



City of Hesperia

RFP 2022-23-005
Project Management/Construction
Management Services for CIP Projects
Release Date: December 15, 2022

Development Services Department



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I. INTRODUCTION

The City of Hesperia’s Development Services Department (City) is seeking qualified professional firms (Consultant) to submit a proposal to provide professional project management/construction management services for Capital Improvement Program (CIP) Projects for the City. Proposals shall conform to the provisions set forth herein.

The City intends to award a contract for a period of three (3) years to a firm that will meet the City’s qualification criteria. Upon satisfactory performance by the Consultant and mutual agreement of both parties, the City may renew the contract for three (3) additional one-year periods. The successful firm will be required to enter into a contract with the City for the services requested in this RFP within a reasonable time after award. The Consultant submitting a proposal must be prepared to use the City’s standard contract form rather than its own contract form, a Sample Professional Service Agreement is attached as “Attachment B”.

A. City Contact

The City contact (Contact) for this Request for Proposal (RFP) is the sole point of contact for this procurement. All communication shall be in writing and submitted to the Contact as designated below. Consultants are not permitted to communicate with other City staff or officials about this RFP, except during pre-proposal meetings and/or interviews, unless otherwise directed by the Contact. Direct written questions and/or correspondence related to this RFP to:

Cristina Hall
E-mail: purchasing@cityofhesperia.us

Consultants interested in participating in this RFP should immediately provide the Contact with a telephone number, and an e-mail address for dissemination of addenda and/or supplemental information, as applicable. Failure to provide said contact information may result in late notifications and/or incomplete proposals. (See Section V for proposal submittal address).

B. Deadline for Submitting Questions

Any questions regarding the RFP must be submitted to the Contact referenced above no later than January 5, 2023 at 1:00 PM. Reference the RFP Number and Title when making inquiries.

C. RFP Schedule

1) RFP Deadlines

Request for Proposals Released.....	December 15, 2022
Deadline for Submitting Questions.....	January 5, 2023 at 1:00 PM
Response to Questions.....	January 17, 2023
Deadline for Submitting Proposals.....	January 31, 2023 at 1:00 PM
Evaluation of Proposals Completed	February 14, 2023



- 2) RFP Tentative Scheduling
 - Interviews with Top Ranked FirmsFebruary 21, 2023
 - Professional Service Agreement (PSA) ExecutedApril 3, 2023

D. Minimum Qualifications and Experience

The City seeks professionals with demonstrated expertise in performing the services described herein. The successful Consultant shall have proven experience in providing the subject professional services and shall, at minimum; have staff members that meet the following:

- The Consultant’s personnel assigned to projects shall have experience in construction management with design-build specific to the types of facilities listed in Attachment A: Scope of Work within the last five (5) years in the State of California. Proposal shall indicate their personnel’s name, title, and responsibilities along with resumes listing the following project specifics:
 - a) Title of project
 - b) Type of facility
 - c) Name of the entity
 - d) Location
 - e) Brief description of the project
 - f) Value
 - g) Competition or project completion date
 - h) Client’s names and means of contact
- Consultant shall have extensive knowledge of available project delivery systems allowed under California Public Contract Code and make such recommendations as to their applicability as appropriate.
- Consultant and staff shall be knowledgeable of all applicable building codes, federal, state, and local by-laws as applicable, including sustainability, conservation and practice of LEED principles and certification processes.
- Consultant must be professionally engaged in the project management of capital improvement projects with experience in the public sector for a minimum of five (5) years. At a minimum, Consultants must employ qualified individuals who are licensed and/or otherwise qualified in project management. The following disciplines are relevant to the proposed work:
 1. Construction Management (CM) and/or Project Management Professional (PMP)
 2. Licensed Professional Civil Engineering (PE)
 3. Construction cost estimating/value engineering
 4. Constriction Inspection



II. BACKGROUND

The City of Hesperia is located in the High Desert area of San Bernardino County along Interstate 15 (I-15), approximately 40 miles northeast of Ontario International Airport. Incorporated in 1988, the City encompasses approximately 75 square miles and has a population of roughly 96,400 residents.

The Project Management/Construction Management division is under Development Services and is responsible for plans, designs, and managing the construction and delivery of public works capital projects, as well as remodels of its existing facilities to ensure the safe, accessible, and efficient use of the workplace environment. The City of Hesperia has several large public works projects forthcoming including street rehabilitation projects, utility infrastructure installation for sewer, water and stormdrain, as well as a Waste Water Treatment Plant.

The objective of this solicitation is to select the best qualified Consultant firms (Consultants) that demonstrate the highest level of experience and capability to provide Project Management/Construction Management and Related Services for the City of Hesperia's CIP program. The objective is to select Consultants that exhibit proactive leadership and good planning and management practices. Of particular importance is the ability of the successful Consultants to provide staff that are experienced, self-motivated, and can quickly learn the City's Capital Project Delivery Process to manage and deliver projects on schedule and within budget.

III. SCOPE OF WORK

Refer to Attachment A for Scope of Work.

IV. PROPOSAL FORMAT

The proposal shall consist of two parts: a Technical Proposal and a Fee Proposal. Proposals must be typed or printed legibly in ink. Erasures and whiteouts are not permitted. Mistakes may be crossed out with corrections typed or written adjacent thereto and initialed in ink by the individual(s) signing the proposal.

Proposals are to be prepared in such a way as to provide a straightforward, concise description of capabilities to satisfy the requirements of this RFP. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.

Each section of the Technical Proposal shall be tabbed according to the numbering system shown below.

Technical Proposal

A. Technical Proposal

TAB - 1 Cover Letter

The Cover Letter shall be on company letterhead, signed by a duly authorized officer, employee, or agent of the Consultant. The Cover Letter shall include the following information:



- a. A statement that the Proposal is submitted as a response to RFP – 2022-23 - 005 Project Management/Construction Management Services for CIP Projects.
- b. An introduction of the Consultant including: legal name; address and telephone number of office headquarters, along with the local office; type of business entity [sole proprietor, partnership, or corporation (including state of incorporation)]; and date founded.
- c. A brief discussion of general background and qualifications and a description of any special knowledge or capabilities material to the services requested in the RFP. Be sure to include whether the Consultant has done work for the public sector in the last five (5) years.
- d. A statement addressing any proprietary information that might be contained in the Proposal, in accordance with Section VII, Paragraph 10.
- e. Indicate which individual(s) by name, title, address, and telephone number are authorized to negotiate and execute an Agreement with the City on behalf of the Consultant.
- f. A statement that Consultant has read and understands the RFP in its entirety, including, without limitation, the scope and nature of the work, all appendices, attachments, exhibits, schedules, and addendum, as applicable. Should the Consultant have any objections to the RFP, they must be clearly stated in the Cover Letter, specifically referencing the particular section number, paragraph, and page number of the objection. However, making an objection does not relieve the Consultant from complying with the requirements of the RFP.

TAB - 2 Understanding

Understanding of the Scope of Work; demonstrated knowledge of the work; identification and knowledge of Federal, State, City, and other agency requirements, as applicable to the required service.

TAB - 3 Approach to the Scope of Work

Provide a compendium of the issues from the Consultant’s perspective. Describe the proposed approach and methodology to performing the work. Information should demonstrate the Consultant’s:

- a. Knowledge of the technical and functional needs;
- b. Describe each service you provide and how you go about obtaining that information;
- c. Online capability;
- d. Issues pertinent to this RFP that are not addressed in Section II, Scope of Work.



TAB - 4 Experience

The technical expertise and professional competence in areas directly related to the RFP; number of years' experience in performing similar work; demonstrated ability to manage and coordinate the services, deliver quality services, be a reliable service provider, breadth, and depth of resources.

TAB - 5 References

Provide a minimum of three (3) references of recent demonstrated experience in providing consulting services similar in nature and size to the Scope of Work and include any government references. Provide a short description of the work performed, dates of service, names, addresses, telephone numbers, fax numbers, locations, remedies, and contract amount.

TAB - 6 Addenda

Include signed addenda in chronological order, as applicable.

B. Fee Proposal

The Fee Proposal shall be prepared in the following manner.

One (1) copy of the Fee Proposal, sealed separately, shall be submitted within the sealed proposal package, and clearly marked as follows: FEE PROPOSAL FOR RFP – 2022-23-005 – Project Management/Construction Management Services for CIP Projects.

Proposals without a separate, sealed Fee Proposal will not be accepted.

Consultant shall present their proposal in a professional, clear, and concise format. Consultant shall indicate their respective firm's budget, hourly fees (including meeting with City staff and public hearings attendance), reimbursable expenses, and all other fees associated with performing the Scope of Work.

Separate fee structures shall be provided for 1) Project Management Services and 2) Construction Management Services.

V. PROPOSAL SUBMISSION

The deadline for submitting a proposal **1:00 PM on January 31, 2023**. Any proposals received after this time will be returned unopened.

Submit three (3) copies of the Technical Proposal and one (1) copy of the Fee Proposal. At least one (1) copy of the Technical Proposal shall contain original signatures. Discrepancies between two or more copies of the proposal shall be cause for rejection.

The Technical Proposal and the Fee Proposal(s) **must** be in separate sealed envelopes/packages and shall be clearly marked:

TECHNICAL PROPOSAL – RFP 2022-23-005 – Project Management/Construction Management Services for CIP Projects and



FEE PROPOSAL – RFP 2022-23-005 – Project Management/Construction Management Services for CIP Projects

The two envelopes/packages shall then be combined together in a single sealed envelope/package, which states the Consultant’s name and address, and shall be clearly addressed as follows:

City of Hesperia – Purchasing Section
RFP 2022-23-005 – Project Management/Construction Management Services for CIP
Projects
9700 Seventh Avenue
Hesperia, CA 92345

Proposals will be rejected if not addressed and packaged as indicated above. Faxed or e-mailed proposals will not be accepted since they do not contain original signatures.

VI. SELECTION PROCESS

A. Evaluation

Fee Proposals will remain sealed and held until all responsive Technical Proposals are evaluated and ranked. The evaluation process will be as follows:

1. A panel designated by the City will perform an evaluation and assign a score to each responsive Technical Proposal.
2. Once the ranking of the Consultants has been determined, the Fee Proposal of the three (3) top ranked firm will be opened by the Contact or his/her designee. Thereafter, the City may begin negotiations (if required) with the Consultant obtaining the highest combined score. Should negotiations with the highest ranked Consultant fail, the City will cease further efforts in reaching an Agreement and commence negotiations with the Consultant who received the next highest score. The City will continue negotiations with Consultants in order of the next highest ranking until negotiations are successful.
3. The selection process will conclude upon execution of a Professional Services Agreement (“PSA”). The selected Consultant will be required to execute a PSA in the form attached hereto as Section VII, and to comply with all of the terms and conditions contained therein.
4. All unopened Fee Proposals will be returned back to the proposing Consultant.

B. Selection Criteria

The selection criteria may consist of solely an evaluation of the submitted proposals to determine which, if any, proposals meet the minimum qualifications and experience detailed above, or may consist of both an evaluation of the submitted proposals and panel interviews with the top ranked Consultants as determined by the scores of the evaluated proposals. If the City decides to conduct interviews with the top-ranked Consultants, the City reserves the right to evaluate and make their selection of the top ranked firm based solely on the panel interview scoring. If



interviews are not conducted, the proposal evaluation scores shall be the sole basis for the determination of the top-ranked Consultant.

Proposals will be evaluated against the criteria listed below:

1. Understanding: Understanding of the Scope of Work; demonstrated knowledge of the work; identification and knowledge of Federal, State, City, and other agency requirements, as applicable to the requested services. **20 points**
2. Approach: The methodology and systems reflecting the ability to provide the requested services; thorough discussion of objectives; sensitive approach to public and regulatory concerns; management, coordination of services and quality controls; attention to detail and creativity. **30 points**
3. Experience: The technical expertise and professional competence in areas directly related to this RFP; required number of years' experience in performing similar work; demonstrated ability to manage and coordinate the services, deliver quality products/services, be a reliable service provider, stay within budget, and meet deadlines; level of experience and training of key personnel assigned, including sub-consultants, if applicable; strength and stability of the firm; breadth and depth of resources. **30 points**
4. References: References provided within the proposal will be evaluated. **5 points**
5. Completeness: Overall completeness and thoroughness; initiative; compliance with RFP instructions; exceptions to or deviations from the RFP. **15 points**



ATTACHMENT A: SCOPE OF WORK

Project management within the City which oversees the overall Capital Improvement Program (CIP); reviews and manages the design, development and construction of public works capital improvements, City infrastructure improvements, and public facility projects; oversees the coordination of these projects with various City departments and the community; provides progress reports and works closely with consultants and engineering design teams to meet City, State and Federal standards.

Construction management, within the City which reviews and manages the design development and construction of public works capital improvements, City infrastructure improvements, and public facility projects; oversees the coordination of these projects with various City departments and the community; provides progress reports and works closely with consultants and engineering design teams to meet City, State and Federal standards.

City's Ownership of Materials and Equipment

All services provided by the Consultant, and all materials, documents, reports, and other information of all types, including computer models developed by the Consultant for the project, and all works based thereon, incorporated therein, or derived therefrom, and all intellectual property and proprietary rights in these materials, documents, reports, and other information of all types, shall be the sole and exclusive property of the City.

Scope of Services

The services to be rendered by the Consultant shall include all services as described herein and shall consist of all such services as are customarily rendered when providing professional services of this type. The work shall include, but not be limited to, the following:

1. General

The Consultant shall provide Project Management/Construction Management and Related Services as a member of the City team in support of Development Services. The Consultant is expected to manage projects in a professional, proficient, and legal manner. The Consultant shall be responsible for a combination of the following essential functions:

- Manage and coordinate the planning, programming, design, and construction of projects.
- Manage and coordinate design reviews and plan approvals.
- Identify potential problems in advance and take corrective action or notify the proper level of authority.
- Prepare authorization documentation and other various project correspondence.
- Prepare and maintain project budgets and schedules.
- Perform project cost estimates and costs analysis
- Review the work of other consultants and make recommendations on the approval of invoices.
- Administer project consultant and construction contracts.
- Manage cost and schedule performance of projects.
- Prepare and issue monthly project status reports.



- Review and make recommendations on contractor submittals and Requests for Information.
- Monitor and help coordinate project construction activities in the field.
- Conduct field inspections to assure contract compliance; review and construction related issues.
- Negotiate change orders with contractors; writes and approves contract change orders and approves minor design changes in the field.
- Ensures timely payment project invoices; prepares and processes reimbursement(s) requests from non-City funding sources.
- Coordinate project close-out activities.
- Evaluate and make recommendations on changes in scope of work and prepare documentation for processing change orders
- Conduct and coordinate briefings and presentations for project stakeholders.
- Interface with other City departments and outside jurisdictional agencies to obtain project approvals.
- Coordinate planning and other project management functions as necessary for delivery of projects.
- Ability to work flexible schedule to accommodate City needs and be available on call for construction related problems
- Perform other related and peripheral duties as required and necessary for the successful performance of this job.

The Consultant shall be responsible for overseeing and coordinating all key project activities to ensure optimum scope/budget configuration, cost/schedule compliance, and quality assurance/control of project design, contracting strategies, and construction. When appropriate, the Consultant also will participate in the training of Development Services staff on approved project delivery methods and techniques.

2. Engineering and Technical Support Services

The Consultant shall furnish professional engineering and technical support services for delivery of projects, including, but not limited to:

- Project control systems (e.g. cost, change, schedule, and document control).
- Development of building systems alternatives.
- Development of alternate/value engineering design solutions.
- Preparation of project schedules.
- Review of architectural and engineering documents and studies for accuracy, coordination, and value engineering.
- Constructability review services.
- Identify and prepare alternative bidding/proposal packages.
- Preconstruction site analysis and make-ready work planning.
- Development of project phasing alternatives including cost models.
- Cost estimating services and related analyses.
- Critical Path Method project scheduling services and related analyses.
- Quality Assurance services.



- Commissioning services.
- Field engineering investigations and assessments.
- Surveys of industry suppliers and vendors.
- Geotechnical testing and investigation services.
- Land surveying services.
- Feasibility and special studies.
- Peer review services.
- Environmental documentation preparation and processing in conformance with the California Environmental Quality Act.

3. Additional Services

The Consultant shall furnish other additional on-call services for delivery of projects, including, but not limited to:

- Special assignments (When requested by the City, perform special assignments by contracting specialized consultants with critical knowledge and experience to complete the assignment most efficiently within an expedited schedule).
- Project labor agreement support services.
- Public outreach programs support services (Local Targeted Worker Hiring and Small Business Outreach).
- Labor compliance services.
- Document control services.
- Administrative services (administrative assistant, secretary, clerk).
- Real estate leasing and acquisition support services.
- Transfer of Knowledge.
- Job Developer.

4. Personnel/Staffing Management and Qualifications

4.1. Management of the Consultant

The Consultant shall take all formal direction from the City Project Manager or Section Head assigned the responsibility for supervision of the respective Consultant staff member. All activities related to overall administration of the Consultant's agreement with the City will be managed by the Development Services Department and Finance. The Development Services Department will be responsible for the supervision of the work performed by the consultant's staff hereunder.

4.2. Consultant's Professional Staff

a. All professional staff provided by the Consultant shall be approved by the City and shall not be removed or replaced without prior consent of the City. If a change in personnel is required, the Consultant shall submit, at a minimum, the names and resumes of two candidates for the replacement for City approval 30 days prior to the effective day of the change. In addition, the City, at its sole discretion, reserves the right to direct the Consultant to remove any member of the Consultant's staff. The Consultant shall be responsible for replacing any such staff for the City's approval within 14 days of the effective date of removal.



b. The Consultant shall designate an experienced senior individual as the single point-of-contact who will serve as the supervisor/administrator of the Consultant's staff and subconsultant team and be responsible for the coordination and delivery of services in accordance with the proposed Scope of Services. The designated point-of-contact will not be billable for coordinating staffing requirements with the City.

4.3. Staffing Plan

The City will work with the Consultant to formulate a staffing plan. As a member of the Development Services team, the Consultant will be required to periodically modify the staffing plan throughout the duration of the Agreement to meet the specific needs of projects and the changing workload requirements of the City.

4.4. Project Management/Construction Management Desirable Qualifications

It is desirable for Consultant Project Manager/Construction Managers to have training, experience, and licensing that are comparable to City Project Manager/Construction Managers as follows:

- Graduation from an accredited college with a Bachelor's degree in architecture, engineering, construction management, or a related field.
- Licensed professional in California, and/or Certified Construction Manager.
- Experience in the program planning and development, systems development, resource management, budget maintenance and control, schedule management and control, design and construction of building and infrastructure projects.
- Experience with full responsibility as Owner's representative for coordinating complex facility building and infrastructure projects through all phases including design, bidding, construction, and occupancy and having immediate responsibility for the timely completion of these projects with schedule, resource, and budget limitations.
- Experience with full-time technical and administrative supervision of the design and construction of large and complex capital projects.

Position/Description note: The candidate requirements and detailed responsibilities for each position will vary depending on the specific needs for each project and current workload.



ATTACHMENT B: SAMPLE PROFESSIONAL SERVICES AGREEMENT

Professional Services Agreement «Contract_Number»

THIS AGREEMENT is made and entered into this «Day» day of «Month» «Year», by and between the City of Hesperia, hereinafter called "City ", and «Vendor_Name», hereinafter called the "Consultant".

RECITAL

1. **PURPOSE:** The purpose of this Agreement is to allow City to procure the service of an experienced professional firm to provide «Type_of_Service».

any phase of any program hereunder shall be made without prior written approval of the City's Purchasing Supervisor or his or her designee.

TERMS AND CONDITIONS

2. **MISSION:** City hereby retains Consultant in the capacity as Consultant for provision of the work or services described in Exhibit «ExhSOW». Consultant hereby accepts such responsibility as described herein. Consultant warrants that all work and services set forth in Exhibit «ExhSOW» will be performed in a competent, professional and satisfactory manner. The work or services shall include Consultant's proposal which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

7. **CONFIDENTIALITY OF REPORTS:** Consultant shall keep confidential all reports, information and data received, prepared or assembled pursuant to performance hereunder and that City designates as confidential. Such information shall not be made available to any person, firm, corporation or entity without the prior written consent of City.

3. **TERMS:** This Agreement shall commence as of the day and year first above shown and shall remain in full force and effect and ongoing until «Term_Date», unless sooner terminated as provided herein. The Purchasing Supervisor or his or her designee is authorized to extend this Agreement for up to one year and approve line item adjustments to the agreement's program budget as long as such amendments are upon the same terms and conditions as specified herein.

8. **COMPENSATION:** During the term of this Agreement, City shall pay Consultant the fee described in Exhibit «Exh», the program budget. Said compensation shall be considered full and complete reimbursement for all of the Consultant's costs associated with the services provided hereunder. The maximum compensation for services, including all Consultant's costs under the terms of this Agreement, shall not exceed the amount of «NTE».

4. **CONSULTANT RESPONSIBILITIES:** Upon request of the Purchasing Supervisor, or his or her designee, Consultant shall complete the work program described in Exhibit «ExhSOW». Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the work or services required by this Agreement. Consultant commits the principal personnel listed below to perform the work or services specified herein, and to make all decisions in connection therewith.
Consultant: «Principal_Contact», «Title»

Consultant shall be paid in accordance with City's standard accounts payable system. Invoices shall be approved by the City's Purchasing Supervisor or his or her designee prior to payment.

5. **REPLACEMENT OF NAMED PERSONNEL:** It has been determined that the individual(s) named in this Agreement are necessary for the successful performance of this Agreement. Replacement of these individual(s) shall not be made by Consultant without written consent of City, which shall not be unreasonably withheld. The consent of the City shall be given in writing within ten (10) days of the receipt of written notice from the Consultant of the intent to replace personnel. If City fails to respond to Consultant within ten (10) days of notification by Consultant, said personnel replacement shall be deemed disapproved.

9. **INVOICING**
Consultant shall submit itemized monthly invoices, which shall include an invoice number, invoice date, purchase order number, and a clear and concise explanation of all services performed, including service dates, in the course of the month in a format approved and accepted by the City. Invoices shall be submitted no later than the 10th day (or any other mutually agreed upon day) of the ensuing month in which services were performed.

6. **RELEASE OF NEWS INFORMATION:** No news release, including photographs, public announcements or confirmation of same, of any part of the subject matter of this Agreement or

10. **RIGHT TO AUDIT:** City or any of its duly authorized representatives shall have access to any books, documents, papers and records of Consultant and/or its subcontractors which are pertinent to the specific program hereunder for the purpose of making an audit, an examination, excerpts and transcriptions. All books, records and supporting detail shall be retained for a period of five (5) years after the expiration of the term of this Agreement, or any extension thereof, or for any longer period of time as required by law.

11. **AUDIT EXCEPTIONS:** Consultant agrees that in the event the program established hereunder is subjected to audit exceptions by appropriate audit agencies, it shall be responsible for complying with such exceptions and paying City the full amount of liability resulting from such audit exceptions.

12. **CITY SUPPORT:** City shall provide Consultant with any plans, publications, reports, statistics, records or other data or



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information pertinent to the services to be provided hereunder which are reasonably available to City.

respect to any property it may furnish to the Consultant hereunder.

13. VENUE: INTERPRETATION

The Agreement shall be interpreted in accordance with the laws of the State of California with the County of San Bernardino being the only appropriate forum for any litigation.

18. SUCCESSOR AND ASSIGNMENT:

The services as contained herein are to be rendered by Consultant whose name is as appears first above written and said Consultant shall not (i) contract with any other person or entity to perform the work or services, nor (ii) assign or transfer any interest in this Agreement without the prior written consent of City.

14. CITY BUSINESS LICENSE

Consultant shall obtain a City of Hesperia business license in accordance with the City Municipal Code prior to engaging in any operation or activity as a result of an award of an Agreement. Sub-consultants performing services within the City shall obtain the same. The license must be kept in full force and effect during the term of this Agreement.

19. INDEMNIFICATION:

Consultant agrees to indemnify, defend (upon request by City) and save harmless City, its elected and appointed officials, officers, agents and employees from and against any liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage arising from or connected with Consultant's operations or its services, acts and/or omissions hereunder, including any workers' compensation suit, liability or expense arising from or connected with the services performed for or on behalf of Consultant by any person pursuant to this Agreement.

15. INDEPENDENT CONTRACTOR: Consultant shall perform the services as contained herein as an independent contractor and shall not be considered an employee, elected/appointed official or family member of any employee or elected/appointed official of the City, or under City supervision or control. This Agreement is by and between Consultant and City, and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, between City and Consultant. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of the City.

20. INSURANCE:

Without limiting Consultant's indemnification to City, Consultant shall procure and maintain at all times during the life of this Agreement, a program of insurance against claims for injuries to persons or damages to property which may arise from or in connection with performance of the work hereunder by Consultant, its officers, representatives, agents or employees. Consultant acknowledges that Section 3700 of the California Labor Code requires all employers to be insured against liability for workers' compensation or undertake self-insurance in accordance with the provisions of that Code Section. Consultant shall formally acknowledge this requirement by signing the attached Worker's Compensation Insurance Certificate prior to commencing work hereunder. Consultant shall not commence work under this Agreement until it has obtained all insurance required hereunder from a company or companies acceptable to the City nor shall Consultant allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained. The Consultant shall take out and maintain all times during the life of this Agreement the following policies of insurance: For all operations of the Consultant or any subcontractor in performing the work provided for herein, insurance with the following minimum limits and coverage.

16. CONFLICT OF INTEREST: Consultant represents, warrants and agrees that it does not presently have, nor will it acquire during the term of this Agreement, a direct or indirect, by contract, employment or otherwise, as a partner, joint venture or shareholder (other than as a shareholder holding a one percent [1%] or less interest in publicly traded companies) or affiliate with any business or business entity that has entered into any contract, subcontract or arrangement with City. Upon execution of this Agreement and during its term, as appropriate, Consultant shall upon written request, disclose in writing to City, any other contractual or employment arrangement from which it receives compensation.

Consultant agrees not to accept employment during the term of this Agreement by any other person, business or corporation which employment is likely to directly develop a conflict of interest over a specific business attraction or retention effort.

17. CONSULTANT USE OF CITY PROPERTY

Unless otherwise agreed, the Consultant, at its sole cost, shall supply all materials, equipment, tools, and facilities required to perform the work. Any materials, equipment, tools, or other properties furnished by the City or specifically paid for by the City shall be the City's property. Any such property shall be used only for the City's project and may on demand be removed by the City without charge. The Consultant shall use such property at its own risk, and shall be responsible for all loss of or damage to the same while in the Consultant's custody. The City makes no warranties of any nature with

A) Minimum Scope of Insurance: Coverage shall be at least as broad as: (i) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001), (ii) Insurance Services Office Form Number CA 0001 (Ed. 1/87) covering Automobile Liability, Code 1 (any auto), (iii) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance, (iv) Errors and Omissions liability insurance appropriate to Consultant's profession.



Professional Services Agreement «Contract_Number»

- B) Minimum Limits on Insurance: Consultant shall maintain limits of no less than: (i) General Liability: \$1 million per occurrence for bodily injury, personal injury and property damage including products/completed operations and any other activities undertaken by Consultant pursuant to this Agreement. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit. (ii) Automobile Liability: \$1 million per accident for bodily injury, death and property damage insuring against liability arising out of the use of any vehicle. (iii) Workers' Compensation insurance as required by the State of California. (iv) Employer's Liability: \$1 million per accident for bodily injury or disease. (v) Errors and Omissions Liability: \$1,000,000 per claim insuring against any liability arising out of professional errors and/or omissions ("malpractice"). Modifications to the above noted minimum insurance limits may only occur upon concurrence of both parties to this Agreement, confirmed in writing by Consultant and City's Risk Management.
 - C) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by City's Risk Management. At the option of the City's Risk Management, either: (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, agents and employees; or (ii) Consultant shall provide a financial guarantee satisfactory to the City's Risk Management guaranteeing payment of losses and related investigations, claim administration and defense expenses.
 - D) Other Insurance Provisions - Commercial General and Automobile Liability: The commercial general liability policies are to contain, or be endorsed to contain, the following provisions: (i) The City, its elected and appointed officials, officers, agents, employees and volunteers are to be covered as additional insured with respect to liability arising out of work or operations performed by or on behalf of the Consultant or automobiles owned, leased, hired or borrowed by the Consultant. (1) Each insurance policy required by this Section 16 shall be endorsed to state that coverage shall not be reduced or canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City's Risk Management. (2) Consultant's insurance shall specify that: (i) it applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (ii) Coverage shall be primary insurance as respects to the City, its officers, officials, employees, agents and volunteers. Any insurance maintained by the City, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it. (iii) any failure to comply with reporting or other provisions of the required policy, including breaches of warranty, shall not affect the coverage required to be provided; (iv) all costs of adjusting and/or defending any claim against any insured, including court costs and attorney's fees, shall be paid in addition to and shall not deplete any policy limits.
 - E) Other Insurance Provisions - Workers' Compensation and Employer's Liability: The following provisions apply to Consultant's workers' compensation and employer's liability insurance: (i) Such policies may be subject to deductible or retention in an amount acceptable to the City's Risk Management. (ii) Consultants shall provide to the City an endorsement that the insurer waives the right of subrogation against the City it officers, officials, employees, agents and volunteers.
 - F) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless the City's Risk Management approves, in writing, insurers with a lower A.M. Best rating.
 - G) Verification of Coverage: Consultant shall furnish the City's Risk Management with original certificates and amendatory endorsements effecting coverage required by this clause. The Endorsements should be on forms provided by the City's Risk Management or on other than City's forms provided those endorsements conform to the requirements of the City's Risk Management. All certificates and endorsements are to be received and approved by the City's Risk Management before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time. Notwithstanding the above, if the life of this Agreement shall extend beyond one (1) year, Consultant shall provide City with certificate, amended endorsements or complete certified copies of required insurance policies evidencing renewal of the required policies of insurance prior to beginning of any subsequent year of services pursuant to this Agreement.
 - H) Failure to Provide or Maintain Insurance: Failure on the part of Consultant to procure or maintain required insurance shall constitute a material breach of this Agreement upon which City may immediately terminate this Agreement.
21. CALIFORNIA LABOR CODE REQUIREMENTS
 Consultant shall adhere to the applicable provisions of the California Labor Code including, without limitation, the employment of apprentices; minimum wages; travel and subsistence pay; retention and inspection of payroll records; workers compensation; and payment of prevailing wages, as applicable. The Consultant shall forfeit to the City penalties described in the California Labor Code for violations.



Professional Services Agreement «Contract_Number»

All or a portion of the work requested in the RFP may require payment of prevailing wages. The Consultant shall pay the general prevailing rate of per diem wages for the applicable work performed. In accordance with the provisions for the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 and 2, the Consultant is required to pay not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. Copies of the prevailing rates of per diem wages are on file at the City and are available to any interested party upon request. Certified payroll reports shall be provided to the City for each pay period.

- 22. **COMPLIANCE WITH LAWS:** The parties agree to be bound by applicable federal, state and local laws, regulations and directives as they pertain to the performance of this Agreement.
- 23. **NON-DISCRIMINATION:** Consultant shall not discriminate, harass, or allow harassment on the basis of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical disability (including HIV and AIDS), mental disability, medical condition (including pregnancy and cancer), family care leave, age, gender identification, political affiliation or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and shall comply with all laws, rules and regulations relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, promotion, demotion, transfers, recruitment or recruitment advertising; layoff or selection; rates of pay or other forms of compensation; and selection training, including apprenticeship.
- 24. **SEVERABILITY:** In the event that any provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other provision contained herein, unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless. If any such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- 25. **INTERPRETATION:** No provision of this Agreement is to be interpreted for or against either party because that party or that party's legal representative drafted such provision, but this Agreement is to be construed as if it were drafted by both parties hereto.
- 26. **AGREEMENT; AMENDMENTS:** This Agreement with attachments integrates all of the terms and conditions mentioned herein, and supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the retention of Consultant by City, and contains all the covenants and agreements between the parties with respect to such retention of Consultant by City for the services described

in Exhibit «ExhSOW». All amendments to this Agreement must be in writing and signed by both parties.

- 27. **WAIVER:** No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.
- 28. **CONTRACT EVALUATION AND REVIEW:** The ongoing assessment and monitoring of this Agreement is the responsibility of City's Purchasing Supervisor or his or her designee.
- 29. **TERMINATION:** This Agreement may be terminated by either party with or without cause, by giving written notice at least thirty (30) days prior to the effective termination date in the written notice. Upon receipt of the termination notice, Consultant shall immediately cease all work or services hereunder except as may be specifically authorized by City's Purchasing Supervisor. In the event of termination by City, Consultant shall be entitled to compensation for all services rendered prior to the effectiveness of the termination notice and for such additional services specifically authorized by the Purchasing Supervisor and City shall be entitled to reimbursement for any compensation paid in excess of the services rendered.
- 30. **TERMINATION OF CONTRACT; NON-AVAILABILITY OF FUNDS:** If the term of this Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is subject to the appropriation of funds for such purpose by the City. If funds to effect such continued payment are not appropriated, Consultant agrees to terminate any services supplied to the City under this Agreement, and relieve the City of any further obligation therefore.
- 31. **NOTICE:** Notices herein shall be presented in person or by certified or registered U.S. mail, as follows: To Consultant: «Street_Address», «City» «State» «Zip_Code», To City: 9700 Seventh Avenue, Hesperia, CA 92345, Attn: Purchasing Supervisor. Nothing in this paragraph shall be construed to prevent the giving of notice by personal service.
- 32. **NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES:** No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.
- 33. **NO FINANCIAL INTEREST:** No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation,



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partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

34. ATTORNEY'S FEES: If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable,

shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

35. CORPORATE AUTHORITY: The persons executing this Agreement on behalf of the parties hereto warrant that: (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above shown.

“CONSULTANT”

«Vendor_Name»

(Check One: Individual Partnership Corporation)
(Corporations require two signatures; one from each of the following: A. Chairman of Board, President, any Vice President; AND B. Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.)

By: _____
(Signature & Date)

Print Name and Title

By: _____
(Signature & Date)

Print Name and Title

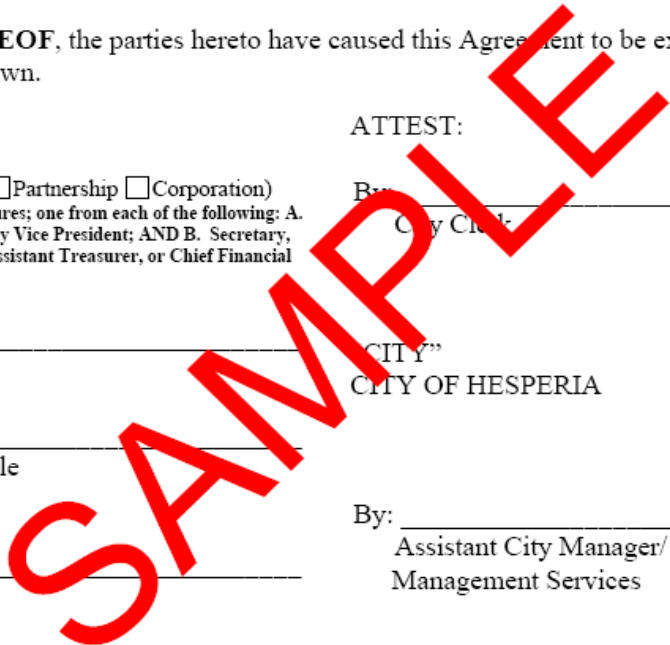
ATTEST:

By: _____
City Clerk Date

CITY
CITY OF HESPERIA

By: _____
Assistant City Manager/
Management Services Date

By: _____
City Manager Date





Professional Services Agreement «Contract_Number»

WORKERS COMPENSATION INSURANCE CERTIFICATE

The Consultant shall execute the following as required by the California Labor Code, Section 1860 and 1861:

"I am aware of the provisions of Section 3700 of the Labor Code which requires 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 I will comply with such provisions before commencing the performance of the work of this Contract."

Consultant

Date

Signature

Title

Attested By (representative from your firm):

Signature

Date

Print

SAMPLE



ATTACHMENT C: TERMS AND CONDITIONS

VII. TERMS AND CONDITIONS

In addition to the foregoing requirements contained in this RFP, the Consultant shall adhere to the following terms and conditions, and perform or make provisions for requirements set forth therein.

1. Late Proposal

Late proposals will not be considered. It is the Consultant's responsibility to ensure that the proposal arrives on or before the specified time. The City will not be responsible for proposals not properly marked and delivered. Postmarks will not be accepted in lieu of actual receipt.

2. Ambiguity, Conflict, or Errors in the RFP

Any ambiguity, conflict, discrepancy, omissions, or other error discovered in the RFP must be reported immediately in writing to the City.

3. Addenda

The City may modify and issue addenda to this RFP. A signed copy of all addenda shall be submitted as part of the proposal. Failure to include the addenda may result in a non-responsive submittal. Addenda shall become a part of this RFP and any Agreement, which may result from this solicitation.

4. Modifications

Any proposed changes or alternatives must be clearly identified in the proposal and are subject to approval by the City. Proposals that are submitted with conditional clauses, alterations, items not requested herein, or irregularities of any kind are subject to rejection at the discretion of the City.

5. Proposal Commitment

The proposal shall be firm and binding for ninety (90) days after the submittal deadline. Submission of a proposal shall constitute a commitment on the part of the Consultant to furnish the services set forth in this RFP.

6. Proposal Withdrawal

Prospective consultants may withdraw a submitted proposal at any time up to the proposal due date and time. This may be done via written request signed by an authorized representative and submitted to the Contact for the RFP. The Consultant may submit another proposal at any time up to the closing date and time.

7. Proposal Errors

The City is not responsible for errors or omissions on the part of the Consultant in drafting their proposals. The City is not responsible for any conclusions or interpretations made by the Consultant regarding information provided by the City.

8. Submission Cost

The City will not be liable for any costs incurred in the preparation of proposals or incidental to the preparation and presentation of qualifications orally or in writing. All costs for preparation, submission of proposals, submission of additional information, delivery, and/or any other aspect of the RFP incurred by the Consultant are the sole responsibility of the Consultant.

9. Property of City

All proposals and materials submitted become the property of the City and may be used by the City in any way it deems appropriate. In addition, proposals received will be subject to the California Public Records Act.

10. Proprietary Information

If any proposal contains trade secrets or other information that is proprietary by law, a request to keep such information confidential must be made in writing and attached to the envelope or other medium used to submit the proposal. The Consultant shall specifically identify the page numbers that contain the confidential information in the cover letter (Tab 1), and said information shall be readily separable from the response in order to facilitate eventual public inspection of the non-confidential portion of the response. Requests are subject to review by the City to determine whether confidentiality can be maintained under law. If confidentiality cannot be maintained, the Consultant has the option of withdrawing the proposal or advising the City in writing of its understanding that this information will become public record. The price of products or services proposed shall not be designated as proprietary or confidential information.

11. Additional Information

The Consultant shall provide the City with any additional information the City deems necessary to accurately determine ability to perform services proposed. During evaluation and selection, the City may conduct any reasonable inquiry from any and all sources concerning the proposal, including reference verification to



determine the responsibility of the Consultant. Furthermore, submission of a proposal constitutes permission by the Consultant for the City to verify all information contained therein. Failure to comply with any request for additional information may disqualify the Consultant from further consideration. Such additional information may include evidence of financial ability to perform.

12. Negotiations

The City may require potential consultants to participate in negotiations, submit revisions to pricing, technical information, and/or other items of their proposal as may result from such negotiations.

13. Sub-contracting

The Consultant shall act as the single principal for all services set forth in the RFP and resulting Agreement. Any sub-consultants shall be subject to the same terms and conditions as the Consultant. The Consultant shall be fully responsible for the performance and payments of any sub-consultants.

14. Material Misstatements or Misrepresentations

If in the course of the RFP process or in the administration of a resulting Agreement, the City determines that the consultant has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the City, the Consultant may be terminated from further participation in the RFP process or in the event an Agreement has been awarded, the Agreement may be immediately terminated. In the event of termination under this provision, the City is entitled to pursue any available legal remedies.

15. Contractual Obligation

After the City selects a consultant, the contents of the submitted proposal will become a contractual obligation. The RFP and any addenda, the Consultant's proposal, and the PSA constitute the entire Agreement between the Consultant and the City. Failure of the Consultant to agree to include all portions thereof as contractual Agreement may result in cancellation of the award.

16. Agreement Deadline

If an Agreement is awarded, the Consultant is required to sign and return the Agreement documents within ten (10) days of written request.

17. Reservation of Rights

The City reserves the right to modify and/or suspend any and all aspects of the RFP, at its own discretion. This includes without limitation, the right to obtain further information from any consultant responding to this RFP, to waive any defect as to form or content of this RFP or any response thereto, to extend deadlines for accepting responses, to reject any and all responses to the RFP, and to choose the firm that best serves the City's interests. Should all proposals be rejected a written notification will be sent to all consultants.

18. Right of Action

No individual or firm responding to this RFP shall obtain any claim or right of action against the City by reason of any aspect of the RFP, defects or abnormalities contained in the RFP and/or the selection process, the rejection of any proposal, the acceptance of any proposal, any statements, representation, acts or omissions of the City, the exercise of any discretion by the City in connection with any of the foregoing, or any and all other matters arising out of all or any of the foregoing.

19. Disclaimer

This RFP does not commit the City to continue with the procurement of the subject services nor to enter into an Agreement with any consultant. The City makes no representation that any Agreement will be awarded. The City may re-issue the RFP at any time for any reason at its sole discretion.

In the event of award, the City makes no guarantee to expend any agreement amount to its maximum. Award of an Agreement may require City Council authorization. In the event that the selected consultant is unable to perform the services for any reason or is dismissed from the project, the City may select another consultant from this RFP solicitation.

20. Commencement of Work

Services under an Agreement shall commence after all required documents are on file with the City as follows:

- Completed Vendor Application Form (if applicable).
- Completed IRS Form W-9.
- Copy of the Consultant's and Sub-Consultant's City of Hesperia Business License (if applicable).
- Insurance Certificates and Endorsements as required in the PSA.
- City Council authorization (if applicable).
- Two fully executed copies of the PSA, with original signatures.
- Executed Worker's Compensation Certificate.
- Notice to Proceed issued to the Consultant.