless complete the Work without liability on the City’s part for further payment beyond the Maximum Contract Amount.

2.2. Method of Payment. Unless some other method of payment is specified in the Schedule of Compensation/Fees (Exhibit “A”), in any month in which Consultant wishes to receive payment, no later than the tenth (10th) working day of such month, Consultant 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 services performed by Consultant 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 Consultant within forty-five (45) days after receipt of the invoice or a soon thereafter as is reasonably practical.

2.3 Changes in Scope. In the event any change or changes in the Scope of 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 professional fees. 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

SAMPLE DRAFT – SUBJECT TO CHANGE ON FINAL

any documents, other work product, or work; and/or (b) to provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant’s profession.

2.4 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 Consultant is an essential condition of this Agreement. **Consultant shall prosecute regularly and diligently the Work of this Agreement according to the agreed upon Schedule of Performance.**

3.2 Schedule of Performance. **Consultant shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed, or on each task order, if applicable, and shall perform all Services within the time period(s) established in the Schedule of Performance, which is attached hereto as Exhibit “A” and is incorporated herein by reference.** When requested by Consultant, 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 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 Consultant (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City, if Consultant, within ten (10) days of the commencement of such delay, notifies the City Manager in writing of the causes of the delay. The City Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Manager such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this section.

3.4 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 _____ (____) years, commencing on _____, 2019 and ending on _____, unless extended by mutual written agreement of the Parties.**

3.5 Task Orders. **Consultant hereby agrees and acknowledges that any and all Services or Work performed pursuant to this Agreement shall be based upon the prior issuance of a written project task order by the City. Furthermore, Consultant hereby agrees and**

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acknowledges that execution of this Agreement by the City does not in any way guarantee that a task order will be issued to Consultant. Moreover, execution of this Agreement by the City shall not entitle Consultant to any form of payment or compensation from the City without City first having issued a project task order.

4. COORDINATION OF WORK

4.1 Representative of Consultant. The following principal of Consultant is hereby designated as being the principal and representative of Consultant authorized to act in its behalf with respect to the Services to be performed under this Agreement and to make all decisions in connection therewith: [REDACTED]. It is expressly understood that the experience, knowledge, education, capability, expertise, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the Work or Services performed hereunder. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

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 Consultant's responsibility to ensure that the Contract Officer is kept fully informed of the progress of the performance of the Services, and the Consultant 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 Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant 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. Consultant shall not contract with any other entity to perform the Services required without prior written consent of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant 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 Consultant. City will deal directly with and will make all payments to Consultant. 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 Consultant, 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

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void. No approved transfer shall release Consultant or any surety of Consultant from any liability hereunder without the express written consent of City.

4.4 Independent Contractor.

A. The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. Consultant 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 Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officials, officers, employees, agents or volunteers shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set forth in this Agreement. Consultant, 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 Consultant's officers, employees, representatives or agents or in fixing their number, compensation, or hours of service. Consultant shall pay all wages, salaries, and other amounts due its employees in connection with the performance of Services under 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 Consultant in its business or otherwise a joint venturer or a member of any joint enterprise with Consultant.

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

C. No City benefits shall be available to Consultant, its officers, employees, or agents, in connection with the performance of any Work or Services under this Agreement. Except for professional fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of any Work or Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents, for injury or sickness arising out of performing any Work or 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 Consultant's officers, employees, representatives, agents, or subconsultants or subcontractors, Consultant shall defend, indemnify, and hold harmless City from and against all such financial obligations.

4.5 PERS Eligibility & Indemnification.

A. In the event that Consultant or any employee, agent, or subcontractor of Consultant 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, Consultant shall indemnify,

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defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant 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.

B. Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant 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. Consultant 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. Consultant 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. If Consultant's existing insurance policies do not meet the insurance requirements set forth herein, Consultant 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, Consultant shall obtain and maintain in full force and effect during the term of this Agreement, including any extension thereof, the following policies of insurance:

A. Commercial General Liability Insurance. Consultant 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.

B. Automobile Liability Insurance. Consultant 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.

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C. Workers' Compensation Insurance. Consultant 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. Consultant 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 subconsultants and subcontractors, if any, to do likewise under their workers' compensation insurance policies. **Consultant 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.**

D. Professional Liability (Errors & Omissions) Insurance. Consultant shall obtain and maintain in full force and effect throughout the term of this Agreement, a policy of Professional Liability or Errors and Omissions Insurance appropriate to Consultant's profession with limits of at least two million dollars (\$2,000,000.00). Covered professional services shall specifically include all Work or Services to be performed under the Agreement and delete any exclusions that may potentially affect the Work or Services to be performed under this Agreement.

1. The policy shall be endorsed to provide the following: Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

2. If the policy of insurance is written on a "claims-made" basis, the City may require that the policy be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Work or Services provided hereunder. In the event of termination of the policy during this period, Consultant shall obtain continuing insurance coverage for the prior acts or omissions of Consultant during the course of performing the Work or Services under the terms of this Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the City.

3. In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Work or Services provided for in this Agreement, whichever is later. In the event of termination of the policy during this period, new coverage shall immediately be obtained to ensure coverage during the entire course of performing the Work or Services under the terms of this Agreement.

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

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current rating of A:X or better (if offered by a non-admitted insurer listed on the **State of California List of Approved Surplus Lines Insurers (LASLI)**, 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 Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City. Consultant 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 Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

A. 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:

1. 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

2. 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 Consultant, 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.

3. Notice: The policy or policies of insurance required by this section for Commercial General Liability and Automobile Liability Insurance shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or modified, or reduced in coverage or in limits, except after thirty (30) days prior written notice by First Class U.S. Mail, postage-prepaid, has been provided to the City. Notwithstanding the foregoing, if coverage is to be suspended, voided, or cancelled because of Consultant's failure to pay the insurance premium, the notice provided to City shall be by ten (10) days prior written notice.

B. For all policies of Commercial General Liability Insurance, Consultant 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.

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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 Consultant 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. Consultant hereby agrees to waive its own right of recovery against the City, its officials, officers, employees, agents and volunteers, and Consultant hereby agrees to require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

5.8 Evidence of Coverage. Concurrently with the execution of the Agreement, Consultant 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, Consultant 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. Consultant 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 Consultant may be held responsible for payments of damages to persons or property.

5.10 Enforcement of Agreement (Non-Estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant 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 Subconsultants. Consultant shall either: (1) include all subconsultants or subcontractors engaged in any Work or Services for Consultant relating to this Agreement as additional named insureds under the Consultant's insurance policies, or (2)

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Consultant shall be responsible for causing its subconsultants 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 Consultant's subconsultants 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. Consultant shall not allow any subconsultant or subcontractor to commence any Work or Services relating to this Agreement unless and until it has provided evidence satisfactory to City that the subconsultant or subcontractor has secured all insurance required under this section.

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

A. Consultant 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.

B. All insurance coverage and limits provided by Consultant 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.

C. 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.

D. 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 Consultant's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.

E. Consultant agrees to ensure that subconsultants and subcontractors, if any, and any other parties involved with the Project who are brought onto or involved in the Project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant 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. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.

F. Consultant agrees to provide immediate written notice to City of any claim, demand or loss against Consultant arising out of the Work or Services performed under

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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, Consultant shall defend (at Consultant's sole cost and expense with legal counsel reasonably acceptable to City), indemnify and hold the City, its elected and appointed officials, officers, employees, agents and volunteers, free and harmless from any and all claims, demands, orders, causes of action, costs, expenses, liabilities, losses, penalties, judgments, arbitration awards, settlements, damages or injuries of any kind, in law or in equity, including but not limited to property or persons, including wrongful death, (collectively "Claims") in any manner arising out of, pertaining to, related to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officers, directors, employees, subcontractors, consultants or agents, in connection with Consultant's performance under this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent that the Work or Services performed by Consultant are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder. Notwithstanding the foregoing, such obligation to defend, hold harmless and indemnify the City, its elected and appointed officials, officers, employees, agents and volunteers, shall not apply to such Claims or liabilities arising from the sole or active negligence or willful misconduct of City.

7. REPORTS AND RECORDS

7.1 Accounting Records. Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Consultant 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. Consultant 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. Consultant 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, Consultant agrees that if Consultant 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 Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of such fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost

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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 Consultant, its employees, subconsultants, 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 Consultant 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. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. Consultant shall ensure that all of its subconsultants and subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

7.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant 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 Consultant in the performance of this Agreement shall be considered confidential and shall not be released by Consultant 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, Consultant shall provide City, or other agents of City, such access to Consultant'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 Consultant's performance under this Agreement. Consultant 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 Consultant 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

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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 Consultant thirty (30) days written notice. Upon such notice, City shall pay Consultant for Services performed through the date of termination. Upon receipt of such notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Thereafter, Consultant shall have no further claims against the City under this Agreement. Upon termination of the Agreement pursuant to this section, Consultant shall submit to the City an invoice for work and services performed prior to the date of termination. In addition, Consultant reserves the right to terminate this Agreement at any time upon sixty (60) days written notice to the City, except that where termination is due to material default by the City, the period of notice may be such shorter time as the Consultant may determine.

8.4 Default of Consultant.

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

B. If the City Manager, or City Manager's designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall notify Consultant in writing of such default. Consultant shall have ten (10) days, or such longer period as City may designate, to cure the default by rendering satisfactory performance. In the event Consultant 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. Consultant 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.

C. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8.4(B), take over the work and prosecute the same to completion by contract or otherwise, and the Consultant 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 Consultant 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 Consultant shall not limit Consultant'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,

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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 Attorneys' 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 witness 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.

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 Consultant, 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 Consultant 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. Consultant represents and warrants that it 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, Consultant 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. Consultant shall ensure that

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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 Patent and Copyright Infringement.

A. To the fullest extent permitted by law, and in lieu of any other warranty by City or Consultant against patent or copyright infringement, statutory or otherwise, it is agreed that Consultant shall defend at its expense any claim or suit against City on account of any allegation that any item furnished under this Agreement, or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and Consultant shall pay all costs and damages finally awarded in any such suit or claim, provided that Consultant is promptly notified in writing of the suit or claim and given authority, information and assistance at Consultant's expense for the defense of same, and provided such suit or claim arises out of, pertains to, or is related to the alleged negligence, recklessness or willful misconduct of Consultant. However, Consultant will not indemnify City if the suit or claim results from: (1) City's alteration of a deliverable, such that City's alteration of such deliverable created the infringement upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by Consultant when it is such use in combination which infringes upon an existing U.S. letters patent or copyright.

B. Consultant shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof, Consultant shall not be obligated to indemnify City under any settlement made without Consultant's consent or in the event City fails to cooperate in the defense of any suit or claim, provided, however, that such defense shall be at Consultant's expense. If the use or sale of such item is enjoined as a result of the suit or claim, Consultant, at no expense to City, shall obtain for City the right to use and sell the item, or shall substitute an equivalent item acceptable to City and extend this patent and copyright indemnity thereto.

10.2 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

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Rancho Santa Margarita, California 92688
Telephone: (949) 635-1800
Facsimile: (949) 635-1667

To Consultant:

10.3 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.

10.4 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.

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

10.6 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.

10.7 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.

10.8. 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.

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10.9 Labor Code Requirements.

A. Prevailing Wages. Consultant 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. If the Work or Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Work or Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant 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 comply with the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement.

B. DIR Registration. If the Work or Services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

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

[SIGNATURES ON NEXT PAGE]

SIGNATURE REQUIREMENTS --

For Consultants that are a corporation, two (2) Corporate Officers must sign and staff may request that a copy of their corporate resolution confirming the names and titles of their authorized signatories be provided to the City in advance for review and approval, and the signature requirements are as follows:

1) One signature by the Chairman of the Board, the President, or the Vice President,

-And-

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- 2) *One signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or an Assistant Treasurer.*

For Consultants that are not a corporation, signature requirements are as follows: the person who has authority to bind the business entity must sign.

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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

JERRY HOLLOWAY,
Mayor

ATTEST:

(SEAL)

AMY DIAZ,
City Clerk

APPROVED AS TO FORM:

GREGORY E. SIMONIAN,
City Attorney

“CONSULTANT”
_____, **Inc.**, a California
corporation

By:

President

By:

Secretary

EXHIBIT “A”

**CONSULTANT’S PROPOSAL/ SCOPE OF WORK
DATED: _____, 2019**

SCOPE OF SERVICES FOR PROJECT

INCLUDING,

SCHEDULE OF PERFORMANCE

AND

SCHEDULE OF COMPENSATION/ FEES