

CITY OF BUENA PARK

COUNTY OF ORANGE
STATE OF CALIFORNIA



REQUEST FOR PROPOSAL

BEACH BOULEVARD MEDIAN IMPROVEMENTS
PROJECT
PLANS, SPECIFICATIONS AND ESTIMATE

RFP Due Date:

OCTOBER 3, 2018, 5:00 PM

RFP Administrator:

Amir Modarresi, Interim Assistant
City Engineer
Public Works Department
T: (714) 562-3679
amidarresi@buenapark.com

Interested parties may obtain a copy of this RFP by emailing the RFP Administrator

ISSUED: SEPTEMBER 12, 2018

OVERVIEW

The City of Buena Park (City) is seeking an architectural consultant to review the existing and potential landscape and hardscape aesthetic elements (medians and parkways), prepare plans, specifications and estimate (PS&E) on Beach Boulevard, within the Caltrans public right of ways, from 9th Street to Rosecrans Avenue .

The Project site is located in northwest Orange County and is about 20 miles southeast of downtown Los Angeles. The Beach Boulevard Median Improvements Project would improve the median and parkways with landscape, hardscape, irrigation and lighting.

MINIMUM QUALIFICATIONS

- Valid California Professional Landscape Architect License;
- Valid City of Buena Park business license (if selected);
- Satisfactory completion of a minimum of three (3) similar landscape project plans, specifications and cost estimate (PS&E), and provide references;
- Understanding of Beach Boulevard situation, surrounding land use, and traffic circulation.
- Ability to provide deliverables consistent with the latest City-adopted formats;
- Familiarity with City of Buena Park standards, provisions, and practices.

The scope of work shall include the following, at a minimum:

1. Project Management and Coordination

a. Project Management

A kick-off meeting with the City and the Consultant to review and refine the work program and schedule, identify critical milestones, and determine appropriate paths of communication will be held prior to beginning work. Consultant shall produce a baseline schedule of work and conduct periodic meetings (phone conference and coordination meetings) with the City to discuss progress.

Deliverables

- Schedule of work - updated monthly
- Meeting minutes for all design meetings

b. Project Coordination

Consultant shall coordinate major design changes with the City, agencies, and other constituents that may provide design input, suggestions or restrictions for the project. Design may be altered through additional coordination efforts.

2. Detailed Design

The Consultant shall provide all necessary professional services: landscaping, hardscape, irrigation, engineering, lighting, surveying, and office engineering for the preparation of project plans, specifications and cost estimate (PS&E) for the project for the construction that may include but may not be limited to the following:

- I. Landscape Plan(s) - showing design and plant schedules to meet the minimum local requirements.
- II. Hardscape Plan(s) - showing design and hardscape details and schedules to meet the minimum local requirements
- III. Irrigation Plan(s) - showing design and equipment specification of a segregated irrigation system(s) designed to meet the minimum local code requirements.
- IV. Irrigation Details - develop irrigation material and related equipment connections and assembly methods for installation.
- V. Landscape Lighting Plan(s) – showing landscape light fixture type and location only. The lighting plan is developed for visual design effect only. Client's electrical engineering consultant will be required to prepare and certify electrical documents including wiring, sizing, connections, switching and foot-candle calculations required to meet local regulations and safety codes.

- a. Perform engineering site visits as necessary
- b. Perform design survey as necessary by qualified survey crew at prevailing wage. The survey shall be from property line to property line
- c. Identify existing utilities on contract drawings. Pothole existing utilities potentially affected by proposed improvements
- d. Prepare a Water Quality Management Plan (WQMP), if applicable, and incorporate all necessary temporary and permanent storm water quality control measures
- e. Prepare 65%, 95%, and 100% PS&E submittals to the City
- f. Review and incorporate all applicable comments from the City and all Agencies Having Jurisdiction (AHJ), and make necessary changes
- g. Prepare contract drawings with sufficient details for construction in accordance with Caltrans, City Standards, MUTCD, and any other applicable regulations.
- h. Provide support services to City during bidding phase including replying to Requests for Information from bidders.
- i. Provide support services to City during construction phase including responding to Requests for Information from the Contractor

Deliverables

- 65% design drawings and estimate
- 95% design drawings, specifications and estimate
- 100% contract drawings, specifications and estimate (bid set)

PROJECT MANAGEMENT - SCHEDULE

PROJECT MANAGEMENT:

Consultant shall organize, schedule, and chair all meetings. Meeting agendas shall be prepared and distributed two days prior to the meeting. Meeting minutes shall be prepared within three days after the meeting. Assume three 2-hour long face-to-face project development meetings with various City staff. In addition to these face-to-face meetings, communication between Consultant and City staff via email and telephone will be on-going throughout project.

Consultant shall submit a draft 65 percent design drawings submittal and allow two (2) weeks for City review. All comments shall be address prior to submitting the draft 95 percent design drawings submittal. Consultant shall allow an additional sixteen (16) weeks for Caltrans review of the 95 percent submittal. Comments from the 95 percent submittal shall be incorporated in the final contract drawings for bidding purposes.

SCHEDULE:

Consultant shall prepare a detailed schedule showing times of completion and milestones for each task. The City desires to meet the following milestones:

- | | |
|---|---------------|
| • Award Professional Services Agreement | October 2018 |
| • 65 Percent Design Drawings Submittal | December 2018 |
| • 95 Percent Design Drawings Submittal | January 2019 |
| • 100 Percent (Final) Contract Drawings (Bid Set) | May 2019 |

INSTRUCTIONS

REGISTRATION:

All interested Proposers shall register with the RFP Administrator by emailing Amir Modarresi at amodarresi@buenapark.com.

PROPOSAL FORMAT:

Proposals shall be submitted to the RFP Administrator. Please note that part of the evaluation criteria takes Consultant's proposal responsiveness into consideration. Proposals missing the required components listed will be evaluated accordingly.

- A. **SCOPE OF WORK:** Detailed scope of work and methodology that comprehensively defines and describes the individual tasks. The scope of work may be used as a basis for contract negotiations. Scope of work shall be based upon, but is not limited to, the information contained in this Request for Proposal (RFP).
- B. **CONSULTANT'S REPRESENTATIVE:** Identification of the primary representative and an alternate to perform the services described in the scope of work. Each shall be identified in the proposal. The consultant's representatives shall be a California Licensed Professional Architect and remain in responsible charge of all duties from contract negotiations through project completion. If the primary representative is unable to continue with the project, then the alternate representative shall become the primary representative upon the City's approval.
- C. **PROJECT TEAM:** Identification of the project team, including organizational chart and resumes of each team member. Specific responsibilities of each team member, including subconsultants, along with their anticipated total effort in the project, shall be detailed in a matrix of total hours of work for each task versus each job classification on the project.
- D. **REFERENCES:** Description of the project team's past record of performance on similar projects for which your firm has provided services. Proposal shall include client references that may be contacted by the City.
- E. **SCHEDULE:** Assurance of the firm's ability to complete all work, considering the firm's current and planned workload based on the aforementioned proposed schedule.
- F. **DESIGN BUDGET:** Provide a breakdown of the estimated hours for each individual for each project task defined in the scope of work. Billing rates for each individual as well as the total design fee proposal shall be submitted in a separate sealed envelope. Proposal shall also include a cost estimate of all reimbursable costs, indirect costs, and incidentals.

- G. SUBCONSULTANT: If subconsultants are utilized, they shall be identified in the scope of work together with the services performed. Tasks shall be identified in the breakdown of estimated hours. Subconsultants shall be directed and compensated by Consultant.

SUBMITTAL INFORMATION:

Proposals are due be 5:00 PM on October 3, 2018 to the RFP Administrator at the City of Buena Park. Postmarks will be not be accepted.

RFP Administrator: Amir Modarresi, Interim Assistant City Engineer
City of Buena Park – Public Works Department
6650 Beach Boulevard
Buena Park, CA 90622
T: (714) 562-3679
Email: amodarresi@buenapark.com

Four hard copies (3 bound, 1 unbound) and an electronic copy of the proposal shall be submitted. Please mark all submittals as “Beach Boulevard Median Improvements”.

It is the responsibility of the Proposer to ensure their Proposal is received before the stated deadline. The Public Works Department may be reached at (714) 562-3670 to verify receipt of proposals.

QUESTIONS, ANSWERS, AND ADDENDA TO RFP:

Prior to the RFP submission deadline, questions may arise regarding the specifications, procedural, and/or administrative matters. By June 14, 2018 at 3:00 PM, all questions pertaining to this RFP shall be directed to the RFP Administrator. Changes to the RFP itself shall only be made by the City via a written addenda. Addenda will be published via email. All addenda shall become part of the RFP document requiring response by the proposer where indicated.

PROPOSAL EVALUATION CRITERIA:

Proposals will be evaluated on the basis of the response to all provisions of this RFP. The City may use some or all of the following criterion in its evaluation and comparison of proposals submitted. The criteria listed are not necessarily an all-inclusive list. The order in which they appear is not intended to indicate their relative importance. The City reserves the right to modify the evaluation criterion and percentage of score as deemed appropriate prior to the commencement of evaluation.

POTENTIAL PROPOSAL EVALUATION CRITERION	
Qualifications and experience of the proposing Consulting firm and team. Quality of key individuals. Experience with preparing landscape improvement plans, specifications, and estimates. Familiarity with City standards, provisions, policies, and operations.	30%

A demonstrated understanding of the City's need, identifying opportunities and constraints. Consultant's ability to deploy the appropriate resources to promptly meet requested Work. Firm's availability to complete work within the desired timeframe. The Consultant's ability to self-perform the desired work, or form a quality subconsulting team.	40%
The Consultant's recent experience in conducting work for contracts of similar scope, complexity, and magnitude, particularly for government agencies. Client references.	30%

The City is under no obligation to award this project to the Proposer offering the lowest fee proposal. Evaluation criteria expressed in this RFP solicitation may be used in the proposal evaluation process. In evaluating proposals, the City may consider the qualifications of the proposers and whether the proposals comply with the prescribed requirements. The size and scope of the Project at hand may dictate the degree to which Qualifications-Based Selection processes are utilized.

The City reserves the right to determine whether or not a proposal meets the specifications and requirements of this RFP and reject any proposal that, in the City's sole opinion, fails to meet the detail or intent of the requirements. The City reserves the right to reject any and all proposals.

SELECTION PROCESS:

All Proposals received as specified will be evaluated by City staff in accordance with the above criteria. During the evaluation period, the City may do any or all of the following: generate a "short list" and conduct interviews with the top candidates; conduct on-site visits and/or tours of the candidates' places of business; conduct negotiations with the most qualified candidate(s). Consultants should be aware that award may be made without consultant visits, interviews, or further discussion or negotiations.

DRAFT AGREEMENT:

A standard draft template of the City's Professional Services Agreement is attached for review. Please note that general provisions and insurance requirements are not subject to change. If your firm is selected following the RFP process, a final agreement will be prepared for approval and execution. At that time, you will need to provide current insurances certificates, which meet the requirements as listed in the agreement.

TERMS AND CONDITIONS

Acceptance of Terms and Conditions

Submission of a proposal indicates acceptance by the company submitting the proposal of the terms, conditions and specifications contained in this RFP and Draft Agreement, unless clearly and specifically stated otherwise in the completed Statement of Compliance.

Precedence of Terms and Conditions

All other terms and conditions of the Draft Agreement attached within this RFP are hereby incorporated into the terms and conditions of this RFP. In the event of a conflict of terms and conditions between the RFP document and the draft agreement, the terms and conditions expressed in the Draft Agreement shall take precedence.

Public Record

Upon submission of a proposal and other materials for consideration by the City, such proposals and materials shall become the property of the City of Buena Park. Proposals may be subject to public inspection and disclosure pursuant to state and federal law after the award of a contract for this Project. Prior to the RFP deadline, proposals may be modified or withdrawn by an authorized representative of the Proposer by written notice to the RFP Administrator.

Late Proposals

Any proposal which is not received by the City's Public Works Department (6650 Beach Boulevard, Buena Park, CA 90622) prior to the deadline date and time set forth in this RFP shall not be considered. The City assumes no responsibility or liability for the transmission, delay, or delivery of a proposal by either public or private carriers.

Representations Not Binding

No verbal or written information that is obtained other than through this RFP or its addenda shall be binding on the City. No employee of the City is authorized to interpret any portion of this RFP or give information as to the requirements of the RFP in addition to that contained in or amended to this written RFP document.

Errors and Omissions

This RFP cannot identify each specific, individual task required to successfully and completely implement this Project. The City relies on the professionalism and competence of Proposers to be knowledgeable of the general areas identified in the scope of work and to include in their proposals all materials, equipment, required tasks and subtasks, personnel commitments, staff-hours, labor, direct and indirect costs, etc. Proposers shall not take advantage of any errors and/or omissions in this RFP document or in the firm's specifications submitted with their proposals. Where such errors or omissions are discovered by the City, full instructions will be given by the City in the form of an addenda.

Proposal Validity

Unless otherwise noted by the Proposer, all proposals shall be held valid for a period of 180 days.

Right of Rejection

The City reserves the right to: (1) Accept or reject any and all proposals or any part of any proposal, and to waive minor defects or technicalities in such; (2) Request clarification of any information contained in a proposal; (3) Solicit new proposals on the same project, or on a modified project, which may include portions of the original RFP as the City may deem necessary; (4) Disregard all non-conforming, non-responsive, or conditional proposals, (5) Reject the response of any proposer who does not pass the evaluation to the City's satisfaction, (6) Allow for the correction of errors and/or omissions; (7) Select the proposal that will best meet the needs of the City, and (8) Negotiate service contract and terms with the successful Proposer.

Non-Compliance

Proposers and/or proposals that do not meet the stated requirements for this Project may be considered noncompliant and may be disqualified, unless such noncompliance is waived by the City. During the evaluation process, the City reserves the right to request additional information or clarification from those submitting proposals, and to allow corrections of errors and/or omissions.

Exceptions to Proposal Requirements

Proposers may find instances where they must take exception with certain requirements or specifications of the RFP and/or Draft Agreement. All exceptions shall be clearly identified using the Statement of Compliance, and written explanations shall include the scope of the exceptions, the ramifications of the exceptions for the City, and a description of the advantage to be gained or disadvantages to be incurred by the City as a result of these exceptions.

Determination of Responsiveness

The City shall have sole authority in determining the responsiveness of any and all Proposals. For Proposals containing exceptions to specifications and/or requirements, the City shall have sole authority in determining the extent to which exceptions affect the responsiveness of any and all Proposals.

No Obligation to Award

The City of Buena Park is not obligated to enter into a Contract or Agreement on the basis of any proposal submitted in response to this RFP. City reserves the right to award multiple contracts for this Project if it is deemed most advantageous to the City.

Bidder Reimbursement Prohibition

The City will not pay for any information herein requested, nor are they liable for any costs incurred by any vendors prior to award of a contract or purchase order. The City may require the finalist proposer(s) to provide on-site presentations and demonstrations of the product(s)/service(s) proposed by the proposer(s). All costs associated with the demonstrations or follow-up interviews are the sole obligation of the proposer(s).

Gratuity Prohibition

Proposers shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the City for the purpose of influencing consideration of this proposal. Submission of a Proposal indicates Proposer certifies that they have not paid nor agreed to pay any person, other than a bona fide employee, a fee or a brokerage resulting from the award of the contract.

Contact with City Personnel or Entities

During the RFP procurement process, proposal evaluation process and proposal selection process, the RFP Administrator is to serve as the primary point of contact for any and all matters pertaining to this RFP and Project. Proposers shall not contact any City personnel or entities, other than the RFP Administrator, for matters regarding this Project until conclusion of the entire procurement process, which shall be defined as Agreement Award. Unauthorized contact may result in disqualification of Proposals.

Indemnification and Release of Liability

Proposer, at its own expense and without exception, and to the maximum extent permitted by law, shall indemnify, defend and pay all damages, costs, expenses, including attorney fees, and release in advance and hold harmless the City, its elected officials, officers, employees, and agents, with respect to any and all claims and liabilities of any nature or kind arising out of or incurred in connection with Proposer's participation in this RFP process including: (i) submittal of a proposal; (ii) selection of a different proposer; and/or (iii) Proposer's provision of services if Proposer is selected and enters an agreement with the City pursuant to this RFP.

Insurance Requirements

The selected Consultant(s) for this Project shall be required, prior to the execution of a Contract, to furnish proof of insurance. The specific insurance types and limits depend on the Project and can be found in the Draft Agreement of this RFP solicitation.

Compliance with All Applicable Laws

Proposer declares that it shall comply with all licenses, statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted, including, but not limited to, appropriate state licensing and business licensing.

Compliance with California Labor Code

The work required pursuant to this RFP may, in whole or in part, constitute "public works" as defined in Section 1720 of the California Labor Code. Therefore, unless advised otherwise in writing by the City prior to performing on any particular project, the Proposer shall comply with all applicable requirements of the California Labor Code including Sections 1720 through 1861 which require payment of prevailing wages, registering with the Department of Industrial Relations prior to execution of an agreement with the City, and maintaining certified payroll records, all as more fully set forth in Section 15.12 of the Draft Agreement.

Fee Schedule

Fee Schedule shall include any and all applicable licenses, insurance coverage, endorsements, bonding and if necessary, any wage compliance deemed necessary to perform the Work or Services as part of the Project described in this RFP. City will not be responsible for reimbursing Consultant for any charges not included in the Proposal pricing that are incurred in securing these requirements.

Subconsultant/Joint Ventures

The selected Consultant shall be the Lead Consultant performing the primary functions of the Agreement. If any portion of the Agreement is to be performed by a subconsultant, this must be clearly set forth in the Proposal submittal as to what part(s) is/are to be delegated. The City reserves the right to reject any Proposal wherein use of subconsultant(s) significantly affects the ability of the Proposer to function as the Lead Consultant on the awarded Agreement. The Lead Consultant will at

all times be responsible for the acts and errors or omissions of its subconsultants or joint participants and persons directly or indirectly employed by them. Acceptance or rejection of a Proposer's request to use subconsultants is at the sole discretion of the City.

DRAFT AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

NO. 18-XX

DATE: _____

PROJECT: _____

PARTIES TO THE AGREEMENT:

"CITY" The CITY OF BUENA PARK, a California municipal corporation

Designated Official: Name: _____
Title: _____
Telephone: _____

Mailing Address: 6650 Beach Boulevard
P.O. Box 5009
Buena Park, CA 90622-5009

THE CONSULTANT

Name of Business

Representative: Name: _____
Title: _____
Telephone: _____

Address: _____

TERM OF SERVICE:

Commencement Date: _____

Completion Date: _____

CONTRACT AMOUNT:

APPROVED BY: () City Council () City Manager () Director of Public Works

THIS AGREEMENT MUST BE FIRST EXECUTED BY THE CONSULTANT OR ITS REPRESENTATIVE AND APPROVED AS TO FORM BY THE CITY ATTORNEY BEFORE

APPROVED: _____ DATE: _____

THE AGREEMENT MAY BE EXECUTED ON BEHALF OF THE CITY OF BUENA PARK.

This Professional Services Agreement ("Agreement") is dated _____, 2017, and is between _____, a _____, (the "CONSULTANT") and the CITY OF BUENA PARK, a California municipal corporation (the "CITY"). The CONSULTANT and the CITY are sometimes referred to herein collectively as the "Parties" and singularly as "Party".

RECITALS

A. The CITY desires to enter into this Agreement with CONSULTANT as an independent contractor to perform the following services: _____ (collectively, the "Project").

B. The CONSULTANT is fully qualified to perform the tasks necessary for this Project by virtue of its experience and the training, education and expertise of its principals and employees.

The Parties therefore agree as follows:

1.0 EMPLOYMENT OF CONSULTANT. The CITY shall engage the CONSULTANT and the CONSULTANT shall perform the services required under this Agreement.

2.0 SCOPE OF SERVICES. The CONSULTANT shall perform during the term of this Agreement, those services set forth in _____ of the *CONSULTANT'S PROPOSAL* attached hereto as Exhibit "A" (collectively, the "Services"), all to CITY's reasonable satisfaction. The CONSULTANT shall commence performance of the Services upon receipt of a written notice from the Designated Official authorizing the CONSULTANT to proceed, and only to the extent of such authorization. The CITY may, from time to time, request changes in the scope of services of the CONSULTANT to be performed under this Agreement. Such changes shall be in the form of a written amendment to this Agreement signed by both Parties and shall include any additional compensation agreed to by the Parties.

3.0 TIME OF PERFORMANCE. The CONSULTANT shall commence performance of the Services immediately upon receipt of a written notice from the Designated Official and shall perform the Services in a timely, diligent manner in accordance with the Schedule of Performance included in _____ of Exhibit A.

4.0 TERM. The term of this Agreement shall commence on _____, and shall remain in full force and effect until _____, unless sooner terminated as provided in Section 10 of this Agreement.

5.0 COMPENSATION. As full and complete compensation for CONSULTANT's services provided under this Agreement, CITY shall pay CONSULTANT the total "NOT-TO-EXCEED" amount of \$_____, as set forth in the *CONSULTANT'S PROPOSAL*, attached hereto as Exhibit "A." No claims for additional compensation shall be allowed unless authorized in advance by the CITY in writing. Any additional work or expenses authorized by the CITY shall be compensated at the rates set forth in Exhibit A, or, if not specified, at a rate agreed to by the Parties. The CITY shall make payment for additional services and expenses in accordance with Section 6.0 of this Agreement.

APPROVED: _____ DATE: _____

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6.0 PAYMENT. Each month, the CONSULTANT shall submit invoices to the CITY for the services performed and any authorized reimbursable expenses incurred. The invoices shall describe in detail the services rendered during each day of the period, and shall show the days worked, personnel performing the services, number of hours worked, the hourly rates charged, milestone achievements, and, if applicable, reimbursable expenses incurred. The CONSULTANT shall remit the invoices to the address for the CITY specified on page one of this Agreement. The CITY shall review all invoices and notify the CONSULTANT in writing within ten (10) business days of any disputed amounts. The CITY shall pay all undisputed portions of the invoice within thirty (30) calendar days after receipt, up to the maximum compensation amount set forth in Section 5.0 of this Agreement. The CITY shall not withhold federal or state payroll or other taxes, or make deductions, from payments made to the CONSULTANT.

7.0 STANDARD OF SKILL. The CONSULTANT warrants that it possesses the professional expertise necessary to perform the Services. The CITY relies upon the skill of the CONSULTANT, and the CONSULTANT's staff, if any, to do and perform the Services in a skillful, competent, and professional manner, and the CONSULTANT and CONSULTANT's staff, shall perform the Services in such manner. The CONSULTANT shall, at all times, meet or exceed any and all applicable professional standards of care. The acceptance of the CONSULTANT's work by the CITY shall not operate as a release of the CONSULTANT from such standard of care and workmanship.

8.0 INDEPENDENT CONTRACTOR. The CONSULTANT is retained by the CITY only to the extent set forth in this Agreement, and the CONSULTANT's relationship to the CITY is that of an independent contractor. The CONSULTANT shall be free to dispose of all portions of the CONSULTANT's time and activities that the CONSULTANT is not obligated to devote to the CITY in such a manner, and to such persons, firms or corporations, as the CONSULTANT sees fit except as expressly provided in this Agreement. Neither the CITY nor any of its agents shall have control over the conduct of the CONSULTANT or any of the CONSULTANT's employees, except as set forth in this Agreement. The CONSULTANT shall not have the status of an employee under this Agreement, or be entitled to participate in any insurance, medical care, vacation, sick leave or other benefits provided for the CITY's officers or employees. The CONSULTANT shall have no power to incur any debt, obligation or liability on behalf of the CITY or otherwise act on behalf of the CITY as an agent. The CONSULTANT shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the CITY. The CONSULTANT shall pay all required taxes on amounts paid to the CONSULTANT under this Agreement, and indemnify and hold the CITY harmless from any and all taxes, assessments, penalties and interest asserted against the CITY by reason of the independent contractor relationship created by this Agreement. The CONSULTANT shall fully comply with applicable workers' compensation laws regarding the CONSULTANT and the CONSULTANT's employees. The CONSULTANT shall indemnify and hold the CITY harmless from any failure of the CONSULTANT to comply with applicable workers' compensation laws. The CITY may offset against the amount of any compensation due to the CONSULTANT under this Agreement any amount due to the CITY from the CONSULTANT as a result of the CONSULTANT's failure to promptly pay to the CITY any reimbursement or indemnification arising under this Section 8.0.

9.0 INDEMNIFICATION. The CONSULTANT and the CITY agree that the CITY, its employees, agents and officials should, to the fullest extent permitted by law, be fully protected from any loss, injury, damage, claim, liability, lawsuit, cost, expense, attorneys fees, litigation

APPROVED: _____ DATE: _____

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costs, defense costs, court costs or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the fullest protection possible under the law to the CITY and the Indemnitees. The CONSULTANT acknowledges that the CITY would not have entered into this Agreement in the absence of the commitment of the CONSULTANT to indemnify and protect the CITY and the Indemnitees, as set forth in this Agreement.

9.1 Indemnity for Design Professional Services. To the fullest extent permitted by law, the CONSULTANT shall, at its sole cost and expense, indemnify and hold harmless the CITY, its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those CITY agents serving as independent contractors in the role of CITY officials (collectively "Indemnitees" in this Section 9.0), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants and other professionals, and all costs associated therewith, and reimbursement of attorneys' fees and costs of defense (collectively "Claims"), whether actual, alleged or threatened, which arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of the CONSULTANT, or its officers, agents, servants, employees, subcontractors, contractors or their officers, agents, servants or employees (or any entity or individual that the CONSULTANT shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a "design professional," as the term is defined under California Civil Code § 2782.8(c)(2).

9.2 Other Indemnities. Other than in the performance of professional services, and to the fullest extent permitted by law, CONSULTANT shall, at its sole cost and expense, to protect, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens and losses of any nature whatsoever, including fees of accountants, attorneys and other professionals, and all costs associated therewith, and the payment of all consequential damages (collectively "Damages"), in law or equity, whether actual, alleged or threatened, which arise out of, pertain to, or relate to the acts or omissions of CONSULTANT, its officers, agents, servants, employees, subcontractors, materialmen, suppliers, or contractors, or their officers, agents, servants or employees (or any entity or individual that CONSULTANT shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Damages arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties. CONSULTANT shall defend the Indemnitees in any action or actions filed in connection with any Damages with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. CONSULTANT shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.

9.3 The obligations of the CONSULTANT under this or any other provision of this Agreement shall not be limited by the provisions of any workers' compensation act or similar act. The CONSULTANT expressly waives any statutory immunity under such statutes or laws as to the Indemnitees. The CONSULTANT's indemnity obligation set forth in this Section 9.0 shall not be limited by the limits of any policies of insurance required or provided by the CONSULTANT pursuant to this Agreement.

APPROVED: _____ DATE: _____

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9.4 The CONSULTANT's covenant under this Section 9.0 shall survive the expiration or termination of this Agreement.

10.0 TERMINATION OF AGREEMENT. The CITY may terminate this Agreement at any time during the term of the Agreement by giving the CONSULTANT not less than thirty (30) calendar days' prior written notice. The CONSULTANT may only terminate this Agreement for cause, and by giving the CITY prior notice in writing with a reasonable opportunity to cure any purported default. If the Agreement is terminated by the CITY, and provided CONSULTANT is not then in breach, the CONSULTANT shall be paid for services satisfactorily rendered to the last working day the Agreement is in effect, and the CONSULTANT shall have no other claim against the CITY by reason of such termination. This Agreement may be extended beyond the term only by the written agreement of both Parties prior to the expiration of the term of the Agreement.

11.0 SAFETY REQUIREMENTS. All work performed under this Agreement shall be performed in such a manner as to provide safety to the public and to meet or exceed the safety standards outlined by CAL OSHA. The CITY may issue restraint or cease and desist orders to the CONSULTANT when unsafe or harmful acts are observed or reported relative to the performance of the Services. The CONSULTANT shall maintain the work sites free of hazards to persons and property resulting from its operations. The CONSULTANT shall immediately report to the CITY any hazardous condition noted by the CONSULTANT.

12.0 MANDATORY INSURANCE. The CONSULTANT shall maintain the following insurance coverage throughout the term of this Agreement, and, upon the CITY's request, the CONSULTANT shall provide the CITY with evidence of such coverage, which may include visual inspection of all policies, copies of declarations page, endorsements signed by an authorized representative of the underwriting company, or certificates of insurance. Insurance coverage shall be provided in the forms and coverage amounts set forth in this Section 12.0.

12.1 Minimum Scope of Insurance. The CONSULTANT shall maintain policies with coverage at least as broad as:

(a) Insurance Services Office Commercial General Liability insurance (occurrence Form Number CG 00 01).

(b) Automobile Liability insurance with coverage at least as broad as Insurance Services Office Form Number CA 0001 covering "Any Auto" (Symbol 1).

(c) Workers Compensation insurance as required by the State of California, and Employer's Liability insurance.

(d) Professional Liability Insurance.

12.2 Minimum Limits of Insurance. The CONSULTANT shall maintain insurance coverage limits not less than:

(a) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence

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limit, and shall contain specific language creating a duty to defend against any suit seeking damages.

(b) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(c) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

(d) Professional Liability: \$2,000,000 per claim, with an extended reporting period of not less than two (2) years.

12.3 Deductibles and Self-insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the CITY prior to the CONSULTANT commencing any work under this Agreement. At the CITY's option, either: (i) the insurer shall reduce or eliminate the deductibles or self-insured retentions with respect to the CITY, its elected officials, officers, attorneys, agents, employees and designated volunteers; or (ii) the CONSULTANT shall provide a bond or other financial guarantee, satisfactory to the CITY, guaranteeing payment of losses and related investigations, claim administration and defense expenses.

12.4 Required Endorsements. Each insurance policy required by this Section 12.0 shall be endorsed as follows:

(a) Except with respect to any employer's liability or professional liability/errors and omission liability policies required by this Section 12.0, the CITY, its elected officials, officers, attorneys, agents, employees, independent contractors serving in the role of city officials and designated volunteers shall be named as additional insureds (collectively, "Additional Insureds" sometimes hereafter in this Section 12.0).

(b) Additional Insured Endorsements shall not:

- (1) Be limited to "Ongoing Operations";
- (2) Exclude "Contractual Operations";
- (3) Restrict coverage to the "Sole" liability of the CONSULTANT; or
- (4) Contain any other exclusion contrary to this Agreement.

(c) For any claims related to the Project, this Agreement or the services performed under this Agreement, the CONSULTANT's insurance coverage shall be primary to any other similar insurance carried by the CITY. Any insurance or self-insurance maintained by the CITY or any of the Additional Insureds, shall be in excess of the CONSULTANT's insurance and shall not be called upon to contribute with it.

(d) All insurance coverage shall contain a provision that prohibits cancellation, modification or lapse without thirty (30) calendar days' prior written notice from insurer to the CITY. The notice shall be provided via certified mail, return receipt requested. The CONSULTANT shall require its insurer to modify the applicable policy and all certificates of

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insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

(e) Each policy shall be endorsed to state that the insurer waives the right of subrogation against the CITY and its officers, employees, agents, independent contractors serving in the role of city officials and designated volunteers.

12.5 Other Insurance Provisions. The CONSULTANT and the CITY further agree as follows:

(a) All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the CITY or its operations limits the application of the insurance coverage.

(b) Requirements of specific coverage features or limits contained in this Section 12.0 are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any Party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

(c) All insurance coverage shall cover the CONSULTANT's operations pursuant to the terms of this Agreement.

(d) Any actual or alleged failure on the part of the CITY or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of the CITY or any additional insured, in this or any other regard.

(e) In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, the CITY has the right, but not the duty, to obtain the insurance it deems necessary and the CONSULTANT shall promptly reimburse to the CITY any premium paid by the CITY.

(f) The CONSULTANT shall provide immediate notice to the CITY of any claim or loss against the CONSULTANT that includes the CITY or any of the Additional Insureds as a defendant. The CITY assumes no obligation or liability from the notice. The CITY shall have the right, but not the duty, to monitor the handling of the claim or claims if they are likely to involve the CITY.

12.6 Acceptability of Insurers. All insurance coverage required by this Section 12.0 shall be written by insurers admitted to conduct business in the State of California by the Department of Insurance and rated "A:VIII" in the most recent A.M. Best's Insurance Rating Guide.

12.7 Verification of Coverage. The CONSULTANT shall furnish the CITY with evidence of the insurance required by this Section 12.0, satisfactory to the CITY. The evidence shall consist of original certificates of insurance and amendatory endorsements, including an additional insured endorsement. The endorsements shall be on forms provided by

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the CITY or on such other forms approved by the CITY in writing, and amended to conform to the CITY's requirements. The CONSULTANT shall file all certificates of insurance and fully executed endorsements with the CITY before commencing performance of the Services. Thereafter, the CONSULTANT shall provide proof that the policies of insurance required under this Agreement and expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. The CONSULTANT shall furnish such proof to the CITY prior to the expiration of the affected coverages. The CITY may require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time. The CONSULTANT shall provide complete copies of policies to the CITY upon request.

12.8 Subcontractors. The CONSULTANT shall include all subcontractors, or any other party involved in the performance of the Services, as insureds under its policies or shall require subcontractors or any other party involved in the Project by the CONSULTANT to carry the same insurance as required in this Section 12.0. The CONSULTANT shall obtain certificates evidencing the coverage and make reasonable efforts to ensure that the coverage is provided as required in this Section 12.0. The CONSULTANT shall require that no contract used by any subcontractor, or contract the CONSULTANT enters into on behalf of the CITY, shall reserve the right to charge back to the CITY the cost of insurance required by this Agreement. The CONSULTANT shall, upon request, submit to the CITY for review, all agreements with subcontractors or others with whom the CONSULTANT contracts with on behalf of the CITY, and all certificates of insurance obtained in compliance with this Section 12.8. The CITY's failure to request copies of the documents shall not impose any liability on the CITY, or its employees, or be deemed a waiver of any of the CITY's rights.

13.0 WORK PRODUCT.

13.1 Deliverables. The CONSULTANT shall, in such time and in such form as the CITY may require, furnish reports concerning the status of services required under this Agreement. The CONSULTANT shall, upon request by the CITY and upon completion or termination of this Agreement, deliver to the CITY all material furnished to the CONSULTANT by the CITY.

13.2 Ownership.

(a) All draft and final reports, documents and other written material, and any and all images, ideas, concepts, designs including website designs, source code, object code, electronic data and files or other media whatsoever, created or developed by the CONSULTANT in the performance of this Agreement (collectively, "Work Product") shall be considered to be "works made for hire" for the benefit of the CITY. All Work Product and any and all intellectual property rights arising from their creation, including all copyrights and other proprietary rights, shall be and remain the property of CITY without restriction or limitation upon their use, duplication or dissemination by the CITY upon final payment being made. The CONSULTANT shall not obtain or attempt to obtain copyright protection as to any of the Work Product.

(b) The CONSULTANT hereby assigns to the CITY all rights of ownership to the Work Product, including any and all related intellectual property and proprietary rights that are not otherwise vested in the CITY pursuant to subsection (a) above.

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(c) The CONSULTANT warrants and represents that it has secured all necessary licenses, consents or approvals necessary to the production of the Work Product, and that upon final payment, the CITY shall have full legal title to the Work Product, and full legal authority and the right to use and reproduce the Work Product for any purpose. The CONSULTANT shall defend, indemnify and hold the CITY, and its elected officials, officers, employees, servants, attorneys, designated volunteers and agents serving as independent contractors in the role of city officials, harmless from any loss, claim or liability in any way related to a claim that the CITY's use of any of the Work Product is violating federal, state or local laws, or any contractual provisions, or any rights or laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights or interests in products, ideas or inventions. Consultant shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the Work Product produced under this Agreement. In the event any the use of any of the Work Product or other deliverables hereunder by the CITY is held to constitute an infringement and the use of any of the same is enjoined, CONSULTANT, at its expense, shall: (a) secure for the CITY the right to continue using the Work Product and other deliverables by suspension of any injunction, or by procuring a license or licenses for the CITY; or (b) modify the Work Product and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Agreement. The CONSULTANT's covenants under this Section 13.2 shall survive the expiration or termination of this Agreement.

13.3 Confidentiality. Except as otherwise required by law, the CONSULTANT shall not disclose, publish or authorize others to disclose or publish, design data, drawings, specifications, reports or other information pertaining to the Project assigned to the CONSULTANT by the CITY or other information to which the CONSULTANT has had access during the term of this Agreement without the Designated Official's prior written approval. CONSULTANT's covenant under this Section 13.3 shall survive the expiration or termination of this Agreement.

13.4 Records. The CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information relating to the Services, as required by the CITY or the Designated Official. The CONSULTANT shall maintain adequate records on services provided in sufficient detail to permit an evaluation of the Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. At all times during regular business hours, the CONSULTANT shall provide access to such books and records to the Designated Official, or his or her designees, and shall give the Designated Official, or his or her designees, the right to examine and audit such books and records and to make transcripts as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement.

14.0 ASSIGNMENT AND SUBCONTRACTING. This Agreement is personal to the CONSULTANT, and the CITY has entered this Agreement in reliance on the CONSULTANT's skill, competence and experience. The CONSULTANT shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without the CITY's prior written consent, by and through the Designated Official. The CITY's consent to an assignment of rights under this Agreement shall not release the CONSULTANT from any of its obligations or alter any of its obligations to be performed under this Agreement. Any attempt at

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assignment or delegation by the CONSULTANT in violation of this Section 14.0 shall be void and of no effect and shall entitle the CITY to immediately terminate this Agreement for cause. The CONSULTANT's services under to this Agreement shall be provided by the Representative or directly under the supervision of the Representative and the CONSULTANT shall not assign another to supervise the CONSULTANT's performance of this Agreement without the CITY's prior written approval, by and through the Designated Official. As used in this Section 14.0, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs. The CONSULTANT shall not subcontract any performance required under this Agreement without the CITY's prior written consent.

15.0 MISCELLANEOUS TERMS.

15.1 Nuisance. The CONSULTANT shall not maintain, commit or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

15.2 Permits and Licenses. The CONSULTANT, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

15.3 Conflicts of Interest. The CONSULTANT shall comply with all applicable federal, state and local conflict of interest laws, including the Political Reform Act (Cal. Gov. Code, § 81000 *et seq.*) and California Government Code Section 1090. During the term of this Agreement, the CONSULTANT may perform similar services for other clients, but the CONSULTANT and its officers, employees, associates and subconsultants shall not, without the City Manager's prior written approval, perform work for another person or entity for whom the CONSULTANT is not currently performing work that would require the CONSULTANT, or one of its officers, employees, associates or subconsultants, to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

15.4 Waiver. No delay or omission to exercise any right, power or remedy accruing to the CITY under this Agreement shall impair any right, power or remedy of the CITY, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver by the CITY of any breach, any failure of a condition, or any right or remedy under this Agreement shall be: (1) effective unless it is in writing and signed by the Party making the waiver; (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy; or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

15.5 Accomplishment of Project. The CONSULTANT shall commence, carry on and complete its assignments with all practicable dispatch, in a sound, economical, and efficient manner in accordance with all applicable laws and generally accepted industry and applicable professional standards.

15.6 Captions for Convenience Only. The titles of the sections, subsections and paragraphs set forth in this Agreement are inserted for convenience and reference only

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and shall be disregarded in construing or interpreting any of the provisions of this Agreement and the rights or obligations of the Parties to this Agreement.

15.7 Word Usage. Unless the context clearly requires otherwise, (a) the word "shall" is mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

15.8 Notices. Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be given in writing to the person at the addresses specified on first page of this Agreement and deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during the CONSULTANT's and the CITY's regular business hours, or (c) three business days after deposit in the United States mail, by first class mail, postage prepaid. Either Party may change the specified person or address at which it is to receive notices by advising the other Party in writing.

15.9 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

15.10 When Rights and Remedies Not Waived. In no event shall the making by the CITY of any payment to the CONSULTANT constitute or be construed as a waiver by the CITY of any breach of covenant, or any default that may then exist, on the part of the CONSULTANT, and the making of any such payment by the CITY while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the CITY with regard to such breach or default.

15.11 Cost of Litigation. If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement (whether in contract, tort or both), the prevailing Party shall be entitled to receive from the losing Party all attorneys' fees, costs and expenses in such amount as the courts may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith.

15.12 Compliance with Laws. In the performance of the work required by this Agreement, the CONSULTANT shall abide by and conform with and to any and all applicable laws of the United States and the State of California, and with the CITY's Municipal Code, ordinances, regulations and policies. Further, this Agreement may call for services that, in whole or in part, constitute "public works" as defined in the California Labor Code. Therefore, as to those services that are "public works," the CONSULTANT shall comply in all respects with the all applicable provisions of the California Labor Code, including those set forth in Exhibit B, attached hereto.

15.13 Severability. If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected by such holding.

15.14 Governing Law. The terms of this Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and

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construed in accordance with the laws of the State of California, without regard for its conflicts of laws principles, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in superior or federal court with geographic jurisdiction over the City of Buena Park.

15.15 Integrated Agreement and Modification of Agreement. This Agreement, and all exhibits referred to in this Agreement, constitutes the final, complete and exclusive statement of the terms of the agreement between the CITY and the CONSULTANT with respect to the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous oral or written negotiations, representations or agreements of the Parties. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may be modified only by a writing signed by both Parties.

15.16 Authority to Bind Parties. Each of the undersigned hereby represents that he or she has the authority to execute this Agreement on behalf of his or her contracting Party.

15.17 Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement by this reference. In the event of any inconsistency between the express provisions of this Agreement and any provision of an exhibit, the provisions of this Agreement, then the CITY's request for proposals, if any, shall prevail.

15.18 Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance.

APPROVED: _____ DATE: _____

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In recognition of the obligations stated in this Agreement, the Parties have executed this Agreement on the date indicated above.

CITY OF BUENA PARK

CONSULTANT*

a California municipal corporation

a [Legal Form of Entity]

Signature

Signature

Name: James B. Vanderpool

Name: _____

Title: City Manager

Title: _____

Signature

Name: _____

Title: _____

* **Please note, two signatures required for corporations pursuant to California Corporations Code Section 313, unless corporate documents provided to the City authorize only one person to sign this Agreement on behalf of the corporation.**

ATTEST:
(SEAL)

Adria M. Jimenez, MMC, City Clerk

APPROVED AS TO FORM:

Patrick K. Bobko, City Attorney

APPROVED: _____

DATE: _____

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EXHIBIT A
CONSULTANT'S PROPOSAL
(Attached)

DRAFT

APPROVED: _____

DATE:

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EXHIBIT "B"

CALIFORNIA LABOR CODE COMPLIANCE

[Labor Code §§ 1720 *et seq.*, 1813, 1860, 1861, 3700]

If this Agreement calls for services that, in whole or in part, constitute "public works" as defined in the California Labor Code, then:

1. This Agreement is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works and the awarding public agency ("City") and Consultant agree to be bound by all the provisions thereof as though set forth in full herein.
2. Consultant shall be registered with the Department of Industrial Relations ("DIR") in accordance with California Labor Code Section 1725.5 and has provided proof of registration to CITY prior to the Effective Date of this Agreement.
3. Consultant agrees to comply with the provisions of California Labor Code Sections 1771, 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The applicable prevailing wage determination(s) may be obtained at (<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>), are on file with City, and are available to any interested party upon request. Consultant shall, as a penalty to the City, forfeit not more than two-hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under this Agreement by Consultant or by any subcontractor.
4. Pursuant to California Labor Code Section 1771.4, Consultant's services are subject to compliance monitoring and enforcement by the Department of Industrial Relations. Consultant shall post job site notices as prescribed by DIR regulations and furnish the records specified in California Labor Code Section 1776 directly to the Labor Commissioner in the manner prescribed by California Labor Code Section 1771.4(a)(3) and (c)(2).
5. Consultant shall comply with the provisions of California Labor Code Section 1776 which, among other things, require Consultant and each subcontractor to (1) keep accurate payroll records, (2) certify and make such payroll records available for inspection as provided by Section 1776, and (3) inform the City of the location of the records. The Consultant is responsible for compliance with Section 1776 by itself and all of its subcontractors.
6. Consultant shall comply with the provisions of California Labor Code Section 1777.5 concerning the employment of apprentices on public works projects, and further agrees that Consultant is responsible for compliance with Section 1777.5 by itself and all of its subcontractors.
7. Consultant shall comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. The Consultant shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the execution of this Agreement by the Consultant or by any subcontractor for each

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calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code.

8. California Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Consultant hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

Date _____ Signature _____

APPROVED: _____ DATE: _____

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