REQUEST FOR PROPOSALS (RFP)
FOR
CONSTRUCTION ENGINEERING SERVICES
FOR
THE SAN LORENZO SEWAGE LIFT STATION
RFP NO.: 18-049

CITY OF SANTA ANA
Santa Ana Public Works Agency
20 Civic Center Plaza
Santa Ana, CA 92701

Tyrone Chesnek, P.E.
Project Manager
(714) 647-5045 Office
tchesanek@santa-ana.org

Approved for Release:

Edwin “William” Galvez, P.E.
Acting Executive Director
Public Works Agency

KEY RFP DATES (Subject to change at discretion of City):

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue Date</td>
<td>Thursday, June 14, 2018</td>
</tr>
<tr>
<td>Letter of Intent</td>
<td>Tuesday, June 26, 2018</td>
</tr>
<tr>
<td>Deadline for Requests for Information</td>
<td>Tuesday, July 3, 2018</td>
</tr>
<tr>
<td>Proposal Due Date</td>
<td>Tuesday, July 10, 2018; 2:00 p.m.</td>
</tr>
<tr>
<td>Interview (If Required)</td>
<td>Week of July 30, 2018</td>
</tr>
<tr>
<td>Projected Award Date</td>
<td>Tuesday, August 21, 2018</td>
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</table>
NOTICE INVITING PROPOSALS

NOTICE IS HEREBY GIVEN that proposals will be received from qualified firms for construction engineering services for the San Lorenzo Sewage Lift Station project.

Responses to this Request for Proposals (RFP) will be accepted until Tuesday, July 10, 2018; 2:00 p.m. Proposals received after this date/time will not be considered. It is the responsibility of the proposer to ensure that any proposals submitted have sufficient time to be received by the City of Santa Ana prior to this proposal due date and time.

Proposals shall be enclosed in a sealed envelope and marked clearly with following information, formatted as follows:

```
“SEALED PROPOSAL FOR
RFP NO. 18-049
CONSTRUCTION ENGINEERING SERVICES FOR
THE SAN LORENZO SEWAGE LIFT STATION
IN THE CITY OF SANTA ANA
DO NOT OPEN WITH REGULAR MAIL.”

City of Santa Ana
Attn.: Tyrone Chesanek
Public Works Agency;
20 Civic Center Plaza; 3rd Floor Reception, Ross Annex
Santa Ana, CA 92701
```

Proposals shall be mailed, hand delivered, or sent by courier service. Proposals shall NOT be sent via telegraphic, electronic or facsimile.

All notifications, updates and addenda will be posted on the City’s RFP Bid page at www.santa-ana.org/bids-rfps. Proposers shall be responsible for monitoring the site to obtain information regarding this solicitation. Failure to respond to required updates may result in a determination of a nonresponsive proposal.

LETTER OF INTENT - Interested firms shall submit a Letter of Intent of their pending proposal to the noted Project Manager by the required date as shown on the cover page of this RFP. Letters shall be forwarded via certified mail or email and shall include the following information:

1. Use formal company letterhead.
2. Indication of company interest in the RFP.
3. Acknowledgement of candidate's responsibility to monitor the City's website for any amendments or modifications to the RFP.
4. Provision of correct, complete contact information.
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I. INTRODUCTION / PROJECT DESCRIPTION

Nature of Work:
The City of Santa Ana is seeking a qualified professional consulting firm to provide construction engineering services for the San Lorenzo Sewage Lift Station project. The consultant shall provide three individuals to act as a Project Manager, an Inspector and a Contract Administrator.

Plans and Specifications for the San Lorenzo Sewage Lift Station project are available for review by the proposer at the office of the Public Works Agency, Construction Engineering Section of the City of Santa Ana, located at 20 Civic Center Plaza, Ross Street Annex, Third floor. A detailed Scope of Work is included in the Appendix of this RFP as Attachment 1.

Number of Proposals and Signature:
Five (5) hard copies and one (1) digital file on labeled USB Flash Drive (or equivalent) of your proposal shall be signed by a company official with the power to bind the company and submitted to the City of Santa Ana. One (1) copy of your Fee Proposal shall be submitted.

The Statement of Qualifications shall be limited to a maximum of (10) double-sided pages (excluding front and back covers, section dividers and attachments such as resumes, forms). Font size shall be minimum 11-point Arial. Proposal exhibits shall be maximum 11” x 17”.

Proposal Evaluation and Rating:
The criteria for evaluating the proposals submitted will take the following items into consideration:

- Firm/Team Experience 25%
- Understanding of Need 25%
- Relevant Project Experience 30%
- Schedule 10%
- References 10%

The City has established a proposal review committee to evaluate proposers based on the response to the RFP, which includes adherence to outlined directions and format, and the City evaluation criteria set forth above. A final score will be calculated for each submitted proposal and used to rank the proposers.

Prevailing Wages:
In accordance with the California State Labor Code, prevailing wage rates apply. Copies of the prevailing rate of per diem wages are on file with the Public Works Agency and shall be made available to any interested party on request.

Term of Contract Agreement:
The City desires to enter into a contract with the selected firm(s) for a period to be negotiated with the successful proposer based on the proposed schedule in the successful proposal and the needs of the City. This term will be specified in the Standard Consultant Agreement, as contained in the Appendix of this RFP as Attachment 2.
II.  INSTRUCTIONS TO PROPOSERS

A. CITY RESPONSIBILITIES
   The City will provide information in its possession relevant to preparation of required
   information in RFP. The City will provide only the staff assistance and documentation
   specifically referred to herein.

B. PROPOSER RESPONSIBILITIES
   Point of Contact: The selected proposer will assume responsibilities for all services in its
   proposal. The selected proposer shall identify a sole point of contact with the greatest
   knowledge in regard to the required service operations and contractual matters, including
   payment of any and all charges resulting from the Agreement.

   Evidence of Financial Capacity: Proposer may be requested to submit its most recent audited
   financial statement, evidencing proposer’s financial capacity to fully perform the required
   services, including provision of equipment and personnel expenses over a ninety (90) day
   period. If said financial statement does not reflect full ninety (90) day operational capacity,
   proposer may include a letter of credit as evidence of supplemental capacity.

C. REQUEST FOR INFORMATION OR CLARIFICATION
   All questions or requested clarifications shall be made in writing via e-mail to the Project
   Manager (contact information as noted on the cover page to this RFP) no fewer than five (5)
   calendar days prior to the date and time set for opening of proposals. No verbal requests or
   responses will be accepted. Significant interpretations or clarifications will be addressed via
   addenda to this RFP.

D. ADDENDA
   Any changes in RFP from the date of release to date of submittal will result in an addendum
   or amendment. Notification of such addendum or amendment shall be posted on City’s
   website, santa-ana.org/bids-rfps as set forth in the Notice Inviting Proposals. Addenda shall
   become part of the agreement documents.

E. LICENSES & PERMITS
   The selected proposer shall be required to obtain a City of Santa Ana Business license within
   ten (10) business days of selection and must provide a copy to the City projects manager or
   designee prior to commencing any work in Santa Ana.

   Additionally, Proposer will be responsible for obtaining any licenses/permits required by the
   Scope of Work.

F. INSURANCE
   The Selected Proposer shall provide the required evidence of insurance coverage as set forth in
   the Scope of Work within ten (10) business days after receipt of notice that the contract has been
   awarded. Failure to provide the required insurance certificates shall be cause for the annulment
   of the award.
G. PAYMENT INFORMATION PACKET

The selected proposer shall return a completed payment information packet within ten (10) business days after the successful proposer has received notice that the contract has been awarded. The packet is available on the City’s website: santa-ana.org/bids-rfps.

H. PRE-PROPOSAL MEETING

Should a pre-proposal be scheduled, the date, time and location is identified on the cover page of this RFP. The meeting will include discussion of the project scope and a question-and-answer session. It is highly recommended that the Proposer’s key team members attend this meeting. Significant interpretations or clarifications will be addressed via addenda to this RFP, as described above in “Section D: Addenda.”

I. CITY RIGHT TO REJECT

The City reserves the right to reject any or all proposals submitted and no representation is made hereby that any contract will be awarded pursuant to this RFP or otherwise.

The City reserves the right to accept or reject the combined or separate components of this proposal in part or in its entirety or to waive any minor inconsistency, informality or technical defect in the proposal.

The City reserves the right to reject, replace and approve any and all subcontractors. All subcontractor(s) shall be identified in the response to the RFP. Subcontractors shall be the responsibility of the successful proposer and the City shall assume no liability of such subcontractors.

J. BID PROTESTS

Proposers with concerns or rebuttal of any staff determination of non-responsiveness or non-responsibility may submit, in writing within five (5) business days, to the Project Manager, any concerns regarding the RFP process or staff determination. Such writing shall be considered by the City Manager or his designated representative, and may be acted upon within five (5) business days. If no action is taken within such time, there shall be no change to the staff determination. The exercise by Proposer of its right to submit written concerns shall be a condition precedent to seeking judicial review of any award of a contract hereunder.
III. SUBMITTAL REQUIREMENTS

A. GENERAL

I. The number of Proposal Copies and signature is specified in:
   RFP SECTION I - INTRODUCTION / PROJECT DESCRIPTION.

II. Deadline:
    Proposals are due to the City of Santa Ana at the date, time, and location specified in the
    Notice Inviting Proposals.

B. PROPOSAL CONTENTS

   The proposal format and page limitation, if any, is specified in:
   RFP SECTION I - INTRODUCTION / PROJECT DESCRIPTION.

1. STATEMENT OF QUALIFICATIONS

   a. Cover Letter – Proposals shall include a letter signed by a principal or authorized
      representative who can make legally binding commitments for the entity.

   b. Contract Agreement Statement: Proposal shall include a statement outlining your
      concurrence or concerns with any and all provisions as contained in the Agreement
      attached herein as Attachment 2 in the Appendix.

   c. Firm and Team Experience: Proposal shall include a profile of the firm’s experience.
      Include resumes of project team/sub-consultants that will be providing services which
      outline their technical and design experience. At a minimum, this should include the
      project manager/principal agent, associates in charge when project manager/principal
      agent is unavailable, key personnel, firm size, and an organization chart identifying
      only those who will perform work for the proposed project and the percentage of each
      individual’s time devoted to this project. The project manager/principal agent shall
      be the primary contact person to represent your firm and will be the person to conduct
      the presentation, if invited for an interview.

   d. Understanding of Need: Proposal shall include an outline which demonstrates the
      firm’s understanding of the work. This outline should include anticipated approach,
      tasks necessary for successful completion, deliverables, and suggestions or special
      concerns that the City should be made aware of. Identify any assumptions and/or
      exclusions used in preparation of the scope of work and associated fee estimate.

   e. Relevant Project Experience: Proposal shall include a list of projects which your firm
      or personnel have completed within the last 5 years, including significant work with
      public agencies. Project information should include project description, year
      completed, client name, along with a person to contact and their telephone number.
f. References: Proposal shall include a listing of relevant projects with references for three public entities for which Proposer has performed similar work within the past five (5) years.

2. SCOPE OF SERVICES AND SCHEDULE:
Proposal shall include a Scope of Services and Schedule which details the work phases to be completed, the tasks to be accomplished, the deliverables to be provided, and the schedule / timeline to complete the project, based upon the requested Scope of Work detailed in Attachment 1 of this RFP.

3. FEE PROPOSAL:
The fee proposal shall be submitted concurrently with the technical proposal, but in a separately sealed envelope, clearly labeled as “Fee Proposal.” This shall include the firm’s Standard Hourly Fee Schedule, a table outlining the tasks and team hourly effort for each of the major tasks, and a Project Fee Schedule as outlined in the Scope of Work.

The fee proposal will not be opened until the proposals have been evaluated by the proposal selection committee. The City will select the consultant based on qualifications, and then negotiate a contract price based on available funding.

4. CERTIFICATIONS:
The following forms shall be signed and included as part of the proposal submittal package:

- Attachment 3-1: Non-Collusion Affidavit
- Attachment 3-2: Non-Lobbying Certification
- Attachment 3-3: Non-Discrimination Certification

IV. PROPOSAL REVIEW (CONSULTANT SELECTION)

A. EVALUATION AND RATING
The criteria for evaluating the proposals are specified in:

RFP SECTION I - INTRODUCTION / PROJECT DESCRIPTION.

B. SELECTION
The committee may interview the top ranking proposers. The City will recommend award of the contract to the proposer who will provide the best value to the City. City reserves the right to begin negotiations and enter into a contract without interview or further discussions.

V. CONTRACT AWARD

A. REQUEST FOR COUNCIL ACTION
Following evaluation and rating by the proposal review committee, the Project Manager will recommend award of a contract to the proposer providing the best value to the City.

B. EXECUTION OF AGREEMENT
   The Scope of Services, Schedule, and Fees submitted in the proposal will be the basis of any negotiation of final terms which will lead to a completed agreement ready for execution based on the standard Agreement attached herein as Attachment 2 in the Appendix.

VI. IMPLEMENTATION

A. KICK-OFF MEETING
   A kick-off meeting will be held after award of contract. Consultant and its team will meet with City of Santa Ana staff to conduct introductions, discuss scope of services, and implementation process.

B. NOTICE TO PROCEED
   Following the kick-off meeting, a formal Notice to Proceed (NTP) may be issued after the agreement is fully executed, and all required bonds, insurance documents and contents of the Information Packet have been received and approved.

   For “On-Call” contracts, Consultant will be notified by individual City Project Managers on a case-by-case basis to request project/task specific proposals. Written NTPs will be then issued accordingly.

VII. PUBLIC RECORDS

All data, documents and other products used, developed, or produced during response preparation of the RFP will become property of the City. All responses to the RFP shall become property of the City. Proposer information identified as proprietary information shall be maintained confidential, to the extent allowed under the California Public Records Act.

Proposals will become public record after award of contract. Proposer information identified as proprietary information shall be maintained confidential, to the extent allowed under the California Public Records Act.
Introduction and Background:

The City desires to engage a professional consultant to perform construction engineering services for the San Lorenzo Sewage Lift Station project. The consultant shall provide three individuals to act as Project Manager (PM), Inspector, and a Contract Administrator (CA), and serve as an extension of City staff to assist in the overall delivery of this project, including pre-construction tasks, managing construction and ensuring that the work is completed in accordance with the contract documents, and project closeout and warranty phase. The consultant team will report directly to the City’s Construction Manager or his authorized representative. City staff may assist in managing construction and will oversee the work of the Project Manager, Inspector, and Contract Administrator.

The estimated construction cost for the San Lorenzo Sewage Lift Station project is $6 million. The City anticipates advertising construction bids in the early fall 2018, and starting construction by late 2018. Total construction duration for the project is anticipated to be 14 months.

Description of Work:

The required services by the Project Manager, the Inspector and the Contract Administrator may include the following:

1. The PM shall be a registered engineer in the State of California and shall represent the City Construction Manager in the field. The CM shall possess a minimum of (5) years’ experience in sewer lift station construction management. The Inspector and the Contracts Administrator should have relevant experience in sewer lift station construction management and certifications that affirm the experience.

2. Prior to the start of the project, the PM shall be responsible for conducting a bid analysis to determine who the lowest responsible bidder for the project will be. Shall obtain certificates of insurance, performance bond and “New Vendor Packet” requirements have been satisfied. This includes verifying that all subcontractors have a valid City Business License. Once determined, a staff report will need to be generated to recommend the award of a Construction Contract.
3. The PM shall be responsible for review of completeness and quantity of all required shop drawings, product data, samples and other submittals ("Submittals"). Shall transmit the Submittals to City staffing for review and approval, and shall establish and implement procedures for expediting the processing and approval of Submittals.

4. Attend pre-construction meeting and schedule and conduct weekly construction and progress meetings to discuss such matters as procedures, progress, problems and scheduling. Will prepare and promptly distribute minutes.

5. Shall be responsible for ensuring that all building permits and special permits, if required are obtained and that all applicable fees have been paid, and shall obtain approvals from authorities having jurisdiction over the Project.

6. Shall review construction schedule, including activity sequences and duration, schedule of submittals and schedule of delivery for products with long lead-time. Update the project schedule as required showing current conditions and revisions required by actual progress.

7. Shall conduct comprehensive evaluation of change order requests, provide independent estimates, render recommendations and assist in claim resolution. Shall regularly monitor and report on the status of the Project Construction Budget on a monthly basis, indicating actual costs for completed activities and work in progress, and indicating estimates for uncompleted work. Report should identify variances between actual and budgeted or estimated costs, and shall advise the City whenever it appears that the Actual Construction Cost has exceeded, or will exceed, the Project Construction Budget for the entire Project or any Project Component.

8. Monitor the contractor’s safety program. Take necessary steps to ensure the job site conditions are in compliance with OSHA regulations.

9. Maintain cost accounting records on authorized work performed under unit costs and additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

10. May develop and implement procedures for the review and processing of applications by contractor for progress and final payments. Make recommendations for certification to the City for payment.

11. Determine that the work of contractor is being performed in accordance with the contract documents. Make recommendations to the City regarding special inspection or testing of work not in compliance with the provisions of the contract documents. Subject to review by the City, reject work which does not conform to the requirements of contract documents.

12. The individuals, Project Manager, Inspector and Contract Administrator, shall
not be responsible for construction means, methods, techniques, sequences and procedures employed by the contractor in the performance of the contract, and shall not be responsible for the failure of the contractor to carry out work in accordance with the contract documents. However, any errors, omissions, or discrepancies found in the Contract Documents shall be called to the attention of the City's Construction Manager and clarified prior to construction starts.

13. Consult with the City when the contractor requests interpretations of the meaning and intent of the drawings and specifications, and assist in achieving the resolution of problems which may arise.

14. Record the progress of the project. Submit written daily and progress reports to the City. Keep daily logs containing a record of weather, contractor’s work on the site, number of workers and equipment, work accomplished, problems encountered, and other relevant data. Make the log available to the City. Prepare and send Weekly Statement of Working Days to the contractor. Monitor contractor's compliance with labor code requirements.

15. Maintain, at the job site, records of contract documents including drawings, addenda, change orders, and other modifications of plans and specifications marked to show all changes made during construction. Maintain as-built records of underground utilities, including locations and depths of trenches. At the completion of the project, deliver to the City all contract documents including as-built records.

16. Evaluate the completion of the work of the contractor and make recommendations to the City when work is ready for final inspection. Assist the City in conducting final inspections.

17. Facilitate and coordinate inspection by representatives of other agencies.

18. Schedule and coordinate special inspection and material testing with the County of Orange or other consultants.

19. Shall monitor and enforce prevailing wage forms and requirements for conformance to the prevailing wage rates on a weekly basis. Shall verify that all Trade personnel listed in the daily log are also listed in the certified payroll and shall conduct weekly employee interviews, one for each trade, and submit verification with the monthly progress payments.

20. Shall monitor and enforce the City’s Community Workforce Agreement (CWA) forms and requirements to ensure compliance. Verification should be provided with the monthly progress payments.

21. The PM shall be responsible for all project closeout items, such as: As-Built plans and related documentation, punch list completion, commissioning, warranty requests during the one-year period. Shall schedule and oversee the
warranty repair. Should include site visits as requested by the City to look at defects or imperfection to determine if it is a warranty issue.

The city reserves the right to add or reduce some of the above tasks and duties as it sees fit. The consultant, serving as staff extension, shall remain sufficiently flexible to meet the needs of the City and of the project.

City Responsibilities:

1. Provide a testing laboratory for special inspection and material testing and other quality assurance program as required by the contract documents.

2. Process progress payments upon receipt of approved payment requests from the resident engineer/inspector.

3. Furnish copies of construction documents, including plans and specifications.

4. Communicate with other consultant to review shop drawings and submittals, respond to requests for information and revise plans if needed.

5. Provide a field office for the Project Manager, the Inspector and the Contract Administrator.

6. Coordinate with the CM and serve as liaison with other City departments

Fee Proposal:

In addition to Section III.B.3 (Submittal Requirements: Fee Proposal) fee schedule shall be structured as follows:

The cost proposal must include the projected staff hours, hourly rates, unit prices and reimbursable expenses for the project, as follows:

[I] Itemized estimated breakdown for services for construction engineering services for the duration of construction. The breakdown should include pre-construction services, construction services, and warranty period services.

a. Personnel costs - Itemized to show the following:

1. Personnel by classification/responsibilities.

2. Hourly rate for each classification.

3. Estimated hours for each personnel category.

4. Subtotal cost for each category.

5. Total estimated personnel cost.
6. Include percent breakdown availability for each of the classifications

The estimated construction duration stated above is for the purpose of cost estimate only. The length of time requiring Consultant’s services will be dependent on the construction progress. For services under this category, the Consultant shall be paid according to hourly rates set forth herewith and the actual hours of service.

b. Estimated reimbursable Expenses:

1. Costs of supplies and materials (itemized).

2. Travel - Transportation and per diem or subsistence listed separately, if any.

3. Any other direct charges.

4. Total estimated reimbursable expenses.

For services under this category, the Consultant shall be paid according to the rates set forth herewith and the actual reimbursable expenses.

c. Subtotal of a and b.

[II] Contingency services for each month after the original construction contract time:

Services under this category will be provided when requested by the City, and the Consultant shall be paid according to hourly rates set forth herewith and the actual hours of service.

For the purpose of comparison, each proposer shall use the same number of hours: 500 hours for the Project Manager, the Inspector and the Contract Administrator. The subtotal of this category shall be calculated as follows:

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</tr>
<tr>
<td>Inspector</td>
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<td>500</td>
<td>$</td>
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<tr>
<td>Contract Administrator</td>
<td>$ /Hr.</td>
<td>500</td>
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Appendix
ATTACHMENT 2
STANDARD AGREEMENT
CONSULTANT AGREEMENT  
CITY OF SANTA ANA

THIS AGREEMENT is made and entered into this [###] day of [Month], 20[##] by and between [Consultant Company Name] (“Consultant”), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California, (“City”).

RECITALS

A. On [Month] [##], 20[##], the City issued Request for Proposal No. [##-###] (“RFP”), by which it sought a consultant to briefly describe the expertise sought.

B. Consultant submitted a responsive proposal that was selected by the City. Consultant represents that it is able and willing to provide the services described in the scope of work that was included in the RFP.

C. In undertaking the performance of this Agreement, Consultant represents that it is knowledgeable in its field 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 the field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES

Consultant shall perform during the term of this Agreement, the tasks and obligations including all labor, materials, tools, equipment, and incidental customary work required to fully and adequately complete the services described and set forth in Scope of Services - Exhibit A, attached hereto and incorporated by reference.

2. COMPENSATION

a. City agrees to pay, and Consultant agrees to accept as total payment for its services for City, the rates and charges identified in Compensation - Exhibit B. The total amount to be expended under this Agreement shall not exceed [One Million Two Hundred Thirty-Four Thousand Five Hundred Sixty-Seven Dollars and Eighty-Nine Cents ($1,234,567.89)] during the term of this Agreement, including and extension periods exercised under Section 3.

b. Payment by City shall be made within 45 days (forty-five) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by City.

3. TERM

This Agreement shall commence on [Month ##, 20##] -OR- [the date first written above] and terminate on [Month] [##], 20[##], unless terminated earlier in accordance with Section 16, below. The term of this Agreement may be extended for [number #-year] period upon a writing executed by the City Manager and City Attorney.
4.  **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 services being performed are part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

5.  **INDEPENDENT CONTRACTOR**

Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; however, the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

6.  **OWNERSHIP OF MATERIALS**

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City’s sole risk.

7.  **INSURANCE**

Prior to undertaking performance of work under this Agreement, Consultant shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a.  Commercial General Liability Insurance. Consultant shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of Consultant’s operations in the performance of this Agreement, including, without
limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of $1,000,000 per occurrence, with $2,000,000 in the aggregate. Such insurance shall (a) name the City, its officers, employees, agents, and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.

b. 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.

c. Worker’s Compensation Insurance. In accordance with the provisions of Section 3700 of the Labor Code, Consultant, if Consultant has any employees, is required to be insured against liability for worker’s compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, Consultant agrees to obtain and maintain any employer’s liability insurance with limits not less than $1,000,000 per accident.

d. If Consultant is or employs a licensed professional such as an architect or engineer: Professional liability (errors and omissions) insurance, with a combined single limit of not less than $1,000,000 per claim with $2,000,000 in the aggregate.

e. The following requirements apply to the insurance to be provided by Consultant pursuant to this section:

   (i) Consultant shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.

   (ii) Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved by the City.

   (iii) Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

   (iv) Consultant shall supply City with a fully executed additional insured endorsement.

f. If Consultant fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City’s election, to forthwith terminate this Agreement. Such termination shall not affect Consultant’s right to be paid for its time and materials expended prior to notification of termination. Consultant waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.
8. **INDEMNIFICATION**

Consultant agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, contractors, special counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the negligent operations of the Consultant, its subcontractors, agents, employees, or other persons acting on its behalf which relates to the services described in section 1 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. The Consultant further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding. Notwithstanding the foregoing, to the extent Consultant’s services 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.

9. **INTELLECTUAL PROPERTY INDEMNIFICATION**

Consultant shall defend and indemnify the City, its officers, agents, representatives, and employees against any and all liability, including costs, for infringement of any United States’ letters patent, trademark, or copyright infringement, including costs, contained in the work product or documents provided by Consultant to the City pursuant to this Agreement.

10. **RECORDS**

Consultant shall keep records and invoices in connection with the work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures, and disbursements charged to the City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of the City to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement during regular business hours. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

11. **CONFIDENTIALITY**

If Consultant receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Consultant agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. “Confidential Information” shall include all nonpublic information. Confidential
information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Consultant disclosed in a publicly available source; (c) is in rightful possession of the Consultant without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Consultant without reference to information disclosed by the City.

12. CONFLICT OF INTEREST CLAUSE

Consultant covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services. Conflict may be further specified in Certifications - Exhibit C, attached hereto and incorporated in this Agreement by reference.

13. DISCRIMINATION

Consultant shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations and as further specified in Certifications - Exhibit C, attached hereto and incorporated in this Agreement by reference.

14. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Consultant, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Consultant. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Consultant or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein.

15. ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City’s prior written consent shall be considered null and void. 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.
16. **TERMINATION**

This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, Consultant shall be entitled to receive and the City shall pay Consultant compensation for all services performed by Consultant prior to receipt of such notice of termination, subject to the following conditions:

a. As a condition of such payment, the Executive Director may require Consultant to deliver to the City all work product(s) completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Consultant consents to the City's use thereof for such purposes as the City deems appropriate.

b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

17. **WAIVER**

No waiver of breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure or right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

18. **JURISDICTION - VENUE**

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

19. **PROFESSIONAL LICENSES**

Consultant shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Consultant shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

20. **MISCELLANEOUS PROVISIONS**

a. Additional provisions, if any, are identified in Additional Provisions - Exhibit D, attached hereto and incorporated into this Agreement by reference.

b. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney’s fees, for any
injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

c. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

21. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To CITY:

Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702
Fax: (714) 647-6956

With courtesy copies to:

Executive Director, Public Works Agency
City of Santa Ana
20 Civic Center Plaza (M-21)
P.O. Box 1988
Santa Ana, CA 92702
Fax: (714) 647-5635

City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, CA 92702
Fax: (714) 647-6515

To CONSULTANT:

First Last
Title
Consultant Company Name
Address
City, State Zip
Fax: (###) ###-####

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

ATTEST:          CITY OF SANTA ANA

______________________________________________  ________________________________
MARIA D. HUIZAR          RAUL GODINEZ II
Clerk of the Council     City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO          CONSULTANT:
City Attorney          [Consultant Company Name]

By:             [NAME]
_________________________  [NAME]
JOHN FUNK          [NAME]
Assistant City Attorney  [Title]
Tax ID#  [##-#######]

RECOMMENDED FOR APPROVAL:

______________________________________________
EDWIN “WILLIAM” GALVEZ
Acting Executive Director
Public Works Agency
EXHIBIT A

SCOPE OF SERVICES
EXHIBIT B

COMPENSATION
Fee Proposal including hourly rates
EXHIBIT C

CERTIFICATIONS
Appendix
ATTACHMENT 3
CERTIFICATIONS
NON-COLLUSION AFFIDAVIT

(Title 23 United States Code Section 112 and Public Contract Code Section 7106)

In conformance with Title 23 United States Code Section 112 and Public Contract Code 7106 the BIDDER declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the BIDDER has not directly or indirectly induced or solicited any other BIDDER to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any BIDDER or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the BIDDER has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the BIDDER or any other BIDDER, or to fix any overhead, profit, or cost element of the bid price, or of that of any other BIDDER, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the BIDDER has not, directly or indirectly, submitted his or her bid 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 corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Non-collusion Affidavit is part of the Proposal. BIDDERS are cautioned that making a false certification may subject the certifier to criminal prosecution.

Signed

State of California
County of ________

Subscribed and sworn to (or affirmed) before me on this _____ day of ______, 20__, by ________________________, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me

Notary Public Signature Notary Public Seal
NON-LOBBYING CERTIFICATION

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in conformance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

Signed: ________________________________

Title: ________________________________

Firm: ________________________________

Date: ________________________________
CITY OF SANTA ANA
RFP NO.: 18-029
STRUCTURAL ENGINEERING SERVICES

NON-DISCRIMINATION CERTIFICATE

The undersigned contractor or corporate officer, during the performance of this contract, certifies as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without, regard to their race, color, religion, sex, or national origin. Such action 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3. The Contractor shall send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers’ representatives of the Contractor’s commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation, to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor’s non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, the contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor shall include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontract or purchase order as the administering agency may direct as means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request that the United States enter into such litigation to protect the interests of the United States.

8. Pursuant to California Labor Code Section 1735, as added by Chapter 643 Stats. 1939, and as amended, no discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical handicaps, mental condition, marital status, or sex of such persons, except as provided in Section 1420, and any contractor of public works violating this Section is subject to all the penalties imposed for a violation of the Chapter.

Signed: 

Title: 

Firm: 

Date: 