

REQUEST FOR PROPOSAL



Construction Management Services

City of Barstow

Release Date: 10/22/2024

Responses are due and must be received by 2:00 p.m.

Pacific Daylight Time on 11/12/2024

Eddie Guerrero, PE| Senior Project Manager
City of Barstow Community Development Department
220 E. Mountain View Street STE. A
Barstow, CA 92311
Email: eddie.guerrero@deainc.com
CC: mhernandez@barstowca.org

DECLARATION OF POSTING

I declare under penalty of perjury that I am employed by the City of Barstow, in the City Clerk's Office; and that I posted the foregoing public notice on the bulletin at the entrance to City Hall, 220 E. Mountain View Street, Barstow, CA on **October 22, 2024**.

Signed October 22, 2024 at Barstow, CA

Maribel Hernandez

Maribel Hernandez, City Clerk

Table of Contents

BACKGROUND INFORMATION AND GENERAL DESCRIPTION	1
EVALUATION OF PROPOSALS AND AWARD OF CONTRACT:	5
SCOPE OF SERVICES TO BE PROVIDED.....	5
BID PROCESS	5
CONSTRUCTION INSPECTION	6
BID AWARD/PROJECT COMPLETION PACKAGES	7
TENTATIVE SCHEDULE OF EVENTS.....	8
SAMPLE AGREEMENT	9
NON-COLLUSION DECLARATION.....	23
WORKERS' COMPENSATION.....	24
CAMPAIGN CONTRIBUTION DISCLOSURE PROVISIONS	25

BACKGROUND INFORMATION AND GENERAL DESCRIPTION

STATEMENT OF INTENT

As outlined in greater detail in Section II – Scope of Work, this Request for Proposal (RFP) is to provide professional construction management services, and participation in the project design/construction processes as needed for various projects located within and for the City of Barstow, with the City's Main Street Traffic Signal Upgrades, and the Barstow Road and Rimrock Road Intersection Improvement projects to be the first and foremost projects to be immediately assigned to the selected proposer(s). These services include but are not limited to; assuring that all construction elements and systems work individually and together as intended and required. Construction Management shall effectively and efficiently ensure that all work complies with the approved construction documents and applicable codes and regulations.

This Service Contract will be managed by the City of Barstow – Project Development Unit (PDU) and individual Task Orders will be issued in conjunction with this contract and may be issued on a full or part time basis dependent on the needs of the City. Projects may include new construction, renovations to existing construction, tenant improvements and existing/future site assessments. Proposers will report to the PDU and work as an integral part of the project team and shall report to the PDU Director, Assistant Director and Project Manager of each project team. The target start date and term for the proposed services is subject to negotiation of a final agreement and through to the completion of the project.

THE REQUEST FOR PROPOSAL PROCESS

This RFP seeks the submission of proposals to provide services from any and all interested and qualified proposers. The City of Barstow seeks, by way of this RFP, to obtain the listed services in a manner that maximizes the quality of services, while also maximizing value to the City and, by extension, the citizens of the city. Proposers must be able to show that they can perform the services requested. Such evidence includes, but is not limited to, the respondent's demonstrated competency and experience in delivering services of a similar scope and type and local availability of the proposer's personnel and equipment resources.

OBTAINING RFP DOCUMENTS AND REGISTRATION AS A PROPOSER

The RFP documents may be downloaded via the internet at www.barstowca.org (go to Business, Bid Opportunities/Request for Proposals). If you are interested in submitting a proposal, it is **IMPERATIVE** that you contact the City Clerk's office by phone at (760) 255-5122 or e-mail mhernandez@barstowca.org to **officially register as a Proposer for this specific project** with your company name, address, phone, fax, contact person and email address. **Register by Thursday, October 31, 2024 at 2 pm.** Failure to officially register may result in not receiving addenda to the RFP. Failure to acknowledge the addenda to the RFP may render your proposal as non-responsive.

EVALUATION OF PROPOSALS AND AWARD OF CONTRACT:

1. Costs for preparation of RFPs will be borne by the consultant.
2. Proposals shall be submitted in an 8 ½ x 11 format including any City-provided forms.
3. Submit one original with original signatures and three copies of the written proposal.
4. Submit pricing in a sealed separate envelope entitled “**Price Proposal**” in the envelope containing the written proposal.
5. Submit the entire proposal in a sealed envelope with “**Sealed Proposal for Construction Management – Do not open with Regular Mail**” printed on the outside.
6. Selection of qualified consultant will be by Chapter 10 “Consultant Selection of Caltrans’ Local Assistance Procedures Manual.
7. This request does not constitute an offer of employment or contract for services.

The City of Barstow reserves the right to:

1. Reject any or all proposals not in compliance with public bidding procedures.
2. Postpone award of the contract for a period not to exceed ninety calendar days from the date of proposal opening.
3. Waive informalities in the proposals.
4. Select the proposal which appears to be in the best interest of the City, and
5. The selection committee may deem it necessary to interview applicants. The City retains the right to interview applicants as part of the selection process.

This solicitation has been developed in the Request for Proposal (RFP) format. Accordingly, Proposers should take note that multiple factors will be considered by the City in selecting the most qualified firm and awarding of the Contract.

SCOPE OF SERVICES TO BE PROVIDED

The Construction Management Consultant will conduct for the City of Barstow staff the processing of the bid and construction process. This includes the attendance to the pre-bid conference and to assist the city in the reviewing of the bids and the construction inspection/observation during construction. Including the preparation of any necessary bid addendums and processing of change order requests.

Work will include the following elements:

BID PROCESS

The Bid Support services will include at a minimum the following;

- Perform Peer/Constructability review of project Plans and Specifications

- Coordinate any design revisions necessary to the construction drawings
- Attend Pre-Bid Meeting at City.
- Respond to Contractor Comments and prepare any necessary Bid Addendums.
- Attend Bid Opening Meeting at City.
- Review bids and verify recommendation for Bid Award.
- Prepare Bid Summary.
- Prepare Notice of Award Resolution for City Council approval.
- Prepare Notice of Award

CONSTRUCTION INSPECTION

The Construction Inspection and Observation will include at a minimum the following;

- Prepare Agenda and attend Pre-Construction Meeting with City and Contractor to discuss scope of work, project documents, and control of the work.
- Review contractors' schedule and identify responsibility for tasks including inspection, meetings, shop drawing reviews, permits, field meetings, survey, and other activities for compliance with contract documents.
- Monitor construction schedules and budgets and administer the construction contract between the Contractor and the City.
- Establish and maintain weather day log.
- Provide onsite inspection services as needed for project to observe construction progress and conformance with specified contract documents. Inspection services are estimated at 8-hours per working day, with a minimum of 4-hours per day.
- Furnish daily inspection reports providing work completed, equipment and laborers onsite.
- Assist in quality assurance to achieve conformance with contract documents.
- Provide photographs of daily work and maintain project logs for daily progress of construction work.
- Log, review and respond to contractors shop drawing submittals.
- Attend meetings, as necessary, with City to discuss project activities, review progress, schedule, and budget.
- Coordinate all required construction permits.
- Coordinate with City and public utility agencies during construction.
- Log, review, and provide responses to contractor Requests for Information.
- Clarify construction changes and irregularities.
- Negotiate, prepare and process change orders and extra work orders.
- Resolve business and residence complaints during construction.
- Assist City staff in responding to City "Hot Line" issues.
- Monitor compliance with General NPDES permits and construction erosion control requirements.
- Monitor contractor compliance with public / traffic safety controls.
- Monitor Contractor Labor Compliances and conducted required field Interviews of Contractor Employees.

- Review and verify progress and final payment request by contractor, and make recommendations for payment, revisions, or denials.
- Review certified payroll submittals from contractor and subconsultants.
- Review project Federal documentation and prepare documents as required for funding requests and labor compliance.
- Prepare and process progress Invoices to Caltrans for payment.
- Comply with reporting requirements to Caltrans/FHWA for funding this includes monitoring of construction, area traffic control, and environmental mitigations compliance, coordination of materials testing, preparation of monthly report and coordination with Caltrans Office of Local Assistance.
- Prepare and administer any Caltrans pre, mid, and post construction audits.
- Field review completed project construction and create punch list.

BID AWARD/PROJECT COMPLETION PACKAGES

Upon the bid award of the project, the Consultant will prepare and process the Bid Award Package with Caltrans Local Assistance. The Bid Award Package to Caltrans includes but is not limited to;

- Cover Page/Construction Contract Administration Checklist
- Local Agency Bid Opening Checklist
- Updated Finance Letter
- Detail Estimate and Detail Estimate Summary
- DBE Certifications (from Contractors)
- Contract Award Checklist
- RE's Checklist

After the construction of the project, the Consultant will conduct the following:

- Complete project close out including acceptance of work, release of retention, completion of final revisions, release of bonds, etc.
- Prepare Final Balancing Change Order.
- Prepare Caltrans Final Completion Package (as outlined below).
- Process Final Invoice with Caltrans.
- Respond to any comments and requests from Caltrans for the Completion Package.
- **Attend final Caltrans or FHWA audit for the project if called upon.**

During and after the construction of the project, the Consultant will prepare and process the Project Completion Forms with Caltrans Local Assistance. This is an important task in the project to assure the reimbursement by Caltrans of the construction payments.

The Final Completion Package to Caltrans includes but is not limited to:

- Cover Page/Expenditures Checklist
- Final Finance Letter

- Final Detail Estimate and Detail Estimate Summary
- Change Order Summary
- Final DBE Certifications (from Contractors)
- Materials Certifications
- Final Inspection Form

TENTATIVE SCHEDULE OF EVENTS

Dates are subject to change

EVENT	DATE
Release Request for Proposal	10/22/2024
Deadline to submit questions to the City	11/01/2024
Last addendum posted by	11/1/2024
Proposal Submission Deadline (2:00 PM on due date)	11/12/2024
Review proposals	11/13/24-11/15/24
Selected Firm(s) Announced by PDU	12/2024

SAMPLE AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

(City of Barstow/_____)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Barstow, a California municipal corporation (“City”) and _____, a California Corporation (“Consultant”).

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: _____.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 “Scope of Services”: Such professional services as are set forth in Consultant’s proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 “Approved Fee Schedule”: Such compensation rates as are set forth in Consultant’s fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 “Commencement Date”: _____.
- 3.4 “Expiration Date”: _____. The City reserves the right to extend the contract with two optional two (2) year terms. The total term of the proposed contract may extend for seven (7) years from award by the City. The exercise of any additional extension of term shall be at the sole discretion of the City.

4. CAMPAIGN CONTRIBUTIONS

This Agreement is subject to Government Code Section 84308, as amended by SB 1439. That statute requires the Consultant to disclose any campaign contribution by the Consultant or the Consultant's agent to City Councilmembers or other City officials of more than \$250 in the aggregate in the preceding 12 months. Consultant shall provide a signed copy of the attached Campaign Contribution Disclosure Form with Consultant's execution of this Agreement.

5. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall terminate at 11:59 p.m. on the Termination Date unless extended in writing by mutual agreement of the parties or terminated earlier in accordance with Section 19 ("Termination") below.

6. CONSULTANT'S SERVICES

- 6.1 Time is of the essence in the Consultant's performance of services under this Agreement.
- 6.2 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Dollars (\$00.00) ("Maximum Amount") unless specifically approved in advance and in writing by City. Consultant shall notify the City Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the maximum amount payable above. Consultant shall concurrently inform the City Agreement Administrator, in writing, of Consultant's estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount payable above.
- 5.1 Consultant shall obtain and maintain in force a City business license for the duration of this Agreement.
- 5.2 Consultant shall perform all work to the highest standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.3 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the

Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.

- 5.4 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by the Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant shall be the Consultant Project Administrator and shall have direct responsibility for the management of the Consultant's performance under this Agreement. No other person shall serve as Consultant Project Administrator without the City's prior written consent.
- 5.5 This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 5.6 Consultant shall be responsible to City for all services to be performed under this Agreement. All subconsultants shall be approved by the City Agreement Administrator and their billing rates are identified in the Approved Fee Schedule, Exhibit B. The city shall pay the Consultant for work performed by its sub-consultants (including labor) only at the Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee Schedule, Exhibit B. *The* Consultant shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all sub-consultants performing services under this Agreement. The city shall not be liable for any payment, compensation, or federal and state taxes for any sub-consultants.
- 5.7 Consultant shall notify the City Agreement Administrator, in writing, of any change in name, ownership, or control of Consultant's firm or of any sub-consultant. Change of ownership or control of the Consultant's firm may require an amendment to the Agreement.
- 5.8 This Agreement is subject to prevailing wage law, for all work performed under the Agreement for which the payment of prevailing wages is required under the California Labor Code. In particular, the Consultant acknowledges that prevailing wage determinations are available for the performance of inspection and survey work.
- 5.9 Pursuant to California Labor Code Sections 1773.2 and 1775, the Consultant shall forfeit as a penalty to the City \$200.00 or any greater penalty provided in the Labor Code for each Calendar Day, or portion thereof, for each worker paid less than the prevailing wage rates for any

work done under the Contract employed in the execution of the work by Consultant or by any Subcontract under Consultant in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each Calendar Day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant.

5.10 Pursuant to Labor Code § 1776, each consultant and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

The payroll records enumerated under subdivision (a) shall be verified and shall be available for inspection at all reasonable hours as required by Labor Code § 1776.”

7. COMPENSATION

6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Approved Fee Schedule in full satisfaction for such services.

6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for services performed pursuant to this Agreement. Each invoice shall identify the maximum amount payable above, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor charges shall be itemized by employee name and classification/position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges. City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall include a copy of each sub-consultant invoice for which reimbursement is sought in the invoice.

6.3 The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by the Consultant.

6.4 **Additional Work.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is

given by the City through a fully executed written amendment to this Agreement. Consultant shall not undertake any such work without prior written approval of the Project Administrator.

8. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents, or other written material, and all electronic files, including computer-aided design files, developed by Consultant in the performance of this Agreement (such written material and electronic files are collectively known as “written products”) shall be and remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

9. RELATIONSHIP OF PARTIES

The consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Consultant, its officers, employees, and agents shall not have any power to bind or commit the City to any decision or course of action, and Consultant, its officers, employees, and agents shall not represent to any person or party that it or they are acting as agents of the City or that it or they have the power to bind or commit the City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant’s employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

Under no circumstances shall Consultant look to the City as its employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant’s previously earned California Public Employees Retirement System (“CalPERS”) retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers’ compensation, and other applicable federal and state taxes.

10. AGREEMENT ADMINISTRATOR

In performing services under this Agreement, Consultant shall coordinate all contact with City through its City Agreement Administrator. City reserves the right to change this designation upon written notice to Consultant. All services under this Agreement shall be performed at the request of the City Agreement Administrator, who will establish the timetable for completion of services and any interim milestones.

11. INDEMNIFICATION

10.11 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys’ fees, litigation

costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the parties intend the provisions of this indemnity provision to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

- 10.12 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of the City's choice, expert fees, and all other expenses of litigation. Consultant shall not be entitled to any refund of attorney's fees, defense costs, or expenses in the event that it is adjudicated to have been non-negligent.
- 10.13 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this section of this Agreement and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.14 The obligations of the Consultant under this section of this Agreement are not limited by the provisions of any workers' compensation or similar statute. Consultant expressly waives its statutory immunity under such statutes as to City, its officers, agents, employees, and volunteers.
- 10.15 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in section of this Agreement from each and every subcontractor or any other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others, Consultant agrees to indemnify, hold harmless, and defend City, its officers, agents, employees, and volunteers from and against any and all claims, losses, costs, and expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of

Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of the City's choice.

- 10.16 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This holds harmless and indemnification provision shall apply whether or not any insurance policies apply to a claim, demand, damage, liability, loss, cost, or expense.
- 10.17 In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.
- 10.18 Notwithstanding any federal, state, or local policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in CalPERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for CalPERS benefits.

12. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement.
- 11.2 Any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements or limits shall be available to City as an Additional Insured as provided below. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured.
- 11.3 Insurance required under this Agreement shall be of the types set forth below, with minimum coverage as described:
- 11.3.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent

consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.

- 11.3.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
- 11.3.3 Worker's Compensation insurance if and as required by the laws of the State of California.
- 11.3.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000). In the event the Consultant's policy is a "claims made" policy only covering those claims made during the policy period, then the Consultant agrees to maintain the professional liability insurance required hereunder and with respect to this project in effect for at least three (3) years after acceptance of the work. The retroactive date of the policy must be shown and must be before the Commencement Date of this Agreement. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date before the Commencement Date of this Agreement, the Consultant must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.
- 11.4 Consultant shall require each of its subconsultants to maintain insurance coverage that meets all of the requirements of this Agreement provided however, that the City Agreement Administrator may waive the provision of Errors and Omissions Insurance by subconsultants in his or her sole discretion.
- 11.5 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A: VII in the latest edition of Best's Insurance Guide.
- 11.6 Consultant agrees that if it does not keep the insurance coverages required by this Agreement in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.
- 11.7 At all times during the term of this Agreement, Consultant shall maintain on file with the City's Risk Manager a certificate or certificates of insurance showing that the required coverages are in effect and naming the City and its officers, employees, agents, and volunteers as Additional Insureds. Prior to commencement of work under this Agreement, Consultant shall file with City's Risk Manager such certificate(s) and Forms CG 20 10 07 04 and CG 20 37 07 04 or the substantial equivalent showing City as an Additional Insured.

- 11.8 Consultant shall provide proof that policies of insurance required by this Agreement expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.9 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming the City and its officers, employees, agents, and volunteers as Additional Insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to the City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.10 The insurance provided by the Consultant shall be primary to any other coverage available to the City. Any insurance or self-insurance maintained by the City and/or its officers, employees, agents, or volunteers shall be in excess of the Consultant's insurance and shall not contribute to it.
- 11.11 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents, or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. However, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents, and sub-consultants.
- 11.12 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, the Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to the City, or the Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.13 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless, and defend under Section 11 of this Agreement.
- 11.14 Consultant may be self-insured under the terms of this Agreement only with express written approval from the City.
- 11.14.1 All self-insured retentions (SIR) must be disclosed to the City for approval and shall not reduce the limits of liability.

11.14.2 Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City.

11.15 City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

13. MUTUAL COOPERATION

13.1.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

12.1 If any claim, action, or proceeding is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim, action, or proceeding.

14. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

15. RECORDS AND INSPECTIONS

Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. City shall further have the right to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

15. RECORDS AND INSPECTIONS

Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. City shall further have the right to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

16. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

17. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

If to Consultant:

City of Barstow
220 East Mountain View Street, Suite A
Barstow, CA 92311
Telephone: (760) 253-3531

With courtesy copy to:

Matthew T. Summers, City Attorney
Colantuono, Highsmith & Whatley, PC
790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101
Telephone: (213) 542-5719
Facsimile: (213) 542-5710
Email: msummers@chwlaw.us

18. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 11, Section 14, Paragraph 13.2 and Section 15 of this Agreement shall survive the expiration or termination of this Agreement.

19. TERMINATION

- 17.1. City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials, or other tangible things shall be promptly returned to City upon the termination or expiration of this Agreement.
- 17.2. If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of 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 required by this Agreement as provided in Section 5.2 above and as otherwise provided in this Agreement.

20. GENERAL PROVISIONS

- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.3 The waiver by the City or Consultant of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition or of any subsequent breach of the same or any other term, covenant, or condition herein contained. No term, covenant, or condition of this Agreement shall be deemed to have been waived by the City or Consultant unless in writing signed by one authorized to bind the party to be charged with the waiver.
- 18.4 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.

- 18.5 Each right, power, and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers, or remedies. If legal action shall be necessary to enforce any term, covenant, or condition contained in this Agreement, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees expended in the action. The venue for any litigation shall be Los Angeles County, California and Consultant hereby consents to jurisdiction in Los Angeles County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.6 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.7 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.8 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the provisions of this Agreement and those of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between the City and the Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on behalf of the City and Consultant.
- 18.9 Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital

status, ancestry, or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.

18.10 This Agreement shall be binding on successors and assigns of the parties.

18.11 Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.

18.12 The Recitals are incorporated by this reference.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement as of the last date indicated below:

“City”
By _____

“Consultant”
By: _____
Signature

Date: _____

Date: _____

Attest:

By _____

Date: _____

Approved as to form:

By _____
Matthew T. Summers, City Attorney

Date: _____

NON-COLLUSION DECLARATION

**TO BE EXECUTED BY
BIDDER AND SUBMITTED WITH BID**

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____[date], at _____[city], _____[state].”

Signature

Printed Name of Signatory

**WORKERS' COMPENSATION
INSURANCE CERTIFICATE**

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATE: _____

Contractor

By: _____
Signature

Title

Attest:

By: _____
Signature

Title

**CAMPAIGN CONTRIBUTION
DISCLOSURE PROVISIONS**

Cities are subject to the campaign disclosure provisions detailed in Government Code Section 84308.

Please carefully read the following information to determine if the provisions apply to you. If you determine that the provisions are applicable, the Campaign Disclosure Form must be completed and returned to the City with your application.

No City Councilmember or other City official shall accept, solicit, or direct a campaign contribution of more than \$250 from any party¹ or agent² for 12 months after the City approves a contract. This prohibition commences when an application is filed, or a proceeding is otherwise initiated.

A party to a City proceeding shall disclose on the record of the proceeding any campaign contribution of more than \$250 by a party or agent to any City Councilmember or other City official during the preceding 12 months. No party to a City proceeding, or agent, shall make a campaign contribution to a City Councilmember or other City official during a proceeding and for 12 months after the City approves a contract.

A City Councilmember or other City official who received a campaign contribution of more than \$250 within the preceding 12 months from any party, or agent, to a proceeding shall disclose that fact on the record of the proceeding, and shall abstain from participating in the proceeding. However, if he or she returns the portion of a campaign contribution in excess of \$250 within 30 days of knowing about the contribution and the relevant proceeding, he or she may participate in the proceeding.

¹ "Party" is defined as any person who files an application for, or is the subject of, a proceeding.

² "Agent" is defined as a person who represents a party in connection with a proceeding. If an individual acting as an agent also is acting as an employee or member of a law, architectural, engineering, or consulting firm, or a similar entity or corporation, both the individual and the entity or corporation are agents. When a closed corporation is a party to a proceeding, the majority shareholder is subject to these provisions.

To determine whether you or your agent made a campaign contribution of more than \$250 to a City Councilmember or other City official within the preceding 12 months, you must aggregate all such contributions.

Names of current City Councilmembers and other City officials are available on the City's website. If you have questions about Government Code Section 84308, FPPC regulations, or the Campaign Disclosure Form, please contact the City Clerk.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

(a) Document:

- License
- Lease
- Permit
- Franchise
- Other Contract
- Other Entitlement

Name and address of any party, or agent, who has contributed more than \$250 to any City Councilmember or other City official within the preceding 12 months:

1. _____
2. _____
3. _____

(b) Date and amount of contribution:

Date _____ Amount \$ _____

Date _____ Amount \$ _____

(c) Name of City Councilmember or other City official to whom contribution was made:

1. _____
2. _____
3. _____

(d) Check here If no contributions have been made to any Councilmember or other City official in the preceding 12 months.

(e) I certify that the above information is provided to the best of my knowledge.

Printed Name _____

Signature _____

Date _____ Phone _____

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