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**Phone: 760-839-4001 Fax: 760-839-4597**

November 30, 2020

**SUBJECT: Request for Proposal to Develop a Local Roadway Safety Plan**

To Whom It May Concern:

**Introduction**

The City of Escondido (City) is seeking proposals for professional engineering services to develop a Local Roadway Safety Plan. Proposals are to be submitted by **5:00 P.M. on December 18, 2020** to the email address indicated on page 5. This project will be funded by a State grant requiring the Consultant to follow all pertinent local and State laws and regulations.

**Project Description**

Federal regulations require each State to prepare a Strategic Highway Safety Plan (SHSP). Where a SHSP is a statewide approach to improve roadway safety, a Local Roadway Safety Plan (LRSP), is a means by which local agencies can address unique roadway safety needs within their jurisdiction while contributing to the success of the SHSP.

The State of California Department of Transportation, Caltrans, has set aside state funds to assist local agencies in development of their roadway safety plans. In 2019, the City of Escondido (City) applied for funding and was notified in late 2019 that their submission was approved.

**Scope of Services**

The Consultant shall prepare a detailed scope of services for the development of the City's Local Roadway Safety Plan, in part and at a minimum, on information presented in this Request for Proposals, and other available information. The Plan shall be customized for improving traffic safety within the City of Escondido using measures under the various E's: Engineering, Education, Encouragement, Enforcement, Emerging technologies, and Evaluation.

The Consultant shall also prepare and provide a comprehensive schedule to reflect the timeframe for each task of the proposed scope of work, preferably utilizing Microsoft Project. The project schedule shall show the tasks, duration, milestones, assignments, critical paths, and other relevant data. This project has an anticipated duration of six to eight months.

The work scope will include, but is not limited to the following tasks:

**Background Research**

Information to be supplied by the City includes available traffic count data, relevant planning documents, such as the General Plan and the Bicycle Master Plan (2012), and relevant City Capital Improvements Projects (CIP). Collision data is best available through SWITRS and TIMS. Transit facilities and route information would be available through NCTD (North County Transit District).

The Consultant shall be responsible for review of all supplied information, research and review of the documents listed above, as well as the City's standard specifications and provisions, NCTD's TIP, SANDAG's TIP, Caltrans' Integrated Corridor Management, the Local Roadway Safety Manual for California's Local Road Owners, the Systemic Safety Project Selection Tool and other relevant local and regional policies and guidelines. The consultant should also be familiar with relevant state and national guidelines and standards, including sources with emphasis on bicycle and pedestrian safety from FHWA, AASHTO and NACTO.

### **Setting Safety Plan Goals and Objectives**

- Consultant shall work with City staff and the project team to formalize the Plan goals and objectives in order to safely and equitably serve multi-modal mobility in the City of Escondido. Determination will also take place with regards to the frequency of future Plan updates and possible reporting elements.
- Safety Plan should include but not be limited to:
  - Safety Goals
  - Identified crash patterns and deficiencies
  - Cost-effective improvement strategies and countermeasures for each identified location/intersection
  - Infrastructure safety projects that address the identified safety deficiencies and that are in line with the goals of and eligible for the HSIP program
  - Engineering: Benefit/Cost Ratio, crash reduction factor
  - Behavioral safety strategies
  - Implementation plan (and steps towards implementation) for each of the Es, identify/address potential barriers that can affect implementation
  - Communication, collaboration, outreach with stakeholders
  - Integrating the LRSP into other Transportation Plans for implementation
  - Identifying funding options/opportunities
  - Performance monitoring plan

### **Safety Issues Identification**

Consultant shall utilize the 5-year collisions data along with associated analysis, and identify priority safety corridors and intersections (a minimum of the top 30 City-owned intersections and/or segments) that experience the highest number of fatality and severe injury collisions, as well as overall numbers of collisions. This is in addition to the general identification of crash activities at intersections and roadway segments throughout the City. The locations and data supporting their selection shall be identified and discussed with Traffic Engineering and Police Department staff for evaluation and input.

Within the bounds of available data, the consultant shall explore detailed issues identification and countermeasures for the priority safety intersections and roadway segments, particularly those that experience high crash volumes, high crash severity, high numbers of 'vulnerable' user crashes, and location characteristic variety. The Consultant shall also identify countermeasures that are applicable

citywide under the various E's. Particular attention needs to be paid to collisions involving vulnerable road users including pedestrians, cyclists, seniors, disabled persons, school age children, etc.

Further, the consultant shall identify 5-10 (as appropriate) contributing factors of crashes at each location. Given that several state routes run through the City, consultant shall also include Caltrans intersections within the City-wide analysis. Those intersections should be ranked with the City intersections as a whole, and may cause additional intersections to be analyzed in addition to the top 30 City-owned intersections.

### **Field Visits**

Consultant shall conduct site visits on a weekday (Tuesday-Thursday) with observations of traffic patterns and roadway characteristics that could highlight potential reasons for the observed crash patterns.

The intended purpose of the field visits is to customize the safety measures in accordance to road, traffic, safety conditions and other factors at the different locations rather than offering a generic list of possible improvements.

### **Safety Measures**

The evaluation will culminate in a location profile for each of the selected sites that summarizes its crash activity, physical characteristics, relevant behavioral and social economic context, and likely factors that contribute to crashes at that location. Consultant shall identify safety measures under the various E's, including proven measures contained in the Local Roadway Safety Manual. Consultant shall conduct a benefit/cost analysis for project alternatives to determine which projects provide the most safety benefit relative to associated costs to help ensure maximization of the benefits. Consultant is expected to identify measures that equitably mitigate safety issues for all modes of transportation. A master project list shall be developed to help prioritize implementation, assuming that some project elements will be complementary and that applying them to multiple locations at once could lead to cumulative safety benefits and/or cost savings. The use of temporary devices can be considered. Technological measures such as crash avoidance technology, connected vehicles, and others can also be considered to minimize the factor of human error. Opportunities for implementation through the City's pavement maintenance program, safety grant funding, etc. need to be noted when applicable.

In addition to the infrastructure/engineering measures, safety measures shall also be identified for targeted enforcement based on collisions data review, including locations, types, and contributing factors. Safety education measures (for elementary/middle school age students, high schools, seniors, working adults, etc.) shall also be identified. This is in addition to encouragement initiatives to support the safe use of environmentally friendly modes of transportation, including walking, cycling and use of transit.

An evaluation mechanism must be built into the Plan to assess effectiveness of the different countermeasures and apply corrections in order to maximize the safety benefits. Recommended future updates of the Local Roadway Safety Plan must also be described as part of an ongoing Evaluation process.

### **Local Roadway Safety Plan**

The results of prior tasks will be incorporated into an Administrative Draft Local Roadway Safety Plan for review by the City's Engineering Services Department. The Administrative Draft will include the Plan goals and objectives, process used for the Plan development, analysis findings, recommended safety measures along with associated prioritization, potential funding sources, and evaluation criteria and future updates. Maps, charts, photos, and concept improvement graphs will be included in the Administrative Draft report as applicable. Comments will be incorporated into a Draft Plan report for review by the Project Team (PT) and the Transportation and Community Safety Commission. Consultant shall revise the Draft Plan based on comments compiled and provided by City. In addition to the electronic files, consultant shall deliver two hard copies of the Administrative Draft report, six copies of the Draft, and three hard copies of the Final Plan report.

### **Project Management and Coordination Meetings**

The designated Consultant Project Manager, under the general direction of the City Project Manager, shall be responsible for overseeing all aspects of project development and coordination as follows:

- **Project Kick-Off Meeting:** Meeting with representatives of the different City departments to discuss the plan goals, the role of the consultant and stakeholders, communication protocol, progress reporting, scheduling and invoicing, key milestones, and what defines success for this project.
- **Project Team Meetings:** Up-to three (3) Project Team (PT) status meetings will be conducted to maintain a regular and consistent communication on upcoming tasks, identifying potential risks and challenges to success. These meetings will be held virtually via Zoom or equivalent technology. Consultant shall develop the agenda and prepare a summary of the PT meetings. The meeting notes will include a list of decisions, actions, and responsible parties.
- **Assisting in the presentation of the plan to the Transportation and Community Safety Commission and to City Council.** This will also provide opportunities for the public to provide input on the objectives, and desired safety measures.
- **Overseeing the Plan development and ensuring that all measures of the project's scope of services are completed in a timely and professional manner with an emphasis on providing the City with a high-quality product.**
- **Ensuring that the Safety Plan, including all recommended safety measures, meet applicable Federal, State, and local requirements, in anticipation of future grant funding opportunities.**

- Ensuring that all appropriate communication, correspondence, and reports are completed on an ongoing basis in a timely manner to the satisfaction of the City.

**PROPOSAL SUBMITTAL INFORMATION:**

1. Proposals should be limited to 25 pages. The page limit does not apply to the cover page, the schedule, attachments and any forms required by this RFP. Each page should be numbered.
2. Each submittal shall include:
  - a. Proposed Project Team – List roles and responsibilities of all team members. Key members shall not be removed from the project without City approval.
  - b. Project Team Qualifications and References – Include information on the qualification of all team members. Team members should have demonstrated experience in similar projects. Please include a list of representative and similar past projects with a contact's name and phone number in your proposal.
    - i. Any sub-consultants used for supporting services not performed by members of your firm must be listed separately in your proposal.
  - c. Scope of Work and Approach – Include the approach to the project, potential challenges and how these challenges will be addressed, recognizing the established Caltrans LRSP guidelines. Include the number of locations to be evaluated and proposed scope of work for each location.
  - d. Cost Proposal Worksheet – All proposals shall provide detailed information on the number of hours assigned to each task and the associated hourly rate for each of the team members. Include milestones and deliverables. Consultant should refer to Local Assistance Procedure Manual Exhibit 10-H for submittal example.
  - e. Proposed Schedule – Include a detailed implementation schedule with an estimated project start in February, 2021. Note key project milestones and timelines for deliverables. Provide project schedule details and suggest changes within the basic constraints of the program. It is preferable to maintain the complete project schedule within six to nine (6-9) months. Transportation and Community Safety Commission approval of the Local Roadway Safety Plan is planned for the 4<sup>th</sup> quarter of 2021.
    - i. In order to assess duration and resources, the project planning and scheduling of tasks should be done using a Gantt chart.
3. Responses to this RFP shall be submitted to Craig Williams at [cwilliams@escondido.org](mailto:cwilliams@escondido.org).

**GENERAL**

This project is being funded through a Caltrans grant, and requires the selected consultant to follow established guidelines and procedures for HSIP contracts. Disadvantage Business Enterprise (DBE) participation in this project is encouraged.

The total amount payable to the Consultant shall not exceed \$72,000.

Any questions related to this RFP shall be submitted in writing to the attention of Craig Williams at [cwilliams@escondido.org](mailto:cwilliams@escondido.org). Questions shall be submitted before 5:00 PM on December 11, 2020.

No oral questions or inquiries about this RFP/RFQ shall be accepted.

Addenda to this RFP, if issued, will be sent to all prospective Consultants the [local agency] has specifically e-mailed a copy of the RFP to and will also be posted on the City of Escondido's website at:

[www.escondido.org/purchasing](http://www.escondido.org/purchasing)

It shall be the Consultant's responsibility to check the City's website to obtain any addenda that may be issued.

#### **SELECTION PROCESS**

The submitted proposals will be evaluated based on the qualifications of the proposed team for design of similar projects, proposed schedule and the value for the service provided.

Proposals will be evaluated and ranked according to the following criteria:

- Organization of Proposal
- Approach & Project Scope
- Schedule of Work
- Staff Qualifications
- References
- Cost Proposal Value for Services Provided
- Interview (optional)
  - Presentation by Team
  - Q&A Responses

The highest rated firm(s) may be interviewed by the City of Escondido. Contract shall be awarded based on qualifications and best value of service provided, as determined by the City.

The anticipated consultant selection schedule is as follows:

- RFP Issued: November 30, 2020
- Proposals due: December 18, 2020
- Proposal review and evaluation: December 21 – Dec. 31
- Oral interviews (if needed): January 10 – Jan 15
- Cost Negotiation with first ranked consultant: January 5 (if no interviews) – January 16 (with interviews)
- Contract Award and Notice to Proceed: February 15, 2021

The Consultant shall, upon notification by the City of being selected for this work, return a signed Consulting Agreement for Design Professionals with the City (Attachment 1) and required insurance

certificate within ten days. Attached is a copy of the City's standard form of contract for professional services. Please take note of the insurance requirements detailed in Paragraph No. 8. Be sure to review your current insurance policy and verify that your firm's coverage meets these minimum requirements.

**REFERENCE DOCUMENTS**

- General Plan Circulation Element  
<http://www.escondido.org/data/sites/1/media/pdfs/planning/gpupdate/generalplanchapteriii.pdf>
- 2012 Bicycle Master Plan:  
<https://www.escondido.org/Data/Sites/1/media/PDFs/Planning/BicycleMasterPlan.pdf>
- Caltrans Local Roadway Safety Plan (LRSP) guidance:  
<https://dot.ca.gov/programs/local-assistance/fed-and-state-programs/highway-safety-improvement-program/local-roadway-safety-plans>

ATTACHMENT 1



**CITY OF ESCONDIDO  
CONSULTING AGREEMENT**

This Consulting Agreement ("Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2020 ("Effective Date")

Between: CITY OF ESCONDIDO  
a California municipal corporation  
201 N. Broadway  
Escondido, CA 92025  
Attn: [name of primary City staff contact]  
(760) xxx-xxxx  
("CITY")

And: [Name]  
[Entity Type: e.g., "a California corporation"]  
[Street address]  
[City, state, zip code]  
Attn: [name of contact]  
[telephone number]  
("CONSULTANT").

WHEREAS, the CITY has determined that it is in the CITY's best interest to retain the professional services of a consultant to [insert brief description of what CONSULTANT will do];

WHEREAS, CONSULTANT is considered competent to perform the necessary professional services for the CITY; and

WHEREAS, the CITY and CONSULTANT desire to enter into this Agreement for the performance of the Services described herein.

NOW, THEREFORE, it is mutually agreed as follows:

1. Description of Services. CONSULTANT shall furnish all of the Services described in the Scope of Work, which is attached to this Agreement as Attachment "A" and incorporated herein by this reference ("Services").
2. Compensation. In exchange for CONSULTANT's completion of the Services, the CITY shall pay, and CONSULTANT shall accept in full, an amount not to exceed the sum of \$ [REDACTED]. Any breach of this Agreement shall relieve CITY from the obligation to pay CONSULTANT, if CONSULTANT has not corrected the breach within a reasonable time after CITY provides notice.
3. Scope of Compensation. CONSULTANT shall be compensated only for performance of the Services as described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent.
4. Performance. CONSULTANT shall faithfully perform the Services in a proficient manner, to the satisfaction of the CITY, and in accord with the terms of this Agreement. CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other information furnished by CONSULTANT pursuant to this Agreement, except that CONSULTANT shall not be responsible for the accuracy of information supplied by the CITY.
5. Personnel. The performance of the Services by certain professionals is significant to the CITY. As such, CONSULTANT shall only assign the persons listed on Attachment "B", attached to this Agreement and incorporated herein by this reference ("Personnel List"), to perform the Services. CONSULTANT shall not add or remove persons from the Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.
6. Termination. Either the CITY or CONSULTANT may terminate this Agreement upon providing the other party with thirty (30) days' advance written notice.
7. City Property. All original documents, drawings, electronic media, and other materials prepared by CONSULTANT pursuant to this Agreement immediately become the exclusive property of the CITY, and shall not be used by CONSULTANT for any other purpose without the CITY's prior written consent.
8. Insurance Requirements.
  - a. CONSULTANT shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services, and the results of such work, by CONSULTANT, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:

- (1) *Commercial General Liability.* Insurance Services Office (“ISO”) Form CG 00 01 covering Commercial General Liability on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence, \$4,000,000 general aggregate.
  - (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY’s Risk and Safety Division.
  - (3) *Workers’ Compensation.* Worker’s Compensation as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
  - (4) *Professional Liability (Errors and Omissions).* Professional Liability (Errors and Omissions) appropriate to CONSULTANT’s profession, with limits no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.
  - (5) If CONSULTANT maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONSULTANT.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best’s rating of no less than A-:VII, or as approved by the CITY.
  - (2) *Additional Insured Status.* Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used. The Automobile Liability endorsement shall be at least as broad as ISO Form CA 20 01.
  - (3) *Primary Coverage.* CONSULTANT’s insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONSULTANT’s insurance and shall not contribute with it.
  - (4) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
  - (5) *Subcontractors.* If applicable, CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this

Agreement, and CONSULTANT shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.

- (6) *Waiver of Subrogation.* CONSULTANT hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONSULTANT, its agents, representatives, employees, and subcontractors.
  - (7) *Self-Insurance.* CONSULTANT may, with the CITY's prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONSULTANT shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONSULTANT's (i) net worth and (ii) reserves for payment of claims of liability against CONSULTANT are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. CONSULTANT's utilization of self-insurance shall not in any way limit the liabilities assumed by CONSULTANT pursuant to this Agreement.
  - (8) *Self-Insured Retentions.* Self-insured retentions must be declared to and approved by the CITY.
- c. *Verification of Coverage.* At the time CONSULTANT executes this Agreement, CONSULTANT shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.
  - d. *Special Risks or Circumstances.* The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
  - e. *No Limitation of Obligations.* The insurance requirements in this Agreement, including the types and limits of insurance coverage CONSULTANT must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.
  - f. Failure to comply with any of the insurance requirements in this Agreement, including but not limited to a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. In the event that CONSULTANT fails to comply with any such insurance requirements in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i)

immediately terminate this Agreement; or (ii) order CONSULTANT to stop work under this Agreement and/or withhold any payment that becomes due to CONSULTANT until CONSULTANT demonstrates compliance with the insurance requirements in this Agreement.

9. Indemnification, Duty to Defend, and Hold Harmless.

- a. [Please use this subsection (and delete subsections b and c, below) if this is a **NON-CONSTRUCTION** contract and *is not* regarding a DESIGN PROFESSIONAL (see subsection c for types of DESIGN PROFESSIONALS)] CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall hold harmless, defend, and indemnify the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with CONSULTANT's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the sole negligence or willful misconduct of the CITY.
- b. [Please use this subsection (and delete subsections a and c) if this is a **CONSTRUCTION** contract and *is not* regarding a DESIGN PROFESSIONAL] CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall hold harmless, defend, and indemnify the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with CONSULTANT's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.
- c. [Please use this subsection (and delete subsections a and b, above) if this is a contract regarding a **DESIGN PROFESSIONAL** (Types of DESIGN PROFESSIONALS include: licensed architect, landscape architect, professional engineer, professional land surveyor)] CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall hold harmless, defend, and indemnify the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with CONSULTANT's performance of the

Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY, and only to the extent such Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT. Further, in no event shall the cost to defend charged to the CONSULTANT exceed the CONSULTANT's proportionate percentage of fault.

- d. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall defend, indemnify, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all Claims caused by, arising under, or resulting from any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any work performed pursuant to this Agreement.
  - e. All terms and provisions within this Section 9 shall survive the termination of this Agreement.
10. Anti-Assignment Clause. Because the CITY has relied on the particular skills of CONSULTANT in entering into this Agreement, CONSULTANT shall not assign, delegate, subcontract, or otherwise transfer any duty or right under this Agreement, including as to any portion of the Services, without the CITY's prior written consent. Any purported assignment, delegation, subcontract, or other transfer made without the CITY's consent shall be void and ineffective. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY's prior written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
  11. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.
  12. Independent Contractor. CONSULTANT is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
  13. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONSULTANT.
  14. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONSULTANT concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.

15. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by CITY, in whole or in part.
16. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.
17. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
18. Multiple Copies of Agreement/Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file in the office of the Escondido City Clerk is the copy of the Agreement that shall take precedence if any differences exist among copies or counterparts of the Agreement.
19. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.
20. Notice. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and the CITY and CONSULTANT shall promptly provide the other party with notice of any changes to such contact information.
21. Business License. CONSULTANT shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.
22. Compliance with Laws, Permits, and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. CONSULTANT shall obtain any and all permits, licenses, and other authorizations necessary to perform the Services. 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 CONSULTANT to comply with this section.
23. Prevailing Wages. If applicable, pursuant to California Labor Code section 1770 et seq., CONSULTANT agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the

applicable "General Prevailing Wage Determination" approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at <http://www.dir.ca.gov/opri/dprewagedetermination.htm> and incorporated into this Agreement by this reference. 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 CONSULTANT to comply with this section.

24. [Please *keep* this section for **PUBLIC WORKS PROJECTS** that are either (1) for new construction, alteration, installation, demolition, or repair and valued at more than \$25,000, or (2) for maintenance and valued at more than \$15,000. Delete this Section 24 if it does not apply.] Department of Industrial Relations Compliance. This public project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. CONSULTANT shall post any job site noticed required by regulation. CONSULTANT, as well as any subcontractors, shall be registered pursuant to California Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any public works contract subject to the requirements of Division 2, Part 7, Chapter 1 of the California Labor Code. 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 CONSULTANT to comply with this section.
25. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. CONSULTANT affirms that as a licensed Contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will be employed on this public project. CONSULTANT agrees to comply with such provisions before commencing any work on, and continuously throughout the performance of, this Agreement.
26. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signators below.

IN WITNESS WHEREOF, this Agreement is executed by the parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO

Date: \_\_\_\_\_

Name/Title

\_\_\_\_\_  
City      Manager/Department      Head/Designee

[CONSULTANT COMPANY NAME]

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Title (please print)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY  
MICHAEL R. MCGUINNESS, City Attorney

BY: \_\_\_\_\_