

CONSULTANT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2000, by and between _____ (“CONSULTANT”) and the City of Santa Ana, a municipal corporation of the State of California (“CITY”).

WITNESSETH

Recitals:

A. CITY desires to retain a professional firm having skill and knowledge in the field of Engineering for the purpose of preparing construction documents for the _____ project.

WHEREFORE, in consideration of their mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties hereto do hereby agree as follows:

1. REPRESENTATIVES AND NOTICE

A. For purposes of implementing this Agreement, the representatives of CITY shall be the Executive Director of the Public Works Agency and his designated representatives (the “Director”) and the representative of CONSULTANT shall be the Vice-President. Except as may be otherwise stated hereinafter, such representatives shall have the authority to act on behalf of their respective parties in carrying out the terms of this AGREEMENT.

B. Any notice or instrument required to be given or delivered to either party to this AGREEMENT may be delivered by personal delivery or by depositing the same in the United States mail, postage prepaid, addressed to:

If to CITY: Executive Director
Public Works Agency
City of Santa Ana
Public Works Agency
20 Civic Center Plaza
Santa Ana, CA 92701

If to CONSULTANT:

Notice of change of address shall be delivered in the same manner as any other notice provided herein. Notice by mail shall be effective three days after mailing by the above-described procedure.

2. SCOPE OF SERVICES OF CONSULTANT

CONSULTANT agrees to perform, at its own cost and expense except for the compensation specified in this Agreement, the services specified in the RFP, attached hereto as "Exhibit A" and incorporated herein by reference, and the Proposal, attached hereto as "Exhibit B" and incorporated herein by reference, subject to modifications as may be set forth in the text of this Agreement.

3. STANDARD OF PERFORMANCE

In undertaking the performance of this Agreement, CONSULTANT represents that it is knowledgeable in the field specified in Recital A of this Agreement, and that any services performed by CONSULTANT under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in that field.

4. TIME OF COMPLETION

The services to be performed pursuant to this Agreement shall be completed within six months from the day of written notification to proceed from the Director, subject to extension with the approval of the Director, which shall not be unreasonably withheld.

5. CITY OBLIGATIONS

CITY shall provide CONSULTANT with all records in the possession of CITY which will be of assistance to CONSULTANT in the performance of this Agreement.

6. COMPENSATION

CITY agrees to pay, and CONSULTANT agrees to accept payment in accordance with the fee schedule set forth in the Proposal, provided that total compensation for all work within the scope of the RFP and the Proposal shall not exceed \$_____.

CONSULTANT shall submit monthly invoices each accompanied by a detailed statement of services performed during the period for which payment is requested. Payment by CITY shall be made within thirty (30) days following receipt of a proper invoice, subject to CITY accounting procedures.

Notwithstanding the foregoing, payment need not be made for work that fails to meet the standard of performance specified in Section 3.

CONSULTANT and the Director may agree upon the performance by CONSULTANT of additional work beyond the scope of RFP and the Proposal but related thereto this Agreement.

However, total payments to CONSULTANT pursuant to this Agreement, including all such additional work, shall not exceed \$ _____ without the approval of CITY.

7. OWNERSHIP OF MATERIALS, SUPPLIES, DRAWINGS, SPECIFICATIONS, PROGRAMS AND SYSTEMS

Any and all records, papers, drawings, specifications, programs, systems and other materials prepared by CONSULTANT, pursuant to this Agreement shall be the property of CITY. CONSULTANT agrees to provide CITY with any such materials whenever requested to do so.

8. HOLD HARMLESS CLAUSE

CONSULTANT agrees to indemnify and hold harmless CITY, and its officers, agents, representatives, volunteers and employees from any and all loss or damage, and from any and all suits, actions and claims filed or brought by any person or persons, however caused, arising out of CONSULTANT'S negligent performance or failure to perform, any and all things necessary to and required to be done by CONSULTANT, pursuant to the specifications in the Agreement.

9. INSURANCE

With respect to performance of work under this Agreement, CONSULTANT shall maintain and shall require its subcontractors, if any, to maintain insurance as described below:

A. Worker's Compensation insurance with statutory limits, any employer's liability insurance with limits not less than \$1,000,000 per accident.

B. Commercial general liability insurance or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. If such insurance contains a general aggregate limit, such limit shall apply separately to each project CONSULTANT performs for CITY. Such insurance shall (a) name CITY, its officers, agents, representatives, volunteers and employees as additional insureds; (b) be primary with respect to insurance or self-insurance programs maintained by the CITY; and (c) contain standard separation of insureds provisions; and (d) give to CITY prompt and timely notice of claim made or suit instituted arising out of CONSULTANT's operations hereunder.

C. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

Professional liability (errors and omissions) insurance, with a combined single limit of not less than \$1,000,000 per occurrence.

CONSULTANT shall (a) furnish properly executed certificates of insurance and additional insured endorsement to the Director prior to commencement of work under this Agreement, which shall clearly evidence all coverage required above and provide that such insurance shall not be materially changed or terminated except on 30 days prior written notice to CITY; (b) maintain such insurance from the time work first commences until completion of the work under this Agreement; and (c) replace such certificates for policies expiring prior to completion of work under this Agreement.

The Director may waive or reduce the requirements of this section if and to the extent the Director determines them to be unreasonably burdensome to the CONSULTANT and not necessary for the protection of CITY.

10. TERMINATION OF AGREEMENT

This Agreement may be terminated by the Director upon 30 days written notice of termination to CONSULTANT. In such event, CONSULTANT, shall be entitled to receive and CITY shall pay CONSULTANT compensation for all services performed by CONSULTANT for work actually performed to the end of the 30 day period.

As a condition of such payment, the Director may require CONSULTANT to deliver to CITY all work product completed as of such dated, and in such case such work product shall be the property of CITY, and CONSULTANT consents to CITY'S use thereof for such purposes as CITY deems appropriate.

11. MISCELLANEOUS PROVISIONS

A. By signing this Agreement, CONSULTANT certifies that it does not discriminate in hiring on the basis of race, color, creed, religion, sex, age, marital status, national origin, ancestry, physical handicap, or medial conditions.

B. CONSULTANT shall not assign or transfer any interest in this Agreement, whether by assignment or novation, without the prior written consent of the Director; provided, however, that claims for money due or to become due from CITY under this Agreement may be assigned to a bank, trust company, or other financial institution, or to a trustee in bankruptcy, without such approval. Notice of any such assignment or transfer shall be promptly furnished to the Director.

C. CONSULTANT agrees that CONSULTANT is an independent contractor and not an employee of CITY and all CONSULTANT's personnel shall be employees or subcontractors of CONSULTANT and not employees of CITY. CONSULTANT shall pay all salaries and wages, employers social security taxes, unemployment insurance, and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

D. CONSULTANT shall not subcontract any of the services required hereunder without prior written approval of the Director.

E. CONSULTANT reserves the right to effect changes in form or name, including but not limited to changes from individual proprietorship, partnership or corporation to any other such form of organization, and likewise reserves the right to add, substitute or delete stockholders, partners, associates, and employees. This Agreement shall continue in effect with regard to CONSULTANT under its new form or name without the necessity of any amendment to this Agreement. The Director shall be promptly notified of any such change in form or name.

F. Nothing in this Agreement shall be construed to limit the CITY's ability to have any of the services which are the subject to this Agreement performed by CITY personnel or by other consultants retained by CITY.

G. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

H. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. This Agreement supersedes any and all other agreements either oral or in writing between the parties hereto and contains all the covenants and agreements between the parties with respect thereto. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, with respect to such services, which are not embodied herein.

J. Captions and headings in this Agreement, including the title of this Agreement, are for convenience only and are not to be considered in construing this Agreement.

K. This Agreement may not be modified or amended except in writing signed by CITY and CONSULTANT.

L. CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required hereunder.

The parties have executed this Agreement as of the date and year first written above.

ATTEST:

CITY OF SANTA ANA

Patricia E. Healy
Clerk of the Council

Miguel A. Pulido
Mayor

RECOMMENDED FOR APPROVAL:

YOUR COMPANY NAME

James G. Ross
Executive Director
Public Works Agency

Name/Title

ID #

APPROVED AS TO CONTENT:

David N. Ream
City Manager

APPROVED AS TO FORM:

Joseph W. Fletcher
City Attorney