

# REQUEST FOR PROPOSAL



## MASTER CONSULTING AGREEMENT FOR AS-NEEDED CIVIL PLAN CHECK SERVICES

**City of Vista**  
Community Development Department  
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Vista, CA 92084  
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**Submission Deadline:**  
April 25<sup>th</sup> at 2:00 P.M.  
At City Clerk's office on 2<sup>nd</sup> Floor

# REQUEST FOR PROPOSALS

## CITY OF VISTA AS-NEEDED CIVIL ENGINEERING PLAN CHECK SERVICES

### I. INTRODUCTION & SCOPE OF WORK

The City of Vista (City) Community Development Department is requesting proposals from civil engineering consulting firms (Consultant) to provide on-call civil engineering plan check services. The services will be on an as-needed basis. The City intends to award two contracts to provide the requested services for a two-year term, with an optional extension for one additional year for a maximum term of three years from the date of the contract. The services will be conducted under a contract with the City of Vista, hereafter referred to as “the City”. The engineering consultant entity is hereafter referred to as “the Consultant”.

Qualified entities are invited to submit competitive sealed proposals for consideration in accordance with this request. Proposals must be in the actual possession of the City at the location listed below on or prior to the exact date and time indicated below. Late proposals will not be considered.

Scope of work to include the review of plans, tentative maps, and technical reports submitted for planning and engineering review of subdivision (residential) improvements, commercial developments, and infrastructure improvements. These plans shall be reviewed for conformance with local and other applicable (Regional Board, County, State and Federal) ordinances and standards with a strict attention to details. Plan check services may include, but are not limited to the following:

- Entitlement Review including Code Requirements and Conditions of Approval for staff, Planning Commission and/or City Council approval.
- Tentative parcel and subdivision maps
- Parcel Maps and Final Maps
- Grading Plans including preliminary grading, mass grading, rough grading and precise grading plans
- Street Improvement Plans including street widening, rehabilitation and new street plans
- Water and Sewer Plans
- Storm Drainage Plans
- Checklists for determination of project category
- Storm Water Quality Management Plans
- Hydrology and Hydraulic Calculations and Reports
- Engineer’s Cost Estimate for the related items of work for bonding purposes
- Engineer’s Reports including Storm Water Pollution Prevention Plans
- Erosion and Sediment Control Plans
- Geotechnical report review

The tasks of the plan checker include:

- To check for design conformance to:
  - The approved Tentative Map
  - Related Specific Plans
  - General Plan and City Ordinances

- Conditions of Approval
- City Standards
- Regional Storm Water Requirements
- City of Vista BMP Design Manual
- Americans with Disabilities (ADA) Standards
- The City's Subdivision Plan Check Lists
- Other Agency Requirements such as Vista Water District (VID), San Diego County Water Authority (SDCWA), State Water Resources Control Board (SWRCB) and CalTrans
- To review plans for sound engineering practices.
- To check for accuracy of design in conformance with the City's most current Plan Check Lists.
- To check general mathematics and design criteria.
- To call for redesign of any portion of plans that:
  - Will not function due to poor engineering.
  - Does not meet the industry standard of care.
  - Is not consistent with the Approved Tentative Map or Conditions of Approval.
  - Will be potentially unsafe to the public.
  - Is Impractical to construct.

Orientation: Consultant shall call or email with City staff to:

- a. Learn the City development plan check process;
- b. Acquire text files and boiler plate documents as they apply;
- c. Acquire understanding of key issues that need attention during the plan check process;
- d. Establish ongoing operating procedures between City staff and the Consultant for the on-call services.

On-Call Services:

- a. Report to City Hall when called upon to pickup project documents for review, and meet with city staff, as needed, to be briefed on project particulars;
- b. Work at City Hall up to one day a week on specific projects coordinating with the Senior Engineer;
- c. Work with other consultants in coordinating the plans and the technical reports;
- d. Field review projects with City staff, as needed, to address unique aspects of the proposed project;
- e. Attend scheduled development review meetings, as needed, to brief City staff on findings and coordinate additional relevant details and preparation.

Specific Lead Individual:

- a. Regardless of how many qualified professionals employed by the consulting firm proposing to provide the on-call services, the firm shall designate a specific lead individual for the assignment. This RFP has a broad scope of services that may require a team of different individuals from a particular consulting firm based on particular subject matter expertise. The City would be ok with this approach as long as there is still one responsible lead person to coordinate the reviews required. The City would prefer one individual that possessed the technical experience in all aspects of the scope of services. If the designated lead individual providing the on-call services leaves the firm, it shall be considered grounds for contract termination, at the City's sole option.

b. The individual assigned to provide the services must be a California Registered Engineer. The individual should possess a four-year civil engineering degree and have 6 years of experience in plan checking, preferably in the municipal sector, and be well versed in the development plan check process.

**City of Vista As-Needed Civil Engineering Plan Check Services** is under a non-exclusive agreement, on an as-needed basis for two years. Services provided under the contract shall not exceed \$75,000.00 over the term of the agreement.

Based on the review of proposals received, the City will select the top two (2) Consultants the City of Vista deems to be most qualified to perform this work. At that time the Engineering Department will make a recommendation that the City enter into two-year, non-exclusive Master Consulting agreements with the selected firms.

## II. CONTENT OF PROPOSAL

In order to maintain uniformity with all proposals furnished by Consultants, it is hereby requested the proposals be limited to a maximum of 12 single-sided 8.5" x 11" pages, (excluding front and back covers, section dividers and resumes) and includes the following:

1. A PROPOSAL UNDERSTANDING statement containing any suggestions or special concerns that the City should consider when selecting a consultant;
2. A description of the PROFESSIONAL CIVIL ENGINEERING CHECK SERVICES LEAD INDIVIDUAL and TEAM with an ORGANIZATION CHART identifying those who will perform the civil engineering plan check services and a brief resume of each team member, including similar type work in which they have been directly involved. Identify the Designated Lead Individual and the additional plan checkers along with other important staff members proposed to provide said services. The Designated Lead Individual will be the primary contact person to represent your firm. Sub-consultants, if any, shall be identified with the same requirements as for the prime consultant. The Consultant shall submit detailed resumes for team members as an attachment (not a part of the 12 pages);
3. An abbreviated list of REFERENCES for professional civil engineering plan check services your firm has provided to government agencies within the last 5 years. The list should include the type of services provided, the agency's name and the name of a contact person with the contact person's agency telephone number;
4. A statement regarding the Consultant's concurrence with the City's Standard PROFESSIONAL SERVICES AGREEMENT and INSURANCE REQUIREMENTS. The Consultant shall include a detailed description of all clauses and phrases that it deems unacceptable and a detailed description of what changes would be requested if the City opened negotiations with the Consultant;
5. Provide a narrative rendition of typical civil engineering plan check services. Show how all required tasks are to be completed, including approach where appropriate;
6. The consultant shall submit as an attachment (not a part of the 10 pages), examples of the firm's work product for typical civil engineering plan check services;

7. The Consultant's Standard Hourly Billing Rates for all classifications of staff likely to be involved in civil engineering plan check services that shall include the fee proposal along with the mark-up rate for any non-labor expenses and sub-consultants; and
8. Provide one stapled original, three (3) stapled copies and an electronic file of the proposal, signed by the individual or, if a company, the company official with the power to bind the company in contracts. The consultant shall not use three-ring binders or binding of any type for the proposals. To be considered, a proposal must be completely responsive to this RFP.

### **III. DESCRIPTION OF REQUIRED SERVICES**

The selected Consultant shall be expected to comply with all applicable federal and state and local regulations, and contract provisions.

Consultant shall carry out the instructions received from the City and shall cooperate with the City and other involved agencies.

The Consultant has total responsibility for the accuracy and completeness of the civil engineering plan check services and shall check all such materials accordingly. The documents will be reviewed by the City for conformity with the requirements of the Agreement. Reviews by the City do NOT include detailed review or checking for accuracy. The responsibility for accuracy and completeness of such items remains solely that of Consultant.

The civil engineering plan check services impacts documents and calculations, and therefore any other documents furnished under the Agreement shall be of a quality acceptable to the City. The criteria for acceptance shall be a product of neat appearance, well organized, technically and grammatically correct, checked, and dated. The Consultant shall modify its work as necessary to meet the level of acceptability defined by the criteria above.

Typical needs area as follows:

1. Planning case reviews with site development plans, tentative parcel and tentative subdivision maps, SWQMP's, H&H reports and geotechnical reports and preliminary grading plans.
2. Land Development reviews of 100% designed projects and new or previously approved projects for compliance to current standards.
3. Consultant is expected to come into the City of Vista as needed to review reports, meet with staff and or applicants and engineers.
4. Consultant is expected to provide a plan check memo noting major deficiencies, redlined plans and reports and/or digital packages, which can then be forwarded back to the development engineer.
5. Provide professional opinions and technical expertise to supplement COV staff with review of technical reports.
6. Additional studies or technical papers as needed to facilitate the City's needs and satisfy the requirements of other regulatory agencies.

**IV. CITY RESPONSIBILITIES**

The following is a list of the City’s responsibilities during the term of the agreement:

1. Provide all plans, reports and calculations submitted for professional civil engineering plan check review services to the Consultant paper or digital files;
2. Provide a work space at the City of Vista for consultant’s use;
3. Prepare and process payment requests submitted to the City;
4. Distribute public information;

**V. COORDINATION**

Coordination with the City, other consultants, applicants and engineers along with other involved agencies may be required to achieve timely delivery of civil engineering plan check services. Coordination may include, but not be limited to, coordination with other consultants, Caltrans, the County of San Diego, the Vista Irrigation District, the North County Transportation District and other agencies.

The City will decide the manner in which the coordination of individual matters is undertaken. At the City’s option, coordination efforts may be performed by the Consultant’s direct contact, by the Consultant acting through the City or by the City only. When coordination efforts require agreement, such agreement shall be coordinated through the City.

**VI. PROJECT ESTABLISHMENT AND PROGRESS**

The contract shall begin upon approval and execution by the City, and the Consultant shall commence civil engineering plan check review services after notification to proceed by the City.

The Consultant is advised that any recommendation for contract award is not binding on the City until the Agreement is fully executed and approved by the City.

The City’s tentative schedule for this project is as follows:

<b>City Releases RFP</b>	<b>April 11, 2018</b>
<b>Deadline for Questions</b>	<b>April 17, 2018</b>
<b>Addendum Release (if necessary)</b>	<b>April 19, 2018</b>
<b>Proposals Due</b>	<b>April 25, 2018 at 2:00 PM</b>
<b>Consultant Interview (if necessary)</b>	<b>May 2, 2018</b>
<b>Notice of Consultant Selection</b>	<b>May 8, 2018</b>
All dates subject to change	

All questions must be submitted via e-mail to Jason Christman, [jchristman@cityofvista.com](mailto:jchristman@cityofvista.com). Phone call questions will not be accepted. Answers to all submitted questions will be provided in an addendum.

The City reserves the right to extend the date by which proposals are due.

Four (4) hard copies (one original and three copies) and one electronic PDF copy of the consultant's proposal must be submitted, with all copies having been signed by an official with the power to bind the company in its proposal and must acknowledge the RFP has been read and understood. To be considered, all proposals shall be completely responsive to the RFP.

Proposals shall be delivered no later than 2:00pm on Wednesday April 25, 2018 to:

City of Vista  
City Clerk's Office  
Attn: Jason Christman  
200 Civic Center Drive  
Vista, CA 92084

Faxed and e-mail copies will not be accepted.

## **VII. CRITERIA FOR SELECTION**

An evaluation committee appointed by the Community Development Department will review the proposals. When evaluating the proposals, the City will take the following items into consideration:

1. Experience and reputation of the Consultant's firm and of sub-consultant firms, as evidenced by experience working with proposed sub-consultants as a team and by City's verification of proposal information and references (15%);
2. Experience and credentials of key personnel assigned to the civil engineering plan check services, as evidenced by their education, technical background, and experience on similar services contracts (15%);
3. Consultant's understanding of civil engineering plan check services, objectives and requirements as evidenced in the written Scope of Work and Work Plan narratives (15%);
4. Consultant's quality of work as evidenced by example work products and samples and by reference checks (10%);
5. Consultant's past record of performance on similar civil engineering plan check services contracts for other agencies related to control of costs and adherence to schedules, as evidenced by reference checks (10%);
6. Consultant's familiarity with City requirements, specifications, and procedures, as evidenced by City's prior experience with the Consultant (10%);
7. Willingness of Consultant to sign City's Standard Professional Services Agreement and provide required insurance (5%);
8. Cost-effectiveness of Consultant's Hourly Rates, other charges (10%);
9. Overall fit with current City of Vista staff (10%).

The ultimate consultant selection will be based upon experience, technical merit and cost competitiveness. The contract award, if any, will be made to the proposer whose proposal best serves the interests of the City as it determines in its sole discretion. This is not a low bid solicitation, and the scoring criteria set forth above are not determinative of the successful proposer.

#### **VIII. METHOD OF PAYMENT**

The selected consultant shall submit invoices to the City. The invoice shall include a detailed breakdown of the services, the tasks, the hours, and hourly rates

#### **IX. PROFESSIONAL SERVICES AGREEMENT**

A sample Professional Services Agreement is enclosed for your review, as **Exhibit "A"**. The RFP and the Consultant's proposal will be attached and become part of the agreement as exhibits.

Any subsequent changes in the RFP from the date of issuance to the date of submittal will result in an addendum by the issuing office to those parties who have provided the proper notice of interest in responding to the RFP.

The signer of the proposal must declare in writing that the only person, persons, company or parties interested in the proposal as principals are named therein; that the proposal is made without collusion with any other person, persons, company, or parties submitting a proposal; that it is in all respects fair and in good faith without collusion or fraud; and, that the signer of the proposal has full authority to bind the principal proposer.

Please refer to the sample agreement for the necessary amounts of general liability, automotive, worker's compensation and professional liability insurance. The appropriate endorsements are also shown within the sample contract agreement.

The certificate shall include the City of Vista, its officers and employees as insured or additional insured.

#### **X. DISCLOSURE**

All proposals become the property of the City of Vista unless return is specifically requested as specified in the following section. The City is a public agency subject to the disclosure requirements of the Public Records Act, California Government Code Section 6250 and following. These requirements include an exemption for "trade secrets". If any proprietary information is contained in or attached to the written proposal, it must be clearly identified. In order to protect trade secrets from disclosure, pursuant to a public Records Acts request, you must agree in writing to defend and indemnify the City of Vista if litigation results.

#### **XI. LATE, MODIFIED OR WITHDRAWN PROPOSAL**

Any Proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made; and it was sent by mail, and it is determined by the City that the late receipt was due solely to mishandling by the City after receipt at the City; or it is the only Proposal received.



Any modification of a Proposal, except a modification resulting from the City's request for "best and final" offer, is subject to the same conditions as the initial submission.

Proposals may be withdrawn by written notice received at any time prior to Notice of Intent to Award. Thereafter, all Proposals constitute firm offers, subject to negotiation and execution of definitive documents that will remain open and cannot be revoked, withdrawn, or modified for a period of six (6) months thereafter. Proposals may be withdrawn in person by the consultant or an authorized representative, provided the authorized representative's identity is made known and the representative signs a receipt for the Proposal prior the posting of Notice of Intent to Award of contract award.

**XII. ASSIGNED REPRESENTATIVES**

The City will assign a responsible representative to administer the contract, and to assist the Consultant in obtaining information. The Consultant also shall assign a responsible representative (Principle Engineer) and an alternate, who shall be identified in the proposal. The Consultant's representative will remain in responsible charge of the Consultant's duties from the notice-to-proceed through the end of the contract's term. If the Consultant's primary representative should be unable to continue during the contract's term, then the Consultant shall notify the City's representative in writing. The City's representative shall first approve any substitution of representatives or subconsultants identified in the proposal in writing. The City reserves the right to review and approve/disapprove all key staff and subconsultant substitution or removal, and may consider such changes not approved to be a breach of contract.

**XIII. RIGHT TO REJECT OR NEGOTIATE PROPOSALS**

The City of Vista reserves the right to select, negotiate, or delay the contract in whole or in part or waive any informality or irregularity in the proposal as is in the City's best interest. No representation is made hereby that any contract will be awarded pursuant to this RFP or otherwise.

All costs incurred in the preparation of the proposal, the submission of additional information and/or any aspect of a proposal prior to award of a written contract will be borne by the respondent. The City will provide only the staff assistance and documentation specifically referred to herein and will not be responsible for any other cost or obligation of any kind, which may be incurred by the respondent. All proposals submitted to the City of Vista become the property of the City.

**EXHIBIT “A”**

Sample  
City of Vista  
Professional Services Agreement

**CONTRACT FOR PROFESSIONAL SERVICES**  
**TYPE OF SERVICES**

**THIS “CONTRACT”** is entered into by and between the “**Parties**” as of \_\_\_\_\_ (“**Contract Date**”).

**1.0 THE “PARTIES”**

The “**City**”:

**CITY OF VISTA**, a chartered municipal corporation  
200 Civic Center Drive  
Vista, CA 92084

Working Contact: [workingname](#)  
Billing Contact: [billingname](#)

The “**Contractor**”

[NAMEX](#), statusx  
[Address1](#)  
[Address2](#)

Contact: [contactname](#)

**2.0 BASIC TERMS**

2.1 The “**Services**” to be performed by Contractor are set forth in the Request for Proposals attached as **Exhibit A**.

2.2 The “**Required License**” for the Services is: [type](#).

2.3 Contractor, an entity holding the Required License, desires to enter into this “**Contract**” with City for the Services.

2.4 The “**Project**” for which the Services are required is described in **Exhibit A**.

2.5 Contractor has submitted to City a Proposal to perform the Services dated [proposaldate](#) (“**Exhibit B**”).

2.6 The “**Contract Ceiling Price**” is: [pricex](#)

2.7 Any references in **Exhibit A** or **Exhibit B** to “Consultant” shall mean Contractor for the purposes of this Contract.

**3.0 CONTRACT TERM**

3.1 This Contract shall take effect as of the Contract Date.

3.2 This Contract shall be in effect for [xx](#) calendar months (“**Term**”) from the Contract Date. [The Term may be extended at the City’s option for an additional yy months, in increments of City’s choice, for a maximum Term of zz months from the Contract Date.](#)

3.3 City may terminate this Contract upon 30-days’ written notice to Contractor. In such event, or upon request of City, Contractor shall assemble all City documents in the Contractor’s possession, put them in order for proper filing and closing, and deliver the documents to City. In the event of termination, Contractor shall be paid for work performed to the termination date. City shall make the final determination as to the portion of tasks completed and the compensation to be paid.

#### 4.0 SCOPE

Contractor shall perform all Services including, but not limited to, the furnishing of all tools, equipment, materials, software, and supplies, and for furnishing all transportation, services, including fuel, power and water, essential communications, and the performance of all labor, work or other operations, as may be required from time to time, in accordance with **Exhibit A** and **Exhibit B**. In the event of a conflict between the provisions of **Exhibit A** and **Exhibit B**, the provisions of **Exhibit A** shall control.

#### 5.0 COMPENSATION

5.1 City shall pay Contractor for the Services to be performed as set forth in **Exhibit B**.

5.2 An invoice for payment shall be submitted in a form satisfactory to City. At a minimum, the invoice shall include: the purchase order number, the work order number, a description of the work performed, and a total amount.

5.3 Changes in, additions to, or deductions from the Services, including increases or decreases in any item or portion of the Services, shall be set forth in a written change order executed by City and by the Contractor which shall specify:

5.3.1 The changes, additions, and deductions to be made.

5.3.2 The increase or decrease in compensation due the Contractor, if any.

5.3.3 Adjustment in the time of completion, if any.

5.4 Contract Ceiling Price

5.4.1 In no event shall City be liable for paying more than the Contract Ceiling Price for Contractor's services rendered under this contract.

5.4.2 If it becomes foreseeable that Contractor will need to perform services such that the cumulative total of costs to City will exceed the maximum permitted by this Contract, any such cost overrun will be handled pursuant to the change order procedure in Chapter 3.08. City and Contractor recognize that City lacks authority to exceed the cost ceiling without the express authorization of the City Council. If the maximum cost to City for this Contract is exceeded unexpectedly, payment shall be made as mutually agreeable and disputes shall be handled pursuant to this Contract, but work shall cease as soon as is reasonably feasible once the cost ceiling plus allowable change orders, if any, is exceeded.

5.5 Except as provided in **Exhibit B**, Contractor shall not be reimbursed for any expenses incurred in rendering services under this Contract.

#### 6.0 CONTRACT DOCUMENTS

The Contract comprises the following documents including all additions, deletions, modifications and appendices and all addenda setting forth any modifications or interpretations of any these documents: Documents required under **Exhibits A–E**.

## **7.0 TIME FOR COMPLETION AND COMMENCEMENT OF SERVICES**

All Services under the Contract must be completed in compliance with the schedule in **Exhibit A**.

## **8.0 STANDARD OF PERFORMANCE**

8.1 Contractor represents and warrants that it has the training, qualifications, experience and facilities necessary to properly perform the Services required under this Contract in a thorough, competent and professional manner. At all times Contractor shall faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Contract, Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Contractor under this Contract.

8.2 Contractor shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the Term of this Contract. Contractor shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Contract, including any business licenses required by City. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Contractor to comply with this Section.

## **9.0 CONTRACTOR'S STATUS; CONTRACTOR'S EMPLOYEES**

9.1 Contractor shall perform the services provided for herein in Contractor's own way as an independent contractor and in pursuit of Contractor's independent calling. Contractor is not to be considered an employee of City, nor shall any employees of Contractor be considered employees of City, for any purpose. Contractor shall be under the direction and control of City staff only as to the results to be accomplished. This Contract is not intended to create the relationship of partnership, joint venture, or association between City and Contractor.

9.2 Contractor represents and warrants that all professional services required under this Contract shall be provided by a person or persons duly licensed by the State of California to provide those types of services.

9.3 Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

9.4 Contractor is aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all of Contractor's officers, employees, agents and subcontractors that are included in this Contract.

9.5 The payment made to Contractor pursuant to this Contract shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this contract. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. City will not make any federal

or state tax withholdings on behalf of Contractor. City shall not be required to pay any workers' compensation insurance on behalf of Contractor.

9.6 Contractor agrees to defend and indemnify City for any obligation, claim, suit or demand for tax, retirement contribution including any contribution to the Public Employees Retirement System (PERS), social security, salary or wages, overtime payment, or workers' compensation payment which City may be required to make on behalf of Contractor or any employee of Contractor, or any employee of Contractor construed to be an employee of City, for work done under this contract. This is a continuing obligation that survives the termination of this Contract.

## **10.0 CIVIL RIGHTS**

10.1 Contractor agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, any other applicable federal and state laws and regulations hereinafter enacted.

10.2 Contractor shall not knowingly deny an opportunity or benefit, discriminate against or harass, any employee or applicant for employment on account of the person's race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, or other status protected from workplace discrimination by state or federal law.

10.3 Contractor shall not knowingly give preferential treatment to any applicant for employment on the basis of race, color, ethnicity, national origin, ancestry, religion, creed, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation.

10.4 This section shall be interpreted in a manner that is consistent with the California and United States Constitutions and applicable state and federal statutes governing workplace discrimination. The terms used in this section shall have the same meaning as defined in state statutes governing the same subject matter.

10.5 Nothing in this section shall be interpreted as prohibiting bona fide occupational qualifications consistent with applicable state and federal law and reasonably necessary to the normal operation of Contractor. Nothing in this section shall be interpreted as prohibiting regulations and policies to prevent nepotism or conflicts of interest.

10.6 Nothing in this Section shall be interpreted as prohibiting action taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to City.

10.7 To the fullest extent permitted by law and without limitation by the other provisions of this Contract relating to indemnification and insurance, Contractor shall also indemnify, defend and hold harmless City, and its directors, officers, employees and agents from and against all liability (including without limitation all claims, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs, and costs of alternative dispute resolution) resulting from any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Contractor or any of the Contractor's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or

subcontractors of Contractor or its subcontractors, Contractor shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractors. The provisions of this Section survive completion of the services or termination of the Contract.

### **11.0 CONTROL OF SERVICES**

Each Party shall appoint a representative who shall have the authority to represent and act for that Party ("**Representative**"). Any written or verbal directions or requests of City's Representative delivered to the Contractor's Representative shall have the same force and effect as if delivered to the Contractor. The Contractor's Representative shall have the authority to sign any change order, coordinate the work of all subcontractors and make other decisions pertaining to the Contract.

### **12.0 ASSIGNMENT AND SUBCONSULTING**

12.1 Neither this Contract nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of the City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Contract shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

12.2 Contractor shall be fully responsible to the City for any acts and omissions of Contractor's subcontractor, including persons either directly or indirectly employed by subcontractor, in the event Contractor subcontracts any of the work to be performed under this contract. Contractor's responsibility under this paragraph shall be identical to Contractor's liability for acts and omissions of Contractor and employees of the Contractor. Nothing contained in this Contract shall create any contractual relationship between City and any subcontractor of Contractor, but Contractor shall bind every subcontractor and every subcontractor of a subcontractor by the terms of this contract applicable to Contractor's work, unless such change, omission, or addition is approved in advance in writing by the City Manager or the City Manager's designee. All subcontractors are subject to the prior written review and approval of the City Manager or the City Manager's designee.

### **13.0 LICENSES**

If a license of any kind, which term is intended to include evidence of registration, is required of Contractor, its employees, agents, or subcontractors by federal, state or local law, Contractor warrants that such license has been obtained, is valid and in good standing, and that any required bond has been posted in accordance with all applicable laws and regulations.

### **14.0 FINANCIAL RECORDS**

14.1 Contractor shall maintain any and all documents, ledgers, books of account, invoices, vouchers, canceled checks, or records demonstrating or relating to Contractor's performance of services pursuant to this Contract or evidencing or relating to expenditures and disbursements charged to City pursuant to this Contract. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services

provided by Contractor pursuant to this Contract. Any and all such documents or records shall be maintained for three years from the date of execution of this Contract and to the extent required by laws relating to audits of public agencies and their expenditures. It is expressly understood and agreed that the provisions of this Section will survive termination of this Contract.

14.2 Any and all records or documents required to be maintained pursuant to this Section shall be made available for inspection, audit and copying, at any time during regular business hours, upon request by City or its designated representative. Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Contractor's address indicated for receipt of notices in this Contract or the primary location from which services are rendered, whichever is closer.

## **15.0 OWNERSHIP OF DOCUMENTS**

Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this contract are the property of City. Contractor agrees that all copyrights which arise from creation of the work pursuant to this contract shall be vested in City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of Services and that Contractor makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of Services.

## **16.0 CONFIDENTIALITY**

16.1 Contractor shall treat all information obtained from City in the performance of this Contract as confidential and proprietary to City. Contractor shall treat all records and work product prepared or maintained by Contractor in the performance of this Contract as confidential.

16.2 Contractor agrees that it will not use any information obtained as a consequence of the performance of work for any purpose other than fulfillment of Contractor's scope of Services. Contractor will not disclose any information prepared for City, or obtained from City or obtained as a consequence of the performance of work to any person other than City, or its own employees, agents or subcontractors who have a need for the information for the performance of Services under this Contract unless such disclosure is specifically authorized in writing by City.

16.3 Contractor's obligations under this paragraph shall survive the termination of this Contract.

## **17.0 CONFLICT OF INTEREST REQUIREMENT**

Contractor agrees that, to the extent applicable, it shall comply with and be bound by all laws and regulations deriving from the relationship of the Contractor to the City, including the Political Reform Act (Government Codes Section 87100 et seq.) Chapters 2.32 or 2.33 of the Vista Municipal Code, the Community Redevelopment Act (Health & Safety Code 33000 et seq.) and all regulations promulgated thereunder (collectively "Conflict Laws"). As a condition precedent to the formation of this Contract, Contractor warrants and covenants that it is adequately informed



regarding the obligations and duties imposed by the Conflict Laws and that to the best of Contractor's knowledge and belief, there exists no conflict of interest (under the laws) that would disqualify the Contractor from participation in any decisions arising out of the performance of this Contract. Prior to commencement of any work in the performance of this Contract, Contractor shall comply with any applicable requirements of Chapter 2.32 of the Vista Municipal Code, including any requirement to file a financial disclosure statement with the City Clerk. Contractor further agrees that no employee, agent or subcontractor for Contractor shall perform any work for the City pursuant to this Contract which will violate the Conflict Laws.

## **18.0 PROHIBITION OF FINANCIAL INTEREST BY CITY OFFICIAL**

Contractor warrants and covenants to City that no City Official has or will have any current or future financial interest in this Contract as of the date approved, nor shall Contractor promise, offer, or enter into any written, oral or implied Contract, to provide any financial interest or remuneration of any kind or manner to any City official with respect to this Contract. For purposes of this Section, the term "City Official" shall mean and include any elected or appointed officer of City, any employee of City, or any spouse or financial dependent of a City official or employee. A violation of this provision shall render this Contract null and void and Contractor shall be subject to restitution of all fees or money paid or earned under this Contract.

## **19.0 DUTY OF INDEMNIFICATION**

19.1 To the fullest extent permitted by law, Contractor shall (1) immediately defend and (2) indemnify City, and its directors, officers, and employees from and against all liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, or its employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Contractor's obligations to both defend and indemnify apply unless it is finally adjudicated that the liability or liabilities, in whole or in part, do not arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor or its employees, agents, or subcontractors. Defense counsel shall be approved by City.

19.2 The review, acceptance or approval of Contractor's work or work product by any indemnified party shall not affect, relieve or reduce Contractor's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

19.3 Contractor's costs of defense shall not exceed Contractor's proportionate percentage of fault as adjudicated by a court of law, as required by California Civil Code section 2782.8.

## **20.0 INSURANCE AND BONDS**

Contractor shall comply with the insurance provisions set forth in **Exhibit C**.

## **21.0 SERVICE OF NOTICE**

21.1 Any notice, which either Party may desire to give to the other Party, must be in writing and may be given by personal delivery to the Party's Representative or by overnight

courier service to the Party's address set forth in Section 1.0. Notice may also be given by mailing it by registered or certified mail, return receipt requested, to the other Party at the address set forth in Section 1.0. Any notice given by mail will be deemed given 48 hours after such notice is deposited in the United States mail, addressed as provided with postage fully prepaid.

21.2 A Party may change its address by giving notice as provided above, and the changed address shall thereafter be deemed to be the address set forth in Section 1.0.

## **22.0 SPECIAL PROVISIONS**

This Contract is subject to, and Contractor shall comply with, the special provisions referenced in **Exhibit E**, if any.

## **23.0 EXHIBITS**

All documents referenced as exhibits in this Contract, or referenced in an exhibit to this Contract, are incorporated herein.

## **24.0 APPLICABLE LAW, VENUE**

This Contract shall be construed and enforced under the laws of the State of California. If any action is commenced by any Party to this Contract, such action shall be filed in a court of competent jurisdiction within the County of San Diego, California.

## **25.0 MODIFICATIONS**

This Contract contains the entire agreement, between the Parties and supersedes all prior negotiations, discussions, obligations and rights of the Parties in respect of each other regarding the subject matter of this Contract. There is no other written or oral understanding between the Parties. No modification, amendment or alteration of this Contract shall be valid unless it is in writing and signed by all Parties.

**26.0 EXECUTION**

**IN WITNESS WHEREOF**; the Parties hereto have executed this Contract as of the Contract Date.

“City”

“Contractor”

**CITY OF VISTA**, a chartered municipal corporation

**NAMEX**, statusx

By: \_\_\_\_\_  
PATRICK JOHNSON, CITY MANAGER  
JUDYRITTER, MAYOR

By: \_\_\_\_\_

\_\_\_\_\_  
Name/Title

ATTEST:  
KATHY VALDEZ, CITY CLERK

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Name/Title

APPROVED AS TO FORM:  
DAROLD PIEPER, CITY ATTORNEY

By: \_\_\_\_\_

RISK MANAGEMENT REVIEW:  
DOLORES GASCON, RISK MANAGER

By: \_\_\_\_\_

**EXHIBIT A  
REQUEST FOR PROPOSALS**

**EXHIBIT B  
CONTRACTOR'S PROPOSAL**

## EXHIBIT C INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract, [and for x years thereafter,] insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors. Nothing in these provisions shall limit Contractor's Duty of Indemnification.

### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability ("CGL"):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products, completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$2,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

Contractor shall also provide the additional coverages checked below and at least as broad as:

4.  **Professional Liability**, with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.

If the Contractor maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: the Contractor shall cause the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

### ***Other Insurance Provisions***

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used), unless otherwise approved in advance by City.
2. For any claims related to this Project, the **Contractor's insurance coverage shall be primary** insurance as respects City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to City.

### ***Claims Made Policies***

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to City for review.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to City.

### ***Waiver of Subrogation***

**Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire** from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of City for all work performed by the Contractor, its employees, agents and subcontractors.

### ***Verification of Coverage***

Contractor shall furnish City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by City before work

commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

***Subcontractors***

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

***Special Risks or Circumstances***

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.



**AGREEMENT TO COMPLY WITH CALIFORNIA LABOR LAW REQUIREMENTS**

[Labor Code §§ 1720, 1771.1, 1773.8, 1775, 1776, 1777.5, 1813, 1860, 1861, 3700]

**NOT APPLICABLE TO THIS CONTRACT**

**EXHIBIT E**  
**SPECIAL PROVISIONS**

This Contract is subject to the following provisions, if checked:

1.  State of California grant conditions, as attached.
2.  Federal grant conditions, as attached.
3.  Other conditions, as attached.