



**REQUEST FOR PROPOSALS
FOR
AS-NEEDED CEQA TRANSPORTATION/TRAFFIC
CONSULTING SERVICES**

**Deadline for Submission:
January 31, 2019
By 5:00 p.m.**

**City of Vista
Community Development Department
John Hamilton, AICP
Environmental Planner
200 Civic Center Drive
Vista, CA 92084-6275**

January 10, 2019

REQUEST FOR PROPOSALS (RFP)

As-Needed CEQA Transportation/Traffic Consulting Services

1. INTRODUCTION AND OVERVIEW

The City of Vista's ("City") Planning Division ("Planning") within the Community Development Department is requesting Proposals from professional consulting firms ("Consultant") to provide California Environmental Quality Act (CEQA)-level transportation/traffic consulting services on an as-needed (or on-call) basis. From the Proposals received, up to two (2) consulting firms will be selected to provide the requested services. The City intends to enter into a three (3) year Professional Services Agreement (Agreement) with the selected Consultant(s), with the option of two additional one-year time extensions at the City's discretion. Services provided shall not exceed \$175,000 over the term of the Agreement.

The scoping process for each project would generally work as follows:

A specific project request would be sent to the Consultant by the City for a letter proposal outlining the scope of work, cost, and schedule. Once the Consultant's scope and cost proposal is reviewed and accepted, funding is secured from the applicant, and a purchase order would be prepared. The Consultant would commence work after receipt of a Notice to Proceed by City staff. The City would be responsible for the management of the Consultant's work regardless of the source of funding.

The Consultant is advised that any recommendation for contract award is not binding on the City until the Agreement is fully executed and approved. In addition, the City will review the Agreement periodically based on need and performance. The City intends to have CEQA-level transportation/traffic consulting services available on an as-needed basis. However, it is not known how many projects will be undertaken over the term of the Agreement; therefore, work may or may not be available for the selected Consultant(s) at any particular time.

2. SCOPE OF SERVICES

The work in general consists of preparing stand-alone transportation/traffic-related technical reports for CEQA documents that are prepared by City staff (e.g., Negative Declarations and Mitigated Negative Declarations).¹ These technical reports would be prepared primarily for private development projects. In addition, stand-alone third-party peer review reports of applicant-submitted traffic impact analyses, or other similar professional reports, may also be needed from time to time. The City may also require assistance in developing policies and thresholds for traffic impacts under SB 743.

Typical CEQA-related traffic impact assessments (TIAs) are currently expected to consist of, but would not be limited to, the following:

- Introduction
- Existing Conditions, Including Existing Roadway System, and Existing Transit Service, Pedestrian, and Bicycle Facilities
- Proposed Project Description and Anticipated Traffic Generation
- Analysis Methodology and Thresholds of Significance

¹ Environmental Impact Reports are prepared via a separate solicitation and contractual process.

- Existing Plus Project Traffic Conditions
- Near-Term Year Traffic Conditions, With and Without Project Traffic
- Horizon Year Traffic Conditions, With and Without Project Traffic
- Summary Findings and Recommendations

The City currently uses the most recent edition of Appendix G Section XVII of the State CEQA Guidelines for the discussion of potential transportation/traffic impacts in CEQA documents. Due to the new State CEQA Guidelines sections related to SB 743 that will go into full effect statewide on January 1, 2020, the City will be relying on VMT information from the update to our Climate Action Plan (CAP). It is anticipated that the updated CAP will be adopted by the City sometime in 2019.

The selected Consultant(s) will be expected to prepare organized, well written, and comprehensive technical stand-alone TIA reports that would comply with all applicable and relevant federal, State, and/or local laws and regulations. The Consultant(s) will also be expected to coordinate effectively with City staff and other consultants on project-related transportation and/or traffic issues. The Consultant(s) must be able to assist the City through this Agreement period to provide the services needed. The Consultant(s) shall utilize in-house staff (and/or sub-consultants satisfactory to the City) to complete the assignments.

PROJECT DELIVERABLES

- Up to three (3) bound hardcopies of the final approved report plus an electronic copy of the report (in Word and/or PDF document format) to be provided to the assigned City representative for each project.

3. PROPOSAL REQUIREMENTS

The written Proposal is to include a discussion of the Consultant's overall approach to the as-needed Agreement, a summary of key personnel and qualifications, an organization chart, documentation of the firm's qualifications, and a fee schedule. The Proposal should be concise, well organized, and demonstrate the Consultant's qualifications and experience applicable to the Agreement. The proposal shall be limited to 15 pages, excluding the cover letter, and résumés of no more than three (3) key personnel.

In order to be successfully considered for this as-needed contract, Proposals submitted in response to this RFP shall include the following:

1. A cover letter that summarizes key elements and guarantees (to the best of its intentions) that key personnel will be committed to perform the required tasks throughout the duration of the contract. The cover letter shall be limited to two (2) pages and shall include a contact name, email, phone number, and full address for the Consultant. The cover letter shall also include a statement that the Consultant can meet the City's insurance requirements and is prepared to execute the Professional Services Agreement as written. The signer of the cover letter must also declare in writing 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.
2. A brief description of the firm including local history, office location(s), staff numbers, and other pertinent information.
3. A brief summary of the CEQA-related transportation and traffic services offered by the firm.

4. Relevant experience, including demonstrated experience in preparing TIAs for residential, commercial, industrial, office, and municipal projects. Include experience in working on similar as-needed contracts for public agencies, and applicable methodology.
5. Key staff members, including résumés of up to three key staff members.
6. A minimum of three government agency references. Please include the name, phone number, and address of the reference, as well as the type of work completed for each agency.
7. Standard billing rates for all applicable staff levels with reference to identified key staff members.

Written Proposals shall not contain laminated pages, wire comb binding, or plastic comb binding. Proposals shall be bound with a staple or a binder clip in the upper left hand corner, and they shall be easily paper recyclable. **Three (3) copies of the written Proposal** are required with one (1) copy having an original signature (i.e., wet) by an official with the power to bind the company in its Proposal. To be considered, all Proposals shall be completely responsive to the RFP.

Any questions regarding the RFP must be written and submitted on or before January 24, 2019 by 5:00 p.m. via e-mail to jhamilton@cityofvista.com. The City will not respond to questions submitted verbally, whether at the counter, on the phone, or left as voice mail messages.

Deadline for submission of the Proposal is January 31, 2019 by 5:00 p.m.

Mark the package "PROPOSAL: As-Needed CEQA Transportation/Traffic Services" and deliver to:

**City of Vista
City Clerk's Office
Attn: John Hamilton, AICP
200 Civic Center Drive
Vista, California 92084-6275**

Please note: Proposals received after the time and date stated above will not be considered. Facsimile Proposals will not be accepted.

4. CRITERIA FOR SELECTION

The criteria for reviewing and evaluating the submitted Proposals will consider the following items:

- ◆ Inclusion of all Proposal elements listed above (0-5 points).
- ◆ Experience, reputation, and expertise of the Consultant in completing similar local as-needed contracts (0-20 points).
- ◆ Understanding of project objectives and tasks in TIAs as evidenced in the written narratives (0-15 points).
- ◆ Professional qualifications of key personnel that will be assigned to the contract (0-25 points).
- ◆ Consultant's past record of performance in similar projects related to control of costs, QA/QC, project management, and successfully meeting schedules (0-20 points).
- ◆ Consultant's familiarity with such City requirements as quality and consistency of technical reports, adherence to schedule, etc. as evidenced by the City's prior experience with the Consultant (0-15 points).

Please note that the City does not anticipate conducting interviews at this time.

The ultimate consultant selections will be based upon both technical merit and cost competitiveness. The contract award, if any, will be made to the proposer(s) whose proposal best serves the interest 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(s).

5. METHOD OF PAYMENT

The Consultant would submit invoices to the City on a monthly basis. Each invoice must include the planning case number, a detailed breakdown of the services, the tasks, the hours, and hourly rates. It should be noted that in general no more than 85 percent of the total payment amount would be made prior to the final completion and approval of all work and delivery of final products.

6. PROFESSIONAL SERVICES AGREEMENT

A sample Agreement is enclosed for your review, as Attachment "A". The RFP and the selected Consultant's Proposal will be attached as exhibits to the Agreement. Please refer to the sample Agreement for the necessary amounts of general liability, automotive, worker's compensation, and professional liability insurance. The insurance certificate shall include the City of Vista, its officers and employees as insured or additional insured.

The contents of the Proposal of the successful Consultant(s) shall become a contractual obligation if a contract ensues. Failure of a Consultant to accept this obligation will result in the cancellation of any award. Any damage accrued by the City as a result of a failure to contract may be recovered from the Consultant.

7. ASSIGNED REPRESENTATIVES

The City will assign a responsible representative (i.e., Environmental Planner or other City staff) to administer the contract and to assist the Consultant(s) in obtaining information. The Consultant(s) also shall assign a responsible representative (i.e., Principal, Project Manager, etc.) and an alternate, if possible, 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 project completion. If the Consultant's primary representative should be unable to continue with the project, then the Consultant shall notify the City's representative in writing. In addition, the City's representative shall approve any substitution of representatives, associated team members, or sub-consultants whether identified in the written Proposal or not. The City reserves the right to review and approve or disapprove all key staff and any sub-consultant substitution or removal, and may consider such changes not approved to be a breach of contract.

8. RIGHT TO REJECT OR MODIFY PROPOSALS

The City reserves the right to reject any or all Proposals, delay a project, reject any or all scopes of work, or modify any or all scopes of work submitted. No representation is made hereby that any contract will be awarded pursuant to this RFP or otherwise.

All costs incurred in the preparation of this RFP, including the submission of additional information and/or any aspect of the RFP prior to award of a written contract, shall be borne by the respondent.

9. DISCLOSURE

All Proposals (including the response to this RFP) shall become the property of the City. The City is a public agency subject to the disclosure requirements of the Public Records Act, California Government Code Sections 6250 through 6276.48. 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 if litigation results.

Attachment A

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.