



**REQUEST FOR PROPOSALS (RFP)  
FOR PROFESSIONAL SERVICES**

**FOR**

**SEWER PUMP STATIONS  
SELF-OPERATION FEASIBILITY STUDY**

**Issue Date: March 11, 2019**

**Pre-Proposal Meeting: 10:00 AM, March 19, 2019  
Vista Conference Room, Second Floor of City Hall  
200 Civic Center Drive, Vista, CA 92084**

**Submittal Deadline: 4:00 PM, April 12, 2019**

**All interested Consultants shall be registered on E-bid Board in  
order to receive Addendums.**

**Prepared by: Elmer Alex, P.E.**

**REQUEST FOR PROPOSALS**

**SEWER PUMP STATION**

**SELF-OPERATION FEASIBILITY STUDY**

**I. INTRODUCTION**

The City of Vista and the Buena Sanitation District (City) is soliciting proposals from qualified professional engineering consulting firms (Consultant) to provide consulting to determine the feasibility and costs of self-operating two of its sewer pump stations and one future sewer pump station contingent on development. This RFP includes a description of the proposal requirements, criteria for selection, and the scope of services to be provided by the Consultant.

**II. BACKGROUND AND PROJECT DESCRIPTION**

The City contract operates and maintains four (4) sewer pump stations to Encina Wastewater Authority (EWA). Two sewer pump stations, the Agua Hedionda Pump Station and the Buena Vista Pump Station, are jointly owned with the City of Carlsbad. These two stations are not included in the study. The City wholly owns the Raceway Pump Station (Raceway PS) and Buena Creek Pump Station (BCPS).

A potential development (Ranchos Lomas Verdes Development) along the northern boundary of the City is proposing to annex to the City. The development requires a sewer pump station in order for the City to provide sewer service. The location of this pump station makes it ineffective for EWA to operate and maintain the station. The proposed station will be over 15 miles away from EWA while the City's Public Works staff is located at 1165 E. Vista Way which is only approximately 2 miles away from the proposed sewer pump station.

The City desires to investigate its options to operate and maintain this proposed station and determine if efficiencies can be made by also self-operating the Raceway PS and BCPS.

The Raceway PS is located at 2685 South Melrose Drive and was constructed in 2007 and has a design flow of 1.9 million gallons per day (MGDs). The current average daily wastewater influent flow is approximately 0.5 MGDs. The station has three vertical solids-handling submersible pumps.

The Buena Creek PS is located at 2080 South Melrose Drive was constructed in 2002 and has a design flow of 8.8 MGDs. The current average daily wastewater influent flow is approximately 2.1 MGDs. The station has five non-clog, dry-pit centrifugal pumps.

The Ranchos Lomas Verdes Development is proposing a sewer pump station along East Vista Way just north of Mason Road. The average projected sewage flow to the pump station is estimated to be 55,750 gallons per day (gpd) with a peak flow of 0.17 MGDs. The pump station, as currently proposed, consists of two self-priming pumps installed in a fiberglass enclosure over the wet well.

The City's budget for this study is \$100,000.

The City has made available to proposers the following documents:

1. Encina Wastewater Authority Fiscal Year 2018/19 Budget
2. Encina Wastewater Authority Fiscal Year 2017/18 Budget
3. Preliminary Design Report for the Rancho Lomas Verdes Sewage Pump Station
4. Record Drawings for Raceway and Buena Creek Pump Station
5. Asset Management Plan of Each Pump Station
6. Yearly Operating Report

These documents are available at the City FTP site:

<ftp://ftp.cityofvista.com/PumpStationFeasibilityRFP/>

Please note that the Consultant selected will not be eligible to perform follow-on work not included as a part of this scope of work. This includes further work as a construction manager, or member of a construction team. This prohibition results from the conflict of interest rules under Government Code Section 1090, et seq., as discussed in the California Fair Political Practices Commission advice letter File No. A-15-147 dated September 29, 2015, and the San Diego City Attorney's memorandum of law ML-15-21 dated December 21, 2015. Please consult your own attorney for further legal advice concerning Government Code Section 1090.

### **III. PROPOSED SCOPE OF SERVICES**

Consultant shall furnish all services in order to prepare a study report that provides the following:

Scenario 1: Operation and Maintenance of Raceway PS and BCPS is transitioned to the City and Rancho Lomas Verde Sewage Pump Station is constructed.

- A. Detailed road map on how the City could transition operation and maintenance of the existing sewer pump stations from EWA including recommended staffing

(positions including considerations for vacations, experience/license/certifications requirements, salary based on City grade levels), facilities, schedule, and estimated costs. The road map should consider the future Rancho Lomas Verde Sewage Pump Station by Fiscal Year 2023/24.

Scenario 2: Existing sewage pump stations remain with EWA and Rancho Lomas Verde Sewage Pump Station is constructed.

- A. Market analysis on the viability of contract operation and maintenance of the pump station.
- B. Detailed road map on how the City would begin operation and maintenance of the new pump station including recommended staffing, (position, experience/license/certifications requirements, salary based on City grade levels), facilities, schedule and estimated costs. Consultant shall review costs prepared by developer in the "Preliminary Design Report for the Ranchos Lomas Verde Sewage Pump Station". This would be the City's first sewage pump station to maintain.

Consultant shall provide appropriate Quality Assurance\Quality Control (QA/QC) protocols and project management.

#### **IV. CONSULTANT REQUIREMENTS**

As required by Article 2 of Chapter I of Part 7 of Division 2 of the California Labor Code, the Consultant and all subconsultants shall pay not less than the prevailing rate of wages to all workmen employed in the execution of this Contract as ascertained and adopted by the State of California, Director of Industrial Relations pursuant to the Labor Code.

The Consultant and all subconsultants shall have a City of Vista Business License prior to award of contract. Business licenses can be obtained at [www.vistabl.com](http://www.vistabl.com). A City of Vista Business License is not required to propose.

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

The 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 all studies, reports, plans and related designs, specifications and estimates prepared and shall check all such materials accordingly. The plans 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 of design or the accuracy with which such designs

are depicted on the plans. The responsibility for accuracy and completeness of such items remains solely that of the Consultant.

The Consultant or its sub-consultants shall not incorporate in the design any materials or equipment of single or sole source origin without written approval of the City.

The plans, specifications, estimates, calculations, and 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, with the maker and checker identified.

The Consultant shall have a Quality Control Plan in effect during the entire time work is being performed under the Agreement. The Quality Control Plan shall establish a process whereby plans and specifications are independently checked, corrected and back checked. The Quality Control Plan shall require all job related correspondence and memoranda to be dated, annotated by affected persons and bound in appropriate job files. Each transmittal shall clearly state the purpose and required action.

## **V. CITY RESPONSIBILITIES**

The City will be responsible for the following:

1. Providing access to City owned areas of the project.
2. Providing available existing plans, studies and records.
3. Preparing and processing requests to the City.
4. Preparing and executing agreements with other agencies or entities.

## **VI. COORDINATION**

Coordination with the City, other Consultants and other involved agencies may be required. Agency coordination may include, but is not limited to Encina Wastewater Authority and Vista Irrigation District (VID) and other agencies as appropriate.

The City will decide the manner in which the project coordination 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.

## **VII. PROJECT ESTABLISHMENT AND PROGRESS**

The Contract shall begin upon approval by the City, and the Consultant shall commence work 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.

## VIII. PROPOSAL

A. *Schedule.* The City's schedule for the selection process is as follows:

1. City Releases RFP	March 11, 2019
2. Pre-proposal meeting (non-mandatory)	March 19, 2019, 10:00 AM
3. Deadline for questions	March 21, 2019, 4:00 PM
4. Proposals due to the City of Vista	April 12, 2019, 4:00 PM
5. Notice of Consultant Shortlist	May 2, 2019
6. Consultant Interview (if needed)	May 21, 2019
7. Notice of Consultant Selection	May 24, 2019
8. Complete Negotiation of Agreement	May 20, 2019
9. Council Award	June 25, 2019

All dates are subject to change.

**There will NOT be a visit to any of the sewer pump stations.**

All questions must be submitted via email to Elmer Alex, [ealex@cityofvista.com](mailto:ealex@cityofvista.com). Phone call questions will not be accepted. Answers to all submitted questions will be provided in an addendum. Any subsequent changes in the RFP from the date of issuance to the date of submittal will result in an addendum that will be posted on eBidBoard. All such addenda shall be addressed in the proposal as if included in the original RFP. All responding Consultants are required to be registered on eBidBoard.

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

B. In order to maintain uniformity with all proposals furnished by the Consultants, the City requests that the proposals be limited to a maximum of twenty (20) single-sided 8.5" x 11" pages (excluding cover letter, front and back covers, section dividers and resumes). 11" x 17" single-sided foldouts may be used for graphics only and will count as one page. Proposals shall include the following elements:

1. COVER LETTER – A cover letter shall summarize key elements and guarantee that key personnel will be committed to perform the required tasks for 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 include a statement that the Consultant can meet the City's insurance requirements and is prepared to execute the

Professional Services Master Agreement as written, and will not make any changes to the project team without the City's authorization. In cases where a team member voluntarily leaves a firm, the Consultant shall provide the City with a proposal for a substitute team member, subject to the approval of the City.

2. COMPANY INFORMATION

- a. Identification of Responder;
- b. Legal name and address of the company (partnership, corporation, joint venture, etc.);
- c. Identification of the parent company (if applicable);
- d. Addresses of offices located in San Diego County;
- e. Number of employees in San Diego County;
- f. Name, title, address and telephone number of person to contact concerning the proposal;
- g. California Department of Industrial Relations (DIR) Number;
- h. Secretary of State Entity Number.

3. PROJECT UNDERSTANDING AND APPROACH – Discuss the Consultant's understanding of the project, and any suggestions or special concerns that the City and the Consultant should address for a successful project. Provide a narrative rendition of the technical and management approach proposed for this project. Show how all required tasks are to be completed.

4. DETAILED SCOPE OF SERVICES (IN APPENDIX, NOT COUNTED IN PAGE COUNT)

- a. Provide a detailed scope of work containing any additional services or tasks the Consultant sees as necessary for the successful completion of the project. The scope of work shall include any information required to further clarify the scope of work included in the RFP. The scope of work shall reflect the schedule and fee estimate included in this section.
- b. Provide a detailed project schedule, including stages of work, time frames, and ability to perform the required services in a timely manner.
- c. Provide a detailed breakdown of the number of hours for each staff classification (including both professional and administrative classifications) as they relate to each task identified in the Scope of Work. Provide for all subconsultants.

5. PROJECT TEAM AND ORGANIZATION CHART

- a. Describe project organization, including identification and responsibilities of key personnel.
- b. Indicate roles of prime and all sub-consultants.
- c. Provide a discussion of the experience of the Project Manager and other key staff members that would be involved with this project.
- d. Provide resumes of the Project Manager, Project Engineer, and other key staff members who will work on this project. The resume shall include

relevant experience, education, licenses, and certifications. The resume for each individual shall not exceed one (1) page in length. Resumes shall be included as an appendix to the main document.

- e. Describe proposed line-of-communication between the City, prime team members, and sub-consultants.
- f. California Department of Industrial Relations (DIR) Number and Secretary of State Entity Number for all subconsultants.
- g. Provide a discussion on staffing capabilities to complete this project.

## 6. EXPERIENCE

- a. Provide a brief description of consultant's experience in completing similar projects within the last 5 years.
- b. Provide a detailed discussion of specialized experience in completing scope of required services listed above.
- c. Provide three (3) similar projects which your firm has completed within the last 5 years. Projects currently being performed may be submitted for consideration. Project information should include a brief project description, agency or client name, their telephone number(s), the year of project completion, original fee, and final fee. Provide justification for the difference between the original fee and final fee.
- d. Identify team members proposed for this project and their roles on the representative similar projects.

7. REFERENCES – The Consultant shall provide a minimum of three (3) references for similar projects for the prime firm. At least one reference shall be from the projects listed in Item 6.c of EXPERIENCE. At a minimum, each reference shall include the client's name and location, number of projects completed for the client, client contact name and phone number.

8. STANDARD HOURLY BILL RATES – The Consultant's Standard Hourly Billing Rates for all classifications of staff likely to be involved in the project shall be included along with the mark-up rate for any non-labor expenses and sub-consultants.

9. EXCEPTIONS TO RFP – Provide a statement that the Consultant has read, understands, and takes no exception to the RFP or the terms of the City's Standard Consulting Agreement, attached as ATTACHMENT "A". If the Consultant does take exception(s) to any portion of the RFP, the specific portion to which exception is taken shall be identified and explained.

10. ADDENDA TO THE RFP – Provide a statement that the Consultant has received all addenda, and include the addendum numbers and dates.

11. All copies shall be signed by an individual or, if a corporation, a corporation officer with the power to bind the company or corporation to its proposal. To be considered, all proposals shall be completely responsive to this RFP.

Four (4) hard copies and one electronic PDF copy of the consultant's qualifications 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 4:00 PM on Thursday, February 27, 2019 to:

Drop-off Location:

City of Vista  
City Clerk's Office  
Attn: Elmer Alex, Sewer Utilities Division  
200 Civic Center Drive  
Vista, CA 92084

Mailing Address:

City of Vista  
City Clerk's Office  
Attn: Elmer Alex, Sewer Utilities Division  
200 Civic Center Drive  
Vista, CA 92084

Faxed and email copies will not be accepted.

## **IX. CRITERIA FOR SELECTION**

The City's consultant evaluation and selection process is based on Qualifications Based Selection (QBS) for professional services. An evaluation committee appointed by the City Engineer will review the proposals. The criteria and weight for evaluating the proposals submitted will be as follows:

1. 30% - Understanding of project objectives and scope of work as evidenced in the written narratives.
2. 20% - Experience and credentials of key personnel assigned to the project.
3. 10% - Staffing capabilities demonstrating that the present workload of the firm and the availability of staff for the project will remain sufficient throughout the duration of the contract.

4. 20% - Experience with projects of similar nature and reputation of the consulting firm, including a verification of data and references.
5. 15% - Consultant's past record of performance in similar projects related to control of costs, quality of work, and adherence to schedule.
6. 5% - The City's prior experience with the Consultant.

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.

## **X. ESTABLISHMENT OF FEES**

The Consultant shall provide a detailed cost breakdown spreadsheet in a separate sealed envelope, detailing the number of hours and associated cost for each staff classification (including both professional and administrative classifications) as they relate to each task identified in the Scope of Work. In addition, an estimate of all direct costs such as materials and reproduction costs shall be provided. Sub-consultant costs shall be allocated on a per-task basis but do not need to be broken out by each staff classification. The City limits mark-up for sub-consultants and direct costs to 10%. This information will be used by City staff to evaluate the reasonableness of the estimated cost of services and will be used in negotiating the final fee amounts for the contract agreement. Proposed rates shall clearly correlate with names and classifications of staff likely to be involved with various elements of the projects.

The Consultant shall be paid based upon hourly rates for services rendered as negotiated.

There will be no compensation to the Consultant for hours expended due to the Consultant's errors and omissions. There will be no adjustments, including an increase in the hourly rate.

## **XI. METHOD OF PAYMENT**

The Consultant shall submit monthly invoices to the City with an accompanying progress report summarizing work activities. Each invoice shall include a detailed breakdown of the services, the tasks, the hours, the personnel and staff type who worked on the project, and hourly rates. A maximum of 10% markup will be allowed for sub-consultants and reimbursable items.

## **XII. PROFESSIONAL SERVICES AGREEMENT**

A sample Standard Consulting Agreement is enclosed for review, as Attachment "A". The RFP and the Consultant's Proposals 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 insurance certificate shall include the City of Vista and the Buena Sanitation District, its officers and employees as insured or additional insured.

## **XIII. ASSIGNED REPRESENTATIVES**

The City will assign a responsible representative to administer the contract, and to assist the Consultant in obtaining information. In addition, the Consultant shall assign a responsible representative (Project Manager), who will 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 Project Manager should be unable to continue with the project, then the Consultant shall notify the City's representative in writing. The City's representative shall first approve any substitution of representatives or sub-consultants identified in the proposal in writing. The City reserves the right to review and approve/disapprove all key staff and sub-consultant substitution or removal, and may consider such changes not approved to be a breach of contract. This breach of contract will not apply if the Project Manager leaves the Consulting firm.

## **XIII. RIGHT TO REJECT PROPOSALS**

The City reserves the right to delay the project or reject any or all proposals submitted, and no representation is made hereby that any contract will be awarded pursuant to this RFP or otherwise.

The City reserves the right to extend the due date for the proposal, accept or reject any or all proposals received as a result of this request, negotiate with any qualified consultant or cancel this RFP in part or in its entirety. The City may require the selected consultant to participate in negotiations and to submit such technical, fee, or other revisions of their proposals as may result from negotiations.

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.

#### **XIV. DISCLOSURE**

All proposals become the property of the City unless a 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.

#### **XV. 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.

**ATTACHMENT “A”**  
**Standard Consulting 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 ("**Duty of Indemnification**"). 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.

[Continued on page 9.]

**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.