



Christina Holmes  
Director of Finance  
201 North Broadway, Escondido, CA 92025  
Phone: 760-839-4620

## NOTICE OF REQUEST FOR PROPOSALS

October 14, 2021

**Re: Notice to Consultants – Request for Proposals (“RFP”) No. 22-05 – Public Information Services**

Notice is hereby given that the City of Escondido, a California municipal corporation (“City”), is accepting proposals from qualified consulting firms to provide strategic advice and communications and to develop a CityWide outreach plan to educate the public about a potential local sales tax revenue ballot measure for the November 8, 2022 election.

One electronic version of the proposal must be emailed to [cholmes@escondido.org](mailto:cholmes@escondido.org) and received **no later than 5 p.m. on November 4, 2021** (“Submission Deadline”). Any proposals received after the Submission Deadline will not be accepted.

Proposal files must be clearly labeled “RFP No. 22-05 – Public Information Services”.

There will be **no public opening of the proposals**. Proposals will be treated as confidential until the contract is awarded or recommended for award.

Questions or comments concerning this RFP must be submitted via e-mail to Christina Holmes, Director of Finance, at [cholmes@escondido.org](mailto:cholmes@escondido.org), no later than 5 p.m. on November 4, 2021 (“Questions Deadline”). Any questions or comments regarding this RFP received after the Questions Deadline will be disregarded. Emails concerning this RFP should state the following in the subject line: “RFP No. 22-05 – Public Information Services.” Any communication regarding or relating to this RFP with any City employee or official other than the Director of Finance is strictly prohibited. A summary of questions from prospective Consultants and City responses will be posted on the City’s website at <https://www.escondido.org/purchasing> by 5 p.m. on October 27, 2021.

Each proposal shall be in accordance with specifications, instructions, and information contained in this RFP. The City reserves the right to reject any or all proposals for any reason it deems necessary, to waive defects or irregularities in any proposal, and to accept the proposal deemed the most advantageous to the City. This RFP does not commit the City to award a contract or to pay any costs incurred in the preparation of a response to this request.

Sincerely,

A handwritten signature in blue ink that reads "Christina Holmes".

Christina Holmes  
Director of Finance



**REQUEST FOR PROPOSALS No.22-05  
PUBLIC INFORMATION SERVICES**

**SUBMISSION DEADLINE: 5 P.M. ON NOVEMBER 4, 2021**

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EXHIBIT 1: FORM CONSULTING AGREEMENT

## **SECTION I: Schedule**

The following is the City of Escondido's ("City") best estimate of deadlines relating to this RFP and are not binding on the City:

Activity	Date
RFP Released	Thursday, October 14, 2021
Question Submittal Due	By 5 p.m. on Thursday, October 21, 2021
Response to Questions Released	By 5 p.m. on Wednesday, October 27, 2021
RFP Response and Proposal Due	By 5 p.m. on Thursday, November 4, 2021
Staff Review of Proposals	Wednesday, November 10, 2021
Notification of Interviews	Thursday, November 11, 2021
Consultant Presentations/Interviews	Week of November 15, 2021

Note: The City expressly reserves the right to make modifications to the estimated deadlines and dates described in this Section I.

## **SECTION II: Project Objective**

The City of Escondido (City) is seeking proposals from qualified persons or firms to provide strategic advice and communications and to develop a CityWide outreach plan to educate the public about a potential local sales tax revenue ballot measure for the November 8, 2022 election (the Project). The City is working with True North Research on the public opinion polling. The City anticipates an approximate project budget amount of \$75,000.

## **SECTION III: Introduction/Background**

The City of Escondido is located in north San Diego County, approximately 30 miles north of the City of San Diego, California. Escondido is an established community incorporated on October 8, 1888 under the general laws of the State of California. The City's current population is approximately 152,200. The City of Escondido is a full-service city that operates under a City Council/City Manager form of government. The City is organized into the following operating departments: City Attorney, City Clerk, City Manager, City Treasurer, Community Development, Communications & Community Services, Engineering Services, Finance, Fire, Human Resources, Information Systems, Police, Public Works, and Utilities.

Sales tax is the largest General Fund revenue source at 39% of total. The sales tax rate currently applied in the City of Escondido is 7.75 percent, which is the base rate for San Diego County. This includes a combined statewide rate of 7.25 percent and a San Diego county district tax of 0.50 percent for the TransNet program.

## **SECTION IV: Scope of Work**

The scope of work submitted with each proposal must include, but is not limited to, the Project tasks described in this Section IV. If a prospective Consultant feels additional tasks are warranted for the Project, the additional tasks must be clearly identified in the proposal.

The City seeks a strategic advisor to provide advice, recommendations, and support for the City's revenue measure efforts, including (but not limited to) the following tasks:

- Assess public opinion poll results and develop a community engagement strategy to ensure voters understand the outcome of their vote;
- Work collaboratively with the City's chosen survey consultant on the evaluation of polling results;
- Identify the opportunities and challenges associated with different election dates, financial mechanisms, and expenditure plans;
- Prepare a plan (including timeline, logistics, etc) to disseminate appropriate informational and educational materials about the City's needs and priorities and the reason for the ballot measure within the City of Escondido;
- Identify the most effective methods of information distribution for the City of Escondido and provide information about stakeholder engagement;
- Prepare the collateral included in the public information plan;
- Conduct message training for City staff and elected officials;
- Participate in public meetings to help present information to Escondido officials and community members about the reason for the ballot measure;
- Draft and refine the ballot language, argument, and rebuttal as appropriate;
- Provide monitoring and updates of other relevant local, regional, and statewide initiatives.

## SECTION V: Proposal Requirements

Prospective Consultants are responsible for preparing an effective, clear, and concise proposal. The proposal shall demonstrate the qualifications, competence, and capacity of the prospective Consultant to provide the services described in, and in conformity with, the requirements of this RFP.

By submitting a proposal in response to this RFP, the prospective Consultant is certifying it takes no exceptions to the RFP and will accept the City's terms and conditions. If any exceptions are taken, such exceptions must be clearly noted in the proposal and may be reason for rejection of the proposal.

In order for a proposal to be considered, it must contain the following information. Format is left to the discretion of the Respondent.

- Briefly describe the firm's practice and experience in public information, particularly regarding California municipal sales tax revenue ballot measures.
- Describe the knowledge and experience of all the people who would be assigned to this project – including any subcontractors or consultants and what specifically those subcontractors or consultants would be responsible for.
- Describe your firm's proposed methodology, strategy, and timeline for assisting the City with a public information effort geared toward a ballot measure on the November 8, 2022 election. Discuss specifically how your firm connects with people in a post-COVID world.
- Describe how you measure and report on the effectiveness of a public information effort.
- Describe your firm's proposed compensation as well as anticipated hard costs associated with your proposed information plan (translation into Spanish, printing and direct mail costs, etc). Please include both a retainer model as well as a fixed fee amount.
- Provide a list of similar or comparable projects the firm has worked on in at least the past two election cycles. Include project description, project budget, final budget if different, and duration of the project. Submit examples of projects that required significant public engagement as part of their scope, with particular sensitivity to the inclusion of diverse communities. For each example, identify the company's role, client name and contact information, and indicate what role (if any) the proposed project manager and other team members had in the project.
  - Submit examples of collateral used as part of the public information effort.
- Provide three references from the 2018 or 2020 election cycle including the public entity name, address, contact person's name and telephone number, and a brief description of the work performed for them.
- Describe any existing or potential conflict of interest arising from relationships with or representation of other parties that should be considered as a factor in determining your objectivity.
- Describe any and all judgments, pending or expected litigation, or other real or potential financial reversals that might materially affect the viability or stability of the proposing organization or warrant that no such conditions exist.

## **SECTION VI: Section/Award Criteria**

The Project will be awarded to the most responsive and responsible Consultant whose proposal conforms to the requirements of this RFP and is considered to be in the best interest of the City.

The City will conduct a two-tiered evaluation process to select the firm considered to be the most responsive and responsible Respondent whose proposal conforms to the requirements of this RFP and is considered to be the most advantageous to the City.

The initial evaluation will focus on reviewing the scope of work, the firm's qualifications and experience, and cost. The secondary evaluation will consist of an interview and reference check with the top two or three firms. The weighted criteria for each level are:

### Initial Evaluation:

- Proposed scope of work (40%)
  - Demonstrated understanding and responsiveness to RFP
  - Proposed methods, strategy, and process
- Qualifications and relevant experience (40%)
  - Years in business and qualifications of individuals and team
  - Experience providing similar services to local government agencies
  - Services delivery time frames
  - Evaluation of submitted public information outreach materials and collateral
- Cost estimates (20%)

### Secondary Evaluation:

- Interview (50%)
- References (50%)
  - Customer satisfaction
  - Cost versus product level of service
  - Communication strengths and analytical skills
  - Other

The City will act as the sole judge of information submitted in response to this RFP. The City reserves the right to: (1) request additional information or clarification of any submitted information, (2) cancel or amend this RFP, including the proposal evaluation process, at any time, and (3) not enter into any contract resulting from this RFP and issue similar solicitations in the future.

The Consultant awarded the Project ("Consultant") shall enter into a consulting services agreement in substantially the same form as the City's standard Consulting Agreement, which is attached to this RFP as Exhibit 1 and incorporated herein by this reference. Consultant shall enter into the consulting services agreement within 30 days of the City's notice of award of the Project.

The Consultant's proposal submitted in response to this RFP will become part of the consulting services agreement. Any proposed waiver, or change to Exhibit 1 must be clearly identified in Consultant's proposal. Any terms of a submitted proposal that seek to alter or effect the indemnification or licensing requirements of this RFP or Exhibit 1 are not permitted. The requirements and service standards of this RFP and the responses of the Consultant will be incorporated by reference into the resulting agreement regarding the Project.

**Oral Presentations:**

Prior to contract award, the City may require Consultant to present its proposal to the selection committee at no additional cost to the City.

## **SECTION VII: General Terms and Conditions**

### **1. Public Information**

The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal in response to this RFP indicates the prospective Consultant's acceptance of all terms and conditions contained in this RFP, including Exhibits 1, unless clearly and specifically stated otherwise.

### **2. Confidential Information**

Any information deemed confidential or proprietary should be clearly identified by the Consultant as such. Information identified as confidential or proprietary will be protected and treated with confidentiality to the extent permitted by applicable local, state, and federal law.

### **3. Addendums**

The City reserves the right to amend, alter, or revoke this RFP at any time. Any modifications, clarification, or additions will be distributed via email as an addendum.

### **4. Proposal Preparation Cost**

The City is not obligated to reimburse any Consultant for expenses incurred in preparing proposals in response to this RFP. All Consultants shall bear their own costs, fees, and expenses incurred in preparing proposals in response to this RFP.

### **5. Withdrawal of Proposal**

A Consultant may modify or withdraw their proposal, either personally or by written request via email, at any time prior to the Submission Deadline. Such requests should be directed to the Director of Finance.

### **6. Inaccuracies or Misinterpretations**

Subject to the City's sole discretion, the City may terminate a prospective Consultant from the RFP process or terminate any agreement with the Consultant if the City determines that said Consultant has: (1) made a material misstatement, (2) made a material misrepresentation, or (3) provided materially inaccurate information.

### **7. Optional Items**

Prospective Consultants may elect to provide recommendations and pricing for optional items. Pricing for optional items shall not be included in the minimum requirements pricing.

### **8. Business License**

The Consultant awarded the Project shall be required to obtain a City of Escondido Business License pursuant to the terms of Exhibit 1.

### **9. Signature**

All proposals shall be signed in the name of the prospective Consultant and shall bear the original signature in longhand of the persons duly authorized to sign the proposal. Obligations assumed by such signature shall be fulfilled.

### **10. Right to Reject Proposal**

The City reserves the right to reject any or all proposals, to waive any non-material irregularities or information in any proposal, and to accept or reject any items or combination of items. The

City is not obligated to explain or justify its selection or rejection of any Consultant. All proposals submitted in response to this RFP shall immediately become property of the City.

**11. Right to Conduct Personal Interviews**

The City reserves the right to conduct personal interviews or require oral presentations of any or all prospective Consultants prior to selection.

**12. Right to Request Additional Information**

The Consultant shall furnish additional information as the City may reasonably require. The City reserves the right to investigate the qualifications of prospective Consultants as it deems appropriate.

**13. Right to Determine Financial Responsibility and Viability**

The City reserves the right to request information pertaining to the financial stability of a prospective Consultant to allow an appraisal of a prospective Consultant's current financial condition.

**14. Understanding the Services to be Performed**

By submitting a proposal in response to this RFP, each prospective Consultant certifies that they have fully read and understand this RFP and have full knowledge of the scope, nature, quantity, and quality of services to be performed. Each prospective Consultant understands that, if awarded the Project, they will be required to enter into a written contract in substantially the same form as Exhibit 1.

**15. Award of Contract**

Proposals submitted in response to this RFP will be analyzed and the Project awarded to the responsible Consultant whose proposal conforms to this RFP and is considered to be the most advantageous to the City, taking into consideration not just the proposal price, but also the evaluation criteria set forth in this RFP. If the Consultant does not execute a contract in substantially the same form as Exhibit 2 within 30 days after notification of award, the City may, subject to its sole discretion, (1) give notice to the Consultant of the City's intent to select from the remaining Consultants or (2) issue a new RFP for the Project.

**16. Contract Funding**

City's funding of any agreement resulting from this RFP shall be on a fiscal year basis and is subject to annual appropriations. Consultant acknowledges that the City is a municipal corporation, is precluded by the State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this RFP shall constitute an obligation of future legislative bodies of the City or State to appropriate funds for any agreement resulting from this RFP. Accordingly, the Consultant acknowledges and agrees that the funding for any agreement resulting from this RFP are contingent upon appropriation of funds.

**17. City Provisions to Prevail**

The terms of this RFP and the terms of any agreement resulting from this RFP shall govern the Project. Any standard terms and conditions of the Consultant shall not be acceptable to the City unless expressly agreed to by the City by separate document. The City reserves the right to reject a proposal containing unacceptable conditions as non-responsive as a condition of evaluation or award of the proposal.

**18. Equal Employment Opportunity**

The Consultant awarded the project shall comply with all equal employment opportunity provisions of federal, state, and local non-discrimination laws, orders, regulations and guidelines as may be applicable to the Consultant and be in effect during the performance of any agreement resulting from this RFP.

**19. Consulting Services Agreement**

Consultants submitting a proposal shall be prepared to use the City’s standard contract form (Exhibit 1) rather than its own contract form. Services may not commence until the Consulting Service Agreement for the Project is executed.

**20. Consultant’s Invoices**

Invoices shall be prepared and submitted to City of Escondido, Accounts Payable Division, located at 201 N. Broadway, Escondido, CA 92025. Separate invoices are required for each purchase order. Invoices shall contain the following information: Purchase Order number, item number, description of supplies or services, sizes, units of measure, quantities, unit prices and extended totals. Invoices should include all applicable sales or other taxes, and shall be remitted to appropriate agencies on the City’s behalf. All payments made pursuant to this contract are not assignable and shall only be made payable to the seller.

**21. Payment Terms**

The City’s payment terms are Net 30 days from date of invoice. No pre-payment or partial up front down payment will be made for any services. The time period allowed for payment, as indicated on the face hereof or offered by quote or bid, shall commence upon receipt of Vendor’s invoice or upon receipt of the goods or services, whichever is later.

**22. Insurance Requirements**

The Consultant must have insurance in accordance with the requirements listed in Exhibit 1.

**23. Public Agency Clause**

It is intended that other public agencies (e.g., city districts, public authorities, municipal utilities, public school districts and other political subdivisions or public corporations of California) shall have the option to participate in any award made as a result of this solicitation. The City shall incur no financial responsibility for their order placement and payments to the Consultant. This option shall not be considered in proposal evaluation. State whether said option is granted:

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO



CITY OF ESCONDIDO  
CONSULTING AGREEMENT

This Consulting Agreement (“Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (“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").

(The CITY and CONSULTANT each may be referred to herein as a “Party” and collectively as the “Parties.”)

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, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, and the mutual benefits derived therefrom, the Parties hereby agree 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 [Dollar Amount].

CONSULTANT shall be compensated only for performance of the Services described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent.

3. 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.
4. 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.
5. Termination. The Parties may mutually terminate this Agreement through a writing signed by both Parties. The CITY may terminate this Agreement for any reason upon providing CONSULTANT with 10 days' advance written notice. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by CONSULTANT, then CONSULTANT shall be compensated based on the work satisfactorily performed at the time of such termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the Services.
6. 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.
7. 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 and \$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 and \$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.
8. Indemnification, Duty to Defend, and Hold Harmless.
- a. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless 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. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, defend, 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.
  - c. All terms and provisions within this Section 8 shall survive the termination of this Agreement.
9. 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.

10. 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.
11. Independent Contractor. CONSULTANT is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
12. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONSULTANT.
13. 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.
14. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
15. 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.
16. 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.
17. 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 with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.
18. 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.
19. 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.
20. 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.
21. 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 the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

22. 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/dprevwagedetermination.htm> and incorporated into this Agreement by this reference. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

23. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONSULTANT represents and warrants that all of its employees and the employees of any subcontractor retained by CONSULTANT who perform any of the Services under this Agreement, are and will be authorized to perform the Services in full compliance with the IRCA. 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 perform the Services. CONSULTANT agrees to comply with the IRCA before commencing any Services, and continuously throughout the performance of the Services and the term of this Agreement.

24. 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: \_\_\_\_\_

\_\_\_\_\_  
[City Manager/Department Head/Designee Name/Title]

\_\_\_\_\_  
[CONSULTANT COMPANY NAME]

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

\_\_\_\_\_  
Signature

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

APPROVED AS TO FORM:

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

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

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES.

SAMPLE