



City of Downey

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CITY MANAGER
GILBERT A. LIVAS

CITY CLERK
ADRIA M. JIMENEZ, MMC

CITY ATTORNEY
YVETTE M. ABICH GARCIA

May 17, 2016

To Whom It May Concern:

The City of Downey is inviting newspapers to submit a Request for Proposal (RFP) for the publication of legal notices. Included in this packet is the City's RFP describing the City's needs and a sample contract for this service.

Completed proposals must be returned by **Friday, June 17, 2016 at 11:00 a.m.** and must follow the instructions specified in the RFP. Proposals will not be accepted after this deadline.

Once all proposals are received, an analysis and scoring will be conducted by a panel. Newspapers may be invited for an interview to answer questions regarding their submittal. A recommendation will be submitted to the City Council for approval.

If you should have any questions regarding the proposal, please feel free to contact me at (562) 904-7280.

Sincerely,

Adria M. Jimenez, MMC
City Clerk

Enclosures

Future Unlimited



City of Downey

REQUEST FOR PROPOSALS

PUBLICATION OF LEGAL NOTICES

Sealed proposals must be submitted by:

Friday, June 17, 2016
11:00 a.m.
Downey City Hall
City Clerk's Office – 3rd Floor
11111 Brookshire Avenue
Downey, CA 90241

For information, please contact
Adria M. Jimenez, MMC, City Clerk
(562) 904-7280
ajimenez@downeyca.org

INTRODUCTION

The City of Downey ("City") is soliciting proposals for the provision of the publication of legal notices pursuant to Downey Charter Section 517 and Government Code Sections 6000-6008, for the City for a 12-month period. On an annual basis, a Request for Proposal (RFP) is distributed to all newspapers ("Newspaper") of general circulation in the City. Upon selection of the most qualified, cost effective, and responsive newspaper, the City will enter into a contract for services. Proposals will only be accepted from Newspapers that submit proof of adjudication as a newspaper of general circulation.

Terms Defined:

The term "legal notices" refers to legal notices the law requires to be published and identified as legal notices on the form sent by City to Newspaper, requesting publication.

A. Services Required

1. Timeliness of publication of legal notices is of the utmost importance. The City must meet certain legal requirements to publish meeting or hearing notices, or notification for request for proposals/bids. It is imperative the newspaper meet the City's deadlines.
2. Newspaper should use the least amount of space necessary to present a readable publication. The City, at its discretion, may require modification of the type size and/or style. The newspaper may modify the type size and/or style with permission of the City employee requesting publication.
3. Newspapers shall provide the City with two (2) original proofs of publication of each published item within five calendar days of publication. Proof of publication shall be in the form of an affidavit in accordance with Code of Civil Procedure Section 2010, and acceptable to the City Clerk ("Clerk").
4. Legal notices are required to be published in the legal notice section of the Newspaper. Publishing of notices on a supplemental sheet to the Newspaper is not acceptable. Newspaper shall publish legal notices using a standard 7-point type for the body and 8-point type for the heading in the Spartan Classified Style. Newspaper shall print in the required point type and style, or a similar style approved by the Clerk.
5. Newspaper must comply with applicable Government Code requirements, including adjudication as a newspaper of general circulation within the City of Downey, per the City of Downey Charter and Downey Municipal Code.
6. Contract prices for publication shall in no case exceed the customary rates charged by the Newspaper for the publication of legal notices of a private character.
7. Newspaper must obtain all City required business licenses and insurance.
8. In the event the newspaper that is awarded the advertising contract for the City is unable to publish on the date required by the City, the City may choose an alternate newspaper in order to meet publication deadline/requirements.

9. The contractor must submit a draft of the submitted publications to be proofread by the respective City department. If errors are found after the sample proof has been reviewed, a revised corrected proof shall be submitted immediately to said department for approval prior to the publication. All printing done hereunder that does not strictly comply with the copy furnished shall be corrected and republished at the expense of the Newspaper.
10. Invoicing and Payment: The Newspaper must be able to provide seven separate accounts and invoicing for the City consisting of: Administration, City Clerk, Community Development/Planning, Parks & Recreation, Public Works, Human Resources, and Police. Invoices shall include the name of the City Department and/or City employee requesting the advertising.
11. The contractor shall have the capability to receive typeset matter and proofs via email. The contractor shall provide the City an email address to be used for transmission of typeset matter.

PROPOSAL SUBMISSIONS

The proposal and related materials must be submitted by Friday, June 17, 2016, no later than 11:00 a.m. to:

City of Downey – City Clerk’s Office
Adria M. Jimenez, MMC
City Clerk
11111 Brookshire Avenue
Downey, CA 90241

Proposals which fail to meet the deadline and all proposal requirements will be considered non-responsive and ineligible for evaluation. The City reserves the right to evaluate the proposal based on several qualifications including circulation of the paper, days published, experience, samples, lead time, and cost. The City reserves the right to reject any and all proposals and waive any minor irregularities.

Proposals shall be submitted in sealed envelopes marked on the outside,

**"SEALED PROPOSAL FOR PUBLICATION OF LEGAL NOTICES.
DO NOT OPEN WITH REGULAR MAIL."**

Proposals must be submitted on the forms furnished by the City and contain one (1) original and three (3) photocopies.

SECTION 1. FORMAT OF PROPOSAL.

Submit the following items with the proposal:

- a. Letter of Interest and any attachments requested therein.
- b. General Requirements.
- c. Legal samples of Exhibits A & B of this RFP.
- d. A sample proof of publication for Exhibits A & B of this RFP.
- e. A completed and executed Signature Form and Affidavit.
- f. Proof the Newspaper is a newspaper of general circulation within the City.
- g. A reviewed and initialed copy of the insurance requirements.
- h. A completed and executed agreement for legal notices and legal advertisements.
- i. References from at least three current clients for which Newspaper has provided similar services (include name, address and telephone number of contact person.)

SECTION 2. EVALUATION PROCESS

An evaluation panel will evaluate each proposal in accordance with the evaluation criteria. Newspaper may be invited for an interview. Newspaper representative should be authorized to make verbal commitments for services to be provided to City and which will be incorporated into the agreement.

2.1 Evaluation Criteria

The below listed criteria will be utilized to evaluate the proposals:

- Compliance with the requirements of the RFP and clarity of proposals (Max. 25 points)
- Overall understanding of the scope of work (Max 10 points)
- Circulation, readership, and number of bona fide subscribers (Max 25 points)
- Past performance and reference check (Max 10 points)
- Internet publication of advertisements (Max 5 points)
- Proposed fee structure (Max 25 points)

SECTION 3. QUESTIONS AND INQUIRES

Questions regarding this RFP should be directed to:

Adria Jimenez, MMC
City Clerk
City of Downey
11111 Brookshire Avenue
Downey, CA 90241

All questions, clarifications and inquiries should be submitted in writing no later than seven (7) days prior to the due date to submit proposals.

SECTION 4. PROPOSAL SELECTION

Once proposals have been reviewed and evaluated, the evaluation panel will rank the proposals and make a recommendation to the City Council for award of the contract.

SECTION 5. CONFLICT OF INTEREST

The selection procedure used by the City specifically prohibits practices which might result in unlawful activity, including, but not limited to, rebates, kickbacks, or other unlawful consideration. No employee may participate who has a relationship with a person or newspaper submitting proposals, which would subject such employee to the prohibition of Government Code Section 8700.

SECTION 6. INSURANCE

Proof of insurance shall be provided with submitted proposals with the following limits:

- General Liability \$1,000,000
- Automobile Liability \$1,000,000
- Workers' Compensation \$1,000,000

SECTION 7. BUSINESS LICENSE

Newspaper shall obtain and maintain a City business license during the term of this agreement.

SECTION 8. TERM OF AGREEMENT

The agreement will be awarded on a fiscal year basis (July 1, 2016 through June 30, 2017). Prices must be firm for the entire contract period.

SECTION 9. RIGHT TO PUBLISH IN OTHER NEWSPAPERS

The City maintains the right to publish in other newspapers as well as in the newspaper to which the agreement is awarded.

SECTION 10. REJECTION OF PROPOSALS

If the City determines that none of the proposals received offers services at a reasonable price, or for any other reason, or for no reason, all proposals may be rejected.

SECTION 11. SAMPLES

Proposals must include a sample of Exhibit A and Exhibit B as it would appear in the legal notice format, and a sample of the certificate of publication for the notice.

EXHIBIT A

FEES AND CHARGES FISCAL YEAR 2014-15

NOTICE IS HEREBY GIVEN that the City Council for the City of Downey has scheduled a Public Hearing to consider the adoption of a resolution adopting City Fees and Charges, at the Regular Council Meeting of June 23, 2015, at 6:30 p.m., in the Downey City Council Chamber, 11111 Brookshire Avenue, Downey, CA.

This Public Hearing and Notice is intended to comply with the provisions of Government Code Section 66018. The Resolution will set forth the City fees and charges for various services.

Complete details on the Resolution can be obtained at City Hall Monday through Friday between the hours of 7:30 a.m. and 5:30 p.m. Persons who have any questions should contact Anil Gandhi, Director of Finance, at (562) 904-7265.

Adria M. Jimenez, MMC
City Clerk
June 11, 2015

NOTICE CALLING FOR BIDS

**CAPITAL IMPROVEMENT PROJECT NO. 14-20
Firestone Boulevard Improvement Project**

NOTICE IS HEREBY GIVEN that sealed bids will be received at the office of the City Clerk of the City of Downey until 11:00 AM on Thursday, June 2, 2016 which hour the proposed bids will be publicly opened and read in the City Hall at 11111 Brookshire Ave, Downey, California for **Capital Improvement Project No. 14-20 Firestone Boulevard Improvement Project**.

The work to be performed under this Contract generally consists of the construction of street improvements on Firestone Boulevard from Brookshire Avenue to Lakewood Boulevard, as shown on the contract plans. The work to be undertaken shall consist of: cold-milling existing asphalt concrete pavement surface; removal and construction of deep lifts in areas of pavement subgrade failure, and construction of conventional and rubberized hot mix asphalt pavement; adjustment of manholes and water valves to grade; removal and disposal of existing landscape materials such as shrubs and grass; removal and disposal of existing irrigation system; installation of irrigation system, including irrigation controllers, piping, valves, spray heads, drip line and bubblers; planting of landscape materials; removal and reconstruction of curbs, gutters, sidewalks, driveways, curb ramps; installation of traffic signing, striping and pavement markings; traffic control and all appurtenant work thereto necessary for the proper construction of the contemplated improvements, in accordance with Plans and Specifications entitled as *Capital Improvement Project No. 14-20*.

Plans and Specifications for this project are on file in the office of the City Cashier at 11111 Brookshire Ave., Downey, California, where they may be examined and copies obtained at a cost of **\$50.00 per set**. The cost of said Plans and Specifications is **non-refundable** and purchased Plans and Specifications need not be returned. Plans and Specifications may be mailed for an additional charge of \$20 via On-Trac Overnight courier.

The current prevailing wages for Federal projects, as determined by the Secretary of Labor, are included in the specifications of this project. The local prevailing wages, as determined by the State of California, Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1 are on file in the office of the City Clerk of the City of Downey. The Contractor for this work shall not pay less than the higher of these prevailing wage determinations, which, in general, is the determination by the State of California. The Contractor for this work shall perform all the basic regulations, requirements and procedures pursuant to the Davis-Bacon Act and related prevailing wage statutes, including Title I of the State and Local Fiscal Assistance Act of 1972.

It is the policy of the City of Downey that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, shall have a maximum opportunity to participate in the performance of this contract. The City of Downey hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement; DBEs will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for an award. Goals for minority business enterprise participation have been established for the project. In accordance

with 49 CFR Part 26, **the City of Downey has calculated a DBE participation goal for this project of eleven (14) percent.**

BIDS MUST BE MADE ON THE PROPOSAL FORM INCLUDED IN THE PLANS AND SPECIFICATIONS FOR CAPITAL IMPROVEMENT PROJECT NO. 14-20. Each proposal or bid must be accompanied by a certified cashier's check, bidder's bond, or a cash deposit, payable to the City of Downey, in the sum of not less than ten percent (10%) of the total amount base bid as a guarantee that the bidder, should he be successful, will, within ten (10) days after the contract has been mailed or delivered to him or his authorized agent, execute the contract and furnish the necessary bonds. Should a bidder's bond be submitted with any proposal or bid, the bid bond form provided by the City shall be used, and use of substitute forms may disqualify the bid.

The successful Bidder will be required to submit Corporate surety bonds with the Contract. A bond in the sum of one hundred percent (100%) of the Contract price shall be furnished, guaranteeing the faithful performance of said Contract, and a bond in the sum of one hundred percent (100%) of the Contract price shall be furnished for the protection of all laborers and materialmen.

All projects involving Federal funds require the successful bidder to possess a valid State of California Contractor's License at the time of Contract Award, in accordance with Section 20103.5 of the Public Contract Code. Pursuant to Section 3300 of the Public Contract Code, the City has determined that the Contractor to whom the subject contract is awarded shall possess a valid **State of California Contractor's License in the Classification of A, "General Engineering Contractor."**

In accordance with California Labor Code Section 1771.1, no Contractor or Subcontractor shall be qualified to (a) bid on or be listed in a bid proposal on or after March 1, 2015, or (b) engage in the performance of this Work after April 1, 2015, unless registered and qualified to perform the Work pursuant to Labor Code Section 1725.5.

Contractor's performance of the Work described in this Notice Inviting Bids is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

Each Contractor submitting a proposal or bid for his work shall complete and submit with the proposal all of the forms included therein, including the Bidder's Qualifications Statement, Designation of Subcontractors, the Non-Collusion Affidavit, the Pre-Bid Site Inspection Certification and the Signature Page. Failure to include any of these documents with the proposal may disqualify the proposal.

The City of Downey reserves the right, after opening bids, to reject any or all bids, to waive any informality in any bid received, and to be the sole judge of the merits of the respective bids received. The award of the Contract, if it is awarded, will be to the lowest responsible Bidder whose bid complies with all the requirements prescribed.

Pursuant to California Public Contract Code § 22300, the Contractor at his sole cost and expense, may substitute authorized securities for any monies withheld by the City to ensure performance under the Contract.

All requests for information (RFI) shall be in written form and shall be directed to:

Mr. Desi Gutierrez, Principal Engineer

E-Mail: dgutier@downeyca.org

Tel: (562) 904-7110

Fax: (562) 904-7296

No inquiries will be accepted later than five (5) business days prior to the bid opening date as this would not allow time to respond to all plan holders. Phone inquiries will not be accepted.

NO LATE BIDS WILL BE ACCEPTED.

CITY OF DOWNEY, CALIFORNIA

Adria M. Jimenez, MMC

City Clerk

PROPOSAL FOR PUBLICATION OF LEGAL NOTICES

1. Does Newspaper comply with all requirements of the Government Code regarding legal publications? Yes _____ No _____

2. Is Newspaper currently adjudicated as a newspaper of general circulation? Yes _____ No _____

3. Does Newspaper distribute throughout Los Angeles County? Yes _____ No _____

4. Does newspaper meet insurance requirements (INS-B)? Yes _____ No _____

5. Number of years in operation in Downey: _____

6. Estimated number of Downey readers: _____

7. What is the estimated number of readers per newspaper/publication? _____

(Please provide copy of Newspaper's latest verification/certification of this number from an independent source, including contact name and telephone number)

8. Number of paid subscriptions in Downey: _____

9. Number of individual residential delivery addresses in Downey: _____

10. Number of individual commercial delivery addresses in Downey: _____

11. What is the total circulation of your Newspaper: _____

12. Percent of Newspaper devoted to News: _____

13. Frequency of publication: _____

14. Cost of Newspaper at a news rack (if any): _____

15. Days of the week published: _____

16. Number of days notification required before day of publication: _____

By what time of the day? _____

Please list all required deadlines: _____

17. What are the Newspaper's observed Holidays: _____

18. Does Newspaper automatically publish legal notices on its website? Yes _____ No _____

If not, what is additional cost for this service? _____

19. How many hits/visits per day and week does your website receive? _____

20. Must an individual pay a fee or subscribe to view notices? Yes _____ No _____

If yes, what is the fee? _____

21. Time period legal notices may be viewed on website? _____

For the below, please indicate pricing amount in column inch.

1. Cost per column inch for *legal notice without contract* (customary rate):

City-wide rate _____

County-wide rate _____

2. Cost per column inch for *legal notice with contract*:

City-wide rate _____

County-wide rate _____

3. Cost per column inch for second publication of *legal notice without contract*:

City-wide rate _____

County-wide rate _____

4. Cost per column inch for second publication of *legal notice with contract*:

City-wide rate _____

County-wide rate _____

5. Indicate any legal publication cost variance for days of the week:

6. Indicate any legal publication cost variance for sections of the paper:

7. Describe Newspaper's ability to publish in a timely manner and to publish late items:
(Please use a separate sheet of paper if necessary):

8. List cost, if any, to publish late items: _____

9. Does Newspaper offer a price discount or other compensation if Newspaper misses a deadline?

Yes _____ No _____ Please explain: _____

SIGNATURE FORM AND AFFIDAVIT

Newspaper/Contact Name

Address

Phone Number

Fax Number

E-Mail Address

City of Downey Business License Number

Federal I.D Number

The undersigned, submitting this proposal to the City Council of the City of Downey, declares:

1. That s/he has read this proposal, agrees to the conditions thereof, has carefully examined and understands the scope of the requirements and specifications contained in the Request for Proposal, and does hereby propose to furnish all required labor and perform all work in accordance with the requirements and specifications of the Request for Proposal and the Agreement for Publication for which the proposal is submitted.
2. The undersigned declares under penalty of perjury that the named newspaper is adjudicated as a newspaper of general circulation in the City of Downey by the State of California (as defined by Government Code Section 6000, et. seq.).
3. The undersigned declares under penalty of perjury that the above proposed rates do not exceed the customary rates charged by the newspaper for the publication of legal notices of private character.
4. The undersigned understands and agrees that the City of Downey will not be responsible for any error or omission on the part of the undersigned in making this proposal.
5. The undersigned certifies (or declares) under penalty of perjury that this proposal is genuine and not sham or collusive, or made in the interest or on behalf of any person, firm, or corporation not herein named; that the contractor has not directly or indirectly induced or solicited any other contractor to put up a sham proposal, or any other person, firm or corporation to refrain from bidding, and that the contractor has not in any manner sought by collusion to secure to himself/herself any advantage over other contractors.
6. In the performance of any contract pursuant to these specifications, the undersigned understands and agrees that it shall not discriminate against any employee or application for employment because of age, sex, marital status, physical handicap, race, color, religion, ancestry, or national origin. The contractor will take affirmative action to ensure the applicants are employed and that employees are treated during employment without regard to their age, sex, marital status, physical handicap, race, color, religion, ancestry, 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. Contractor shall post in a conspicuous place, available to employees

and applicants for employment, notices setting for the provisions of this Fair Employment Practices paragraph.

7. I am authorized by the _____ to submit this proposal. (Name of Newspaper)

I certify or declare under penalty of perjury that the statements made in this proposal, including any addenda and attachments, are true and correct and that this document was executed on _____, 2016, at _____, California.

Signature: _____

(Title/Capacity at Newspaper)

**CITY OF DOWNEY
PROFESSIONAL SERVICES AGREEMENT
WITH _____
FOR PUBLICATION OF LEGAL NOTICES**

1. PARTIES AND DATE.

This Agreement is made and entered into this _____ day of _____, 2015 by and between the City of Downey, a California municipal corporation and charter city with its principal place of business at 11111 Brookshire Avenue, Downey California 90241 ("City") and _____, _____, a California [corporation LLC], with its principal place of business at _____, _____, _____ ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of publishing legal notices required by City on the terms and conditions set forth in this Agreement. Consultant represents that it has demonstrated competence and experience in providing publication services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such services for the publication of legal notices ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately publicize legal notices necessary for the ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from September 1, 2015 to June 30, 2015, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The term of this Agreement may be extended by a written amendment to this Agreement signed by the City Manager and Consultant.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services. The parties acknowledge that the Schedule of Services may be amended by mutual agreement due to changes in circumstances, including changes in the performance schedules of other third parties performing work for the City on the Project, which affect the timing of Consultant's performance of the Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City.

3.2.5 City's Representative. The City hereby designates Adria M. Jimenez, City Clerk, or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates [INSERT NAME OF CONSULTANT'S REPRESENTATIVE], or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods,

techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner consistent with the standard of care set forth herein, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in force at the time the Services are performed by Consultant and in any manner affecting the performance of the Project or the Services, including all applicable Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations. Consultant's violation of such laws, rules and regulations shall also constitute a material breach of this Agreement.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant

shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability:* \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* \$2,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$2,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to its profession. Such insurance shall be in an amount not less than \$2,000,000 per claim, and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City.

3.2.10.8 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed twenty-five thousand dollars (\$25,000) without written approval of the City. Extra Work may be authorized, as described below, and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Reserved.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time either for cause or for the City's convenience and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Consultant may only terminate this Agreement for cause upon giving the City not less than seven (7) calendar days' written notice.

Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. The City shall within fifteen (15) calendar days following termination pay the Consultant for all services

adequately rendered and all reimbursable costs incurred by Consultant up to the date of termination, in accordance with the payment provisions of this Agreement.

The following reasons shall constitute "cause" for which either party may terminate this Agreement as provided herein:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Suspension of the Project or the Consultant's Services by the City for more than ninety (90) calendar days, consecutive or in the aggregate, without good cause;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such Documents and Data and other information within fifteen (15) days of the City's request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

_____, _____
Phone: (____) ____ - ____
Fax: (____) ____ - ____
Attn: _____, _____

City:

City of Downey
11111 Brookshire Avenue
Downey, California 90241
Phone: (562) 904-7286
Fax: (562) 923-6388
Attn: Adria M. Jimenez, City Clerk

With a courtesy copy to:

City of Downey
City Attorney's Office
11111 Brookshire Avenue
Downey, California 90241

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. 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 prepared by design professionals other than Consultant or 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.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. In the event of any litigation, whether in a court of law, administrative hearing, arbitration, or otherwise, arising from or related to this Agreement of the services provided under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation.

3.5.6 Indemnification. Consultant shall defend (with counsel acceptable to City), indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, errors, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, and agents or volunteers. Consultant shall not be obligated to defend, indemnify or hold the City harmless in any manner whatsoever for any claims or liability arising solely out of the City's own negligent acts, errors or omissions or willful misconduct.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be the courts in Los Angeles County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Neither party shall assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the other party. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any City Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

3.5.23 Effect of Conflict.

In the event of any conflict, inconsistency, or incongruity between any provision of this Agreement, any of its exhibits, attachments, purchase order, or notice to proceed, the provisions of this Agreement will govern and control.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

CITY OF DOWNEY,
a California Municipal Corporation
and Charter City

_____,
a _____

By: _____
Alex Saab
Mayor

By: _____
[INSERT NAME]

Its: _____
[INSERT TITLE]

ATTEST:

ATTEST:

Adria M. Jimenez, MMC
City Clerk

Secretary

Approved as to Form:

Approved as to Form:

Yvette M. Abich Garcia
City Attorney

Legal Counsel