CITY OF SAN JUAN CAPISTRANO

REQUEST FOR PROPOSAL

For

Sales Tax Audit and Reporting Services
And the Statistical Reporting Package for The Comprehensive Annual Financial Report

RELEASE DATE: February 17, 2020

RESPONSE DUE: March 30, 2020
# TABLE OF CONTENTS

1. ABOUT THE CITY ............................................................................................................. 3
2. PROPOSAL SCHEDULE ...................................................................................................... 4
3. PROCEDURE FOR SUBMITTING PROJECT PROPOSAL .................................................. 4
4. DATA TO BE SUBMITTED WITH PROJECT PROPOSAL ............................................... 5
5. SCOPE OF WORK ............................................................................................................. 6
6. DATA TO BE SUBMITTED WITH COST PROPOSAL ...................................................... 9
7. GENERAL REQUIREMENTS .......................................................................................... 9
   APPENDIX A ................................................................................................................ 12
   APPENDIX B ............................................................................................................... 29
   APPENDIX C ............................................................................................................... 29
CITY OF SAN JUAN CAPISTRANO

REQUEST FOR PROPOSAL


Responses must conform to the requirements of this Request for Proposal (“RFP”). The City reserves the right to waive any irregularity in any proposal or to reject any proposal which does not comply with this RFP. Modifications to the RFP, including, but not limited to the scope of work, can be made only by written addendum issued by the City. Selection of the proposer will be made solely by the City on criteria determined by the City.

The use of the term “firm” throughout this document means individual proprietorship, partnership, Limited Liability Company, corporation or joint venture.

By submitting a project proposal, the proposer agrees to all of the terms of the RFP and Agreement (Appendix A). The successful proposer will be required to enter into an Agreement (Appendix A) which will include the requirements of this RFP as well as other requirements. The City reserves the right to reject any proposal(s) exceptions or changes to the Agreement or Request for Proposal.

The City will concurrently be releasing an RFP for Property Tax Forecasting Services. Proposers may respond to either or both RFPs with separate submittals.

1. ABOUT THE CITY

San Juan Capistrano is a general law City incorporated in 1961. The City is located in the southeastern portion of Orange County, approximately 62 miles south of the City of Los Angeles and 65 miles north of the City of San Diego. The City occupies a land area of 14.4 square miles and serves a population of approximately 35,900.

The City is governed by a five-member City Council under the council-manager form of government. The City Council is elected at large with staggered four-year terms and the positions of Mayor and Mayor Pro-Tem are selected amongst Council members annually.

The firm’s principal contact with the City of San Juan Capistrano will be Michelle Daggett Short, Senior Accountant, (949) 487-4317 or a designated representative, who will coordinate the assistance to be provided by the City of San Juan Capistrano to the proposer.

City Hall is located at 32400 Paseo Adelanto, San Juan Capistrano, California 92675. The telephone number is (949) 493-1171.
2. PROPOSAL SCHEDULE

The schedule is as follows:

RFP Available: February 17, 2020
Deadline for questions: February 28, 2020
Response of questions: March 6, 2020
Proposal Due at City Hall: March 30, 2020, 4:00 p.m.
Interviews (If necessary): April 13, 2020
Vendor selection: April 20, 2020

3. PROCEDURE FOR SUBMITTING PROJECT PROPOSAL

Time, Place and Format

Proposals must be received at City Hall no later than 4:00 p.m. on the date indicated in Section 2. Proposals received in the mail after 4:00 p.m. on the date indicated in Section 2, regardless of the date of their postmarks, will be rejected. Proposals must:

- show page numbers for all pages in the proposal
- be submitted in one or more envelopes, each of which clearly:
  - states “Sales Tax Audit and Reporting Services and the Statistical Reporting Package for the Comprehensive Annual Financial Report”
  - identifies the proposer
  - states the number of the envelope and the total number of envelopes submitted by the proposer
- the envelope must be addressed as follows:
  
  City of San Juan Capistrano  
  Attn: Michelle Daggett Short  
  32400 Paseo Adelanto  
  San Juan Capistrano, CA 92675

- the successful proposer must submit the Scope of Work and Cost Proposal in electronic format (MS Word or other format acceptable to the City) in addition to the paper copy.

If hand delivered, address as above and deliver to the City Clerk receptionist in main City Hall.

Proposals must address the requirements of the RFP in the exact order set forth in Section 4. They should be as concise as possible and must not contain any promotional, advertising or display material.
4. DATA TO BE SUBMITTED WITH PROJECT PROPOSAL

The content and sequence of the information contained in each copy of the proposal shall be as follows:

A. Letter of Transmittal

Include your firm’s understanding of the work to be performed. In addition, state why your firm believes it to be the best qualified to perform the services requested. Also, state the Management Contact (Representative authorized to sign an agreement for your firm) and the Project Manager (person responsible for day-to-day management of the project).

B. Table of Contents

Include a clear identification of the material by section and by page number.

C. Summary Sheet

1. This section of the proposal must include a fully-completed copy of the Summary Sheet included with this RFP (Appendix B).

2. Provide the name, title, experience and qualifications of the personnel who will be assigned to the project.

3. Provide the resumes of the Management Contact with the City and the Project Manager.

D. Allocation of Resources

Provide a conceptual plan for services to the City that you believe are appropriate for the City. Indicate features, skills and/or services which distinguish your firm and make it the better choice for the City. Indicate how the resources of your firm (e.g., number and type of personnel allocated by hours) will be allocated for this project. Submittal of a project schedule is required as part of the Allocation of Resources.

E. Scope of Work

Proposals must address all items set forth in Section 5 “Scope of Work.” Additional information which, in your opinion, should be included must be clearly identified. The items must be addressed in the order in which they appear in Section 5 of this RFP.
F. Sample Reports

Provide samples of reports for each proposal.

G. References

Each firm must include the following:

1. List similar services performed for all similar organizations/entities in the last five years and when performed. Show names of organizations, and names and telephone numbers of persons who can be contacted with regard to the services you have provided.

2. List all similar public agencies for which contracts were terminated prior to the end of the contract in the last three years. Show names of organizations, and names and telephone numbers of persons who can be contacted. Firms may provide a brief explanation of the reason(s) for termination(s).

H. Certification of Proposals

Return a copy of the entire completed certification properly executed as provided for in Appendix C.

5. SCOPE OF WORK

The Scope of Work, as may be modified through negotiation and/or by written addendum issued by the City, will be made a part of the Agreement.

The City expects to award a contract for a five-year term beginning July 1, 2020, based upon consultant performance. Proposals must provide a menu of services and total annual costs for sales tax and CAFR statistical reporting services. The City is requesting proposals for the auditing and reporting of sales/use tax records, economic analysis, the recovery of revenue for the City and CAFR statistical reports. The proposal should address the following items at a minimum:

A. Sales Tax

1. General Strategy

   a. Describe the general strategy for sales and use tax auditing.
   b. Define the role of City staff and records as it relates to your efforts.
   c. Describe your interaction with the California Department of Tax and Fee Administration and with businesses being audited.
   d. Identify what sources of information will be needed and the means with which they will be acquired.
2. Objectives and Methodology

a. Identify the specific procedures you will use to detect, correct and recover misallocated revenue for the City, including, but not limited to:

i. Identify and correct the sales/use tax reporting errors and omissions of businesses within the City that are not properly registered based on their business activities in the City

ii. Identify and correct the reporting of businesses that are improperly reporting tax to state and county pools (i.e. classifying sales tax as use tax), thereby depriving the City of sales tax revenue

iii. Detect, document and correct sales/use tax reports errors and omissions in order to generate new, previously unrealized revenue for the City

iv. Determine if the California Department of Tax and Fee Administration had prior knowledge of the error(s), which could entitle the City to collect revenue from additional periods.

b. Monitor and analyze the quarterly distribution reports with a focus on the following:

i. Those accounts with previously reported point-of-sale distribution errors to ensure that the corrections are made for current quarters and all eligible back quarters

ii. Those major accounts comprising 90% or more of the City’s total sales and use tax revenue to identify any irregularities or unusual deviations from the normal pattern (e.g. negative funds transfers, significant decreases, unusual increases, etc.) and ensure that the City is not receiving less revenue than it is entitled to receive

c. Identify opportunities for the City to recover the local allocation on purchase transactions subject to tax, and facilitate the recovery of such funds

d. Assist the City with strategies to preserve and enhance sales and use tax generated by existing businesses within the City.

3. Sales and Use Tax Reporting Services

The successful Proposer shall:

a. Provide an electronic database of the City’s sales and use tax data to the City to facilitate monitoring, analysis and forecasting. The
database will include the following features at a minimum:

i. All sales tax producers in the City, including business name, address, SBOE account number, and current and historical sales tax allocations
ii. Quarterly updates
iii. Ability for the City to create and maintain subsets of the information based on geographic features
iv. Ability to define and print reports

b. Provide written quarterly sales tax reports and attend quarterly meetings with the City to discuss activity in the reports. The reports will include the following:

i. Top sales tax generators ranked by the amount of sales and use tax produced
ii. Analysis of sales trends by business category, identifying by business the major increases and decreases each quarter
iii. Comparisons to other local, county and state jurisdictions. Sales and use tax projections, updated quarterly
iv. Information regarding state and federal legislative issues, including an analysis of their potential impact on the City
vi. Other reports as mutually agreed upon.

4. On-Going Consultation

a. During the term of the contract, Consultant shall serve as the City’s resource to staff on questions relating to sales tax and assist in estimating future sales tax revenues.

B. Statistical Reporting Package for CAFR

1. During the term of the contract, Consultant shall provide the following reports annually:

a. Use category summary for current fiscal year
b. Property tax dollar breakdown for current fiscal year
c. Roll summary for current fiscal year
d. Net taxable assessed value for last ten fiscal years
e. Assessed value of taxable property by secured, unsecured and nonunitary for last ten fiscal years
f. Assessed value of taxable property by category for last ten fiscal years
g. Top ten property tax payers for current fiscal year
h. Top ten property tax payers ten fiscal years ago
i. Direct and overlapping property tax rates for last ten fiscal years
j. Demographic and economic statistics for last ten calendar years
k. Single family residential sales value history
6. DATA TO BE SUBMITTED WITH COST PROPOSAL

A separate, sealed Cost Proposal shall be submitted with the Project Proposal. The separate, sealed envelope shall be marked “Cost Proposal – Sales Tax Audit and Reporting Services and the Statistical Reporting Package for the Comprehensive Annual Financial Report.” The successful proposer must submit an electronic copy of the cost proposal in MS Word, Excel or other format acceptable to the City in addition to the paper copy.

Costs shall indicate the rate percentage shared, etc. for sales tax audit recoveries and the annual total all-inclusive maximum price for sales tax reporting services and the statistical reporting package for the CAFR. The total all-inclusive maximum price to be proposed is to contain all direct and indirect costs, including all out-of-pocket expenses. The City will not be responsible for expenses incurred in preparing and submitting the proposals. The cost proposal should also include the firm’s hourly rates by classification should the City desire additional services not covered by this RFP.

7. GENERAL REQUIREMENTS

A. Personnel

The Agreement and Letter of Transmittal shall identify the Management Contact (representative authorized to sign an agreement for your firm) and Project Manager (person responsible for day-to-day management of project). The successful proposer may change the Management Contact, Project Manager, and other supporting staff and specialists with prior written permission of the City.

B. Right to Request Additional Information

During the evaluation process, the City reserves the right, where it may serve the City’s best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. At the discretion of the City, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

C. Right to Reject Proposals

The City reserves the right without prejudice to reject any or all proposals.

D. Proposal Interpretations and Addenda

Any change to or interpretation of the RFP by the City will be sent to
each firm or individual to whom an RFP has been sent and any such changes or interpretations shall become a part of the RFP for incorporation into any agreement awarded pursuant to the RFP.

E. Public Record

All proposals submitted in response to this RFP will become the property of the City upon submittal and a matter of public record pursuant to applicable law.

F. Additional Services

The Scope of Work describes the minimum work to be accomplished. Upon final selection of the firm, the Scope of Work may be modified and refined during negotiations with the City.

G. Conflict of Interest

By signing the Agreement, the successful Proposer declares and warrants that no elected or appointed official, officer or employee of the City has been or shall be compensated, directly or indirectly, in connection with the award of the Agreement or any work for the proposed project. For the term of the Agreement, no elected or appointed official, officer or employee of the City, during the term of his/her service with the City and for two (2) years following his/her termination of office or employment with the City, shall have any direct interest in the Agreement, or obtain any present, anticipated or future material benefit arising therefrom.

H. Confidential Information

The City shall refrain from releasing Proposer's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Proposer of its intention to release Proprietary Information. Proposer shall have five (5) working days after receipt of the Release Notice to give City written notice of Proposer's objection to the City's release of Proprietary Information. Proposer shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Proposer fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent
jurisdiction requires that City release such information.
APPENDIX A

CITY OF SAN JUAN CAPISTRANO

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into as of __________________, 20____ by and between the City of San Juan Capistrano, a public agency organized and operating under the laws of the State of California with its principal place of business at 32400 Paseo Adelanto, San Juan Capistrano, CA 92675 (“City”), and [***INSERT NAME***], a [***INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY***] with its principal place of business at [***INSERT ADDRESS***] (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

(Hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit “A.” [Alternatively, Scope of Services can be included here and all subsequent exhibits renumbered accordingly.]

2. Compensation.

   a. Subject to paragraph 2(b) below, the City shall pay for such services
in accordance with the Schedule of Charges set forth in Exhibit “B.” [Alternatively, Schedule of Charges may be included here and all subsequent exhibits renumbered accordingly.]

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of $_______ [Insert amount of compensation]. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.


Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. [Insert Term or Time of Performance].

[If engaging the Consultant for a particular term, use the following provision]

The term of this Agreement shall be from [Insert start date] to [Insert end date], unless earlier terminated as provided herein. The Parties may, by mutual, written consent, extend the term of this Agreement for two additional one year terms. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon receipt of written notice from the City to proceed (“Notice to Proceed”). [If the City has specific milestones or timelines for performance, please input those requirements in the “Activity Schedule” attached as Exhibit C, otherwise delete Exhibit C.] The Notice to Proceed shall set forth the date of commencement of work.

[If engaging the Consultant to perform a discrete task with a specified deadline, use the following provision]

Consultant shall perform its services in a prompt and timely manner and shall
commence performance upon receipt of written notice from the City to proceed (“Notice to Proceed”). Consultant shall complete the services required hereunder within [Insert number of calendar days for performance of the services – if more detail is required attach “Activity Schedule” as Exhibit C, otherwise delete Exhibit C.] The Notice to Proceed shall set forth the date of commencement of work.


a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant’s services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.
10. **Independent Contractor**

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. **Insurance.** Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

   a. **Commercial General Liability**

      (i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

      (ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

          (1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

      (iii) Commercial General Liability Insurance must include coverage for the following:

          (1) Bodily Injury and Property Damage
          (2) Personal Injury/Advertising Injury
          (3) Premises/Operations Liability
          (4) Products/Completed Operations Liability
          (5) Aggregate Limits that Apply per Project
          (6) Explosion, Collapse and Underground (UCX) exclusion deleted
          (7) Contractual Liability with respect to this Agreement
          (8) Property Damage
          (9) Independent Consultants Coverage

      (iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any
other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers’ Compensation/Employer’s Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the “Workers’ Compensation and Insurance Act,” Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer’s Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers’ compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)
At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. “Covered Professional Services” as designated in the policy must specifically include work performed under this Agreement. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer's duty to defend.

e. **Minimum Policy Limits Required**

   (i) The following insurance limits are required for the Agreement:

   - **Combined Single Limit**
     - Commercial General Liability: $1,000,000 per occurrence/ $2,000,000 aggregate for bodily injury, personal injury, and property damage
     - Automobile Liability: $1,000,000 combined single limit
     - Employer's Liability: $1,000,000 per accident or disease
     - Professional Liability: $1,000,000 per claim and aggregate (errors and omissions)

   (ii) Defense costs shall be payable in addition to the limits.

   (iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. **Evidence Required**

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer’s equivalent) signed by the insurer’s representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. **Policy Provisions Required**
(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant’s policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant’s indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

1. Each such policy shall be from a company or companies with a current A.M. Best’s rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and
obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City’s choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant’s services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney’s fees and other related costs and expenses. Consultant’s obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant’s obligation to defend, indemnify, and/or hold harmless arises out of Consultant’s performance of “design professional” services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant’s indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant’s liability for such claim, including the cost to defend, shall not exceed the Consultant’s proportionate percentage of
California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). If the services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.
15. City Material Requirements.

Consultant is hereby made aware of the City’s requirements regarding materials, as set forth in [Insert the name of the document that contains the City’s standard material requirements], which are deemed to be a part of this Agreement.

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Orange, State of California.

17 Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days’ written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

18 Documents. Except as otherwise provided in “Termination or Abandonment,” above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

19. Organization

Consultant shall assign _________________________ as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.
This Agreement is limited to and includes only the work included in the Project described above.

21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:                 CONSULTANT:
City of San Juan Capistrano [***INSERT NAME, ADDRESS &
32400 Paseo Adelanto CONTACT PERSON***]
San Juan Capistrano, CA 92675
Attn:                  [***INSERT NAME &
[***INSERT NAME &
DEPARTMENT***]

and shall be effective upon receipt thereof.

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.


Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated
Agreement.

25. **Severability**

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

26. **Successors and Assigns**

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

27. **Non-Waiver**

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

28. **Time of Essence**

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

29. **City’s Right to Employ Other Consultants**

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. **Prohibited Interests**

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

31. **Federal Requirements**

When funding for the services is provided, in whole or in part, by an agency of the federal government, Consultant shall also fully and adequately comply with the provisions

[***INCLUDE THIS SECTION ONLY IF APPLICABLE; DELETE OTHERWISE AND DELETE ASSOCIATED EXHIBIT. YOU MAY ALSO NEED TO INCLUDE SOME INFORMATION IN THE RFP DUE TO FEDERAL FUNDING GUIDELINES. CONSULT LEGAL COUNSEL IF NECESSARY***]
included in Exhibit “D” (Federal Requirements) attached hereto and incorporated herein by reference (“Federal Requirements”). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

[SIGNATURES ON FOLLOWING PAGE]
SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT

BETWEEN CITY OF SAN JUAN CAPISTRANO

AND [***INSERT NAME***]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF SAN JUAN CAPISTRANO [INSERT NAME OF CONSULTANT]

By: ___________________________        By: ___________________________

[INSERT NAME]                     [INSERT NAME]

[INSERT TITLE]                    [INSERT TITLE]

Its: ___________________________

Printed Name:____________________

ATTEST:

By: ___________________________

City Clerk

APPROVED AS TO FORM:

By: ___________________________

City Attorney
EXHIBIT A

Scope of Services
EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a quarterly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant.
APPENDIX B
SUMMARY SHEET

Firm Name: ______________________________________________________
Firm Parent or Ownership: _________________________________________
Firm Address: _____________________________________________________

Firm Telephone Number: ____________
Firm Fax Number: ________________
Number of years in existence: ______

Management Contact (person responsible for direct contact with the City of San Juan Capistrano and services required for this Request for Proposal):
Name: ______________________ Title: ______________________________
Telephone Number: ______________________
Fax: ____________________________
Email: __________________________

Project Manager (Person responsible for day-to-day servicing of the account):
Name: ______________________ Title: ______________________________
Telephone Number: ______________________
Fax: ____________________________
Email: __________________________

Types of services provided by the firm:
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
APPENDIX C
CERTIFICATION OF PROPOSAL TO THE CITY OF SAN JUAN CAPISTRANO

1. The undersigned hereby submits its proposal and, by doing so, agrees to furnish services to the City in accordance with the Request for Proposal (RFP), dated __________, and to be bound by the terms and conditions of the RFP.

2. This firm has carefully reviewed its proposal and understands and agrees that the City is not responsible for any errors or omissions on the part of the proposer and that the proposer is responsible for them.

3. It is understood and agreed that the City reserves the right to accept or reject any or all proposals and to waive any informality or irregularity in any proposal received by the City.

4. The proposal includes all of the commentary, figures and data required by the RFP, dated ____________________.

5. This firm has carefully read and fully understands all of the items contained in Section 7, General Requirements. This firm agrees to all of the general requirements except for those disclosed by the firm in project proposal, listed on an attachment.

6. The proposal shall be valid for 120 days from the date of submission.

Name of Firm: _________________________
By: _________________________________
   (Authorized Signature)
Print Name: _________________________
Title: _______________________________
Date: _______________________________