

# Request for Proposal (RFP)

No. 20-005-0000-29

Solid Waste Management Consulting Services



## City of Laguna Niguel

Public Works Department  
30111 Crown Valley Parkway  
Laguna Niguel, CA 92677  
(949) 362-4313

**Issue Date:** October 2, 2019

**Due Date:** October 28, 2019 by 2:00 P.M.

**I. INSTRUCTIONS TO CONSULTANTS**

**A. EXAMINATION OF PROPOSAL DOCUMENTS**

The City of Laguna Niguel is requesting Proposals from Consultants with experience working with the solid waste and recycling industry to provide “Solid Waste Management Consulting Services.”

By submitting a Proposal, the Consultant represents that it has thoroughly examined and become familiar with the work required in this Request for Proposal (RFP) and that it is capable of performing quality work to achieve the objectives of the City of Laguna Niguel, Public Works Department.

**B. ADDENDA**

Any City of Laguna Niguel changes to the requirements will be made by written addendum to this RFP. In order to receive addendums to this RFP, you must register as Prospective Consultant for the “Solid Waste Management Consulting Services” RFP. Consultants may do so by emailing the City Contact below.

Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of the resulting Agreement. The City of Laguna Niguel will not be bound to any modifications or deviations from the requirements set forth in this RFP as the result of oral instructions. Consultants shall acknowledge receipt of addenda in their offers. Failure to acknowledge receipt of all addenda may cause a Proposal to be deemed non-responsive.

**C. CITY CONTACT**

All questions and/or inquiries regarding this RFP shall be submitted in writing by email and directed to:

Hal Ghafari, Environmental Programs Supervisor  
City of Laguna Niguel  
30111 Crown Valley Parkway  
Laguna Niguel, CA 92677  
Phone: (949) 362-4384  
E-mail: [hghafari@cityoflagunaniguel.org](mailto:hghafari@cityoflagunaniguel.org)

**D. CLARIFICATIONS**

**1. Examination of Documents**

Should a Consultant require clarifications regarding the RFP, the Consultant shall submit all questions or clarifications via email to the City Contact. Should it be found that the point in question is not clearly and fully set forth in the RFP; the City of Laguna Niguel will issue a written

addendum clarifying the matter(s). The written addendum will be sent to all registered Prospective Consultants via e-mail.

## **2. Submitting Requests**

- a) All questions must be submitted via email to the City's contact no later than **5:00 p.m. on October 16, 2019**.
- b) Requests for clarifications, questions and comments must be clearly labeled, "Written Questions Re: RFP for Solid Waste Management Consulting Services." The City of Laguna Niguel is not responsible for failure to respond to a request that has not been labeled as such.
- c) Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:
  - (1) U.S. Mail or Personal Courier: Attention: Hal Ghafari, Environmental Programs Supervisor, City of Laguna Niguel, 30111 Crown Valley Parkway, Laguna Niguel, CA 92677.
  - (2) E-mail: [hghafari@cityoflagunaniguel.org](mailto:hghafari@cityoflagunaniguel.org)

## **3. City of Laguna Niguel Responses**

Responses from the City of Laguna Niguel will be e-mailed to all listed Consultants no later than **5:00 P.M. on October 21, 2019**.

## **E. SUBMISSION OF PROPOSAL**

### **1. Date and Time**

**Proposals must be submitted on or before 2:00 P.M. on October 28, 2019.** Late Proposals shall be rejected and returned unopened without exception.

### **2. Address**

Proposals may be delivered in person or by mail in a sealed package with proposer name and address, addressed to:

Hal Ghafari, Environmental Programs Supervisor  
City of Laguna Niguel  
Public Works Department, 2<sup>nd</sup> Floor  
30111 Crown Valley Parkway  
Laguna Niguel, CA 92677

**3. Identification of Proposals**

Consultant shall submit **three (3) copies** of its Proposal in a sealed package, addressed as shown above, bearing the Consultant's name and address, and clearly marked as follows:

**"PROPOSAL FOR SOLID WASTE MANAGEMENT CONSULTING SERVICES." DO NOT OPEN WITH REGULAR MAIL.**

**4. Acceptance of Proposals**

a) The City of Laguna Niguel reserves the right to accept or reject any or all Proposals, waive any informalities or irregularities in the Proposals, request additional information or revisions to the Proposals, and to negotiate with any or all Proposers.

b) The City of Laguna Niguel reserves the right to withdraw this RFP at any time without prior notice and the City of Laguna Niguel makes no representations that any contract will be awarded to any Proposer responding to this RFP.

c) The City of Laguna Niguel reserves the right to postpone the Proposal opening for its own convenience.

d) The City of Laguna Niguel reserves the right to reject all Proposals and issue a new RFP for the required work.

e) Proposals received by the City of Laguna Niguel are subject to public inspection under the California Public Records Act (Government Code Section 6250 et seq.), unless exempt and will be made available upon request after award.

f) Proposals submitted are not to be copyrighted.

g) The City of Laguna Niguel reserves the right to require confirmation of information furnished by any Proposer and/or request any Consultant to provide additional evidence of qualifications to successfully perform the work.

**F. PRE-CONTRACTURAL EXPENSES**

The City of Laguna Niguel shall not, in any event, be liable for any pre-contractual expense incurred by Consultant in the preparation of its Proposal. Pre-contractual expenses are defined as expenses incurred by Proposer in:

- Preparing its Proposal in response to this RFP.

- Submitting its Proposal to the City of Laguna Niguel.
- Any other expenses incurred by Proposer prior to date of award.

#### **G. JOINT OFFERS**

Where two or more Proposers desire to submit a single Proposal in response to this RFP, they shall do so on a prime-sub-consultant basis rather than as a joint venture. The City of Laguna Niguel intends to contract with a single firm and not with multiple firms doing business as a joint venture.

#### **H. CONTRACT TYPE**

It is anticipated that the Agreement resulting from this RFP, if awarded, will be a lump sum.

### **II. PROPOSAL CONTENT**

#### **A. PRESENTATION**

In order to be considered, Proposers must submit their Proposals as set forth in Section I, "Instructions to Consultant".

Proposals shall be typed and submitted on 8 1/2" x 11" size paper, using a single method of fastening. Proposers should not include any unnecessarily elaborate promotional material. Lengthy narrative is discouraged and Proposals should be brief, clear and concise.

#### **B. LETTER OF TRANSMITTAL**

A Letter of Transmittal shall be addressed to Hal Ghafari, Environmental Programs Supervisor, and at a minimum, must contain the following information:

- Identification of Consultant who will have contractual responsibility with the City of Laguna Niguel. Identification shall include legal name of company, corporate address, telephone number and **e-mail address of the contact person** identified during the period of Proposal evaluation.
- Acknowledgment of receipt of all addenda, if any.
- A statement to the effect that the Proposal shall remain valid for a period of not less than 90 days from the date of submittal.
- Signature of the official authorized to bind Consultant to the terms of the Proposal.
- Signed statement attesting that all information submitted with the Proposal is true and correct.
- Complete and submit the Proposal Acknowledgement Form as presented in Exhibit "B".

## **C. PROPOSAL**

### **1. Qualifications, Relevant Experience and References**

This section of the Proposal shall establish the ability of the Consultant to satisfactorily perform the required work by reasons of: experience in performing work of a similar nature to the required services shown in Section III, "Scope of Project"; proven competence in the services to be provided; strength and stability of the firm; staffing capacity; current work load; track record of meeting schedules on similar projects and supportive client references. This section shall:

- a) Provide a brief profile of the firm, including the types of services offered; the year founded; type of organization (corporation, partnership, or sole proprietorship); number, size and location of offices; and total number of employees.
- b) Provide a general description of the firm's financial condition and identify any conditions (e.g. bankruptcy, pending litigation, planned office closures, impending merger, etc.) that may impede the Consultant's ability to provide these services.
- c) Describe the firm's experience in performing work of a similar nature to that solicited in this RFP, and highlight the participation in such work by the key personnel proposed for assignment to the City.
- d) Describe specialized training, experience and professional competence in the area directly related to this RFP.
- e) Identify sub-consultants by company name, contractor's license number, address, contact person, telephone number and project function, if applicable. The list should include a summary of the roles and responsibilities of each sub-consultant.
- f) Provide a minimum of three (3) references for completed work similar to the required services shown in Section III, "Scope of Project". Furnish the contact name, title, address and telephone number of the person at each client agency/organization who is most knowledgeable about the work performed.

### **2. Proposed Team**

This section of the Proposal shall establish the method that will be used by the Consultant to provide requested services as well as identify key personnel assigned. This section shall:

- a) Furnish brief resumes (two pages maximum per resume) for the

proposed Project Manager and key personnel (including sub-consultants).

b) Include a statement that key personnel will be available to the extent proposed for the duration of the required services acknowledging that no person designated as “key” shall be removed or replaced without the prior written concurrence of the City of Laguna Niguel.

**3. Project Understanding**

Consultant shall provide an overview of the project and a detailed narrative of the project approach, methodology and services the Consultant will employ to complete the project.

**4. Scope of Services**

Consultant shall provide a detailed Scope of Services demonstrating the Consultant’s understanding of the City of Laguna Niguel's needs and requirements. The Scope of Services shall be by phase and task, and shall include deliverables for each task and/or phase, if appropriate.

**5. Exceptions and Deviations**

Consultant shall state any exceptions or deviations from the requirements of this RFP, segregating "technical" exceptions from "contractual" exceptions. Where the Consultant wishes to propose alternative approaches to meeting the City of Laguna Niguel's technical or contractual requirements, these shall be thoroughly explained. If no contractual exceptions are noted, Consultant will be deemed to have no objection to the contract requirements as set forth in Exhibit D, sample “Agreement for Professional Services”.

**6. Schedule**

Consultant shall provide a schedule for the performance of the project, by phases and tasks.

**7. Statement of Qualification Acknowledgement Form**

Consultant shall compete and submit Exhibit B, “Proposal Acknowledgement” Form with the Proposal package.

**8. Not-to-Exceed Fee**

Consultant shall provide a Not-to-Exceed Fee to perform each task or service specified in Section III – C (Scope of Project – Scope of Services) of this RFP. The proposed fee shall be itemized and provided per task or service. Consultant will also submit a schedule of hourly rates that will be

charged to provide these or other support services as required.

### **III. SCOPE OF PROJECT**

#### **A. INTRODUCTION**

The City of Laguna Niguel (“City”) is requesting Proposals from qualified firms (“Proposer”) to provide solid waste and recycling consulting services (herein referred to as “Services”) to ensure compliance with the City’s franchise agreement and provide other support services as required for a not-to-exceed Proposal amount. The suggested scope of work for Services is listed below. It is the intent of the City to execute a multi-year agreement with the selected Proposer for the Services as referenced in Section IV – D (Evaluation and Award – Term of Agreement) of this RFP.

#### **B. BACKGROUND**

The City incorporated on December 1, 1989, and has a population of approximately 66,847. The City occupies 14.9 square miles and is fully built out. The City has two community parks, 23 neighborhood parks, three mini-parks, one dog park, two county regional parks, two small county parks, and a skate and soccer park. In addition to the parks, over one-third of Laguna Niguel is designated as open space.

CR&R, Inc. is the waste hauler and recycling services provider to the City. Both the residential sector and commercial sector are serviced by CR&R under an exclusive franchise agreement which expires December 31, 2028. All roll-off service and clean-up bin service is also provided by CR&R under the exclusive franchise agreement. (An electronic version of the City’s franchise agreement will be provided to the Proposer upon request). The following table lists CR&R’s diversion rates per sector and CR&R has claimed an overall diversion rate of 51.2% for Laguna Niguel for calendar year 2018.

Reporting period from Jan. 2018 – December 2018	
Residential Curbside	47.2%
Multi-family	39.4%
Commercial	46.0%
C&D Processing	72.2%

The City’s per capita disposal figures, reported to CalRecycle for the 2018 annual report, was 3.3 pounds/person/day and the target figure was 6.6 pounds/person/day.

#### **C. SCOPE OF SERVICES**

The following represents the general scope of work for Services pursuant to the Proposers not-to-exceed Proposal amount. The schedule of performance for the



following tasks will be determined by the City.

### **Task 1: Solid Waste Franchise Agreement Implementation and Tracking**

The City's Solid Waste Franchise Agreement for the collection, transportation, processing, and diversion of municipal solid waste, recyclable materials, food scraps, yard trimmings, wood, and construction and demolition debris includes several programs, and require multiple reports to be submitted by the hauler. The Agreement requires the hauler to implement all State-required programs and to meet all the other new State-mandates for diversion and recycling. The consultant shall provide professional services to the City for implementation and tracking of the Solid waste Franchise Agreement under the following subtasks.

#### **Task 1.1: Program Implementation Tracking**

Develop and keep a tracking system that aggregates time sensitive contractual and compliance obligations. This is a live document and will be updated based on the time schedule in the Franchise Agreement, regulatory requirements and the analysis of the monthly, annual, and quarterly reports from contractor (Task 1.2 below).

#### **Task 1.2: Report Analysis**

Review contractor's submitted data in monthly, quarterly and annual reports and identify areas of inquiry that are then reviewed at the monthly meetings (See Task 3). This analysis will identify and report to the City any deficiencies in program implementation including the regulatory compliance to be resolved with Contractor, and may include follow-up site visits and field verification with Contractor's representative.

#### **Task 1.3: Waste Characterization Oversight**

Oversee the contractor's quarterly waste characterizations to assess the quantity and types of materials found in the different waste streams collected by Contractor including: SB 1383 contamination levels identification, calculate diversion tonnage, this may include fieldwork, as needed, to verify diversion tonnage spot check the field work.

#### **Task 1.4: Monthly Meetings and Coordination**

Coordinate program implementation tracking by monthly meetings with the City, and the contractor, which will be held at the City Hall in order to keep an open line of communication between all parties and to clearly communicate the City's expectations and programs' requirements with the contractor.

### **Task 1.5: Other Franchise Agreement Implementation Tasks**

Other franchise agreement implementation tasks may include disposal analysis and tracking, review of annual rate adjustment described in the franchise agreement (inflation and pass through cost rate increase), commercial and residential organic waste programs implementation tracking, periodic audits of required color/markings, and appearance /conditions of bins, and any other task related to proper implementation of franchise agreement.

### **Task 2: Regulatory Reporting Support**

Assist in preparation of CalRecycle reports including Electronic Annual Reports, 303 Report, City/County Payment (Beverage Cans) Report, and etc. Participate in conference calls and annual tours with CalRecycle as scheduled. Oversee City's Generator Compliance Notification Process including drafting letters, developing paper and online and self-reporting forms, managing responses, and tracking implementation progress for the following notifications: AB 341 – commercial; AB 341 – multi-family; AB 1826 – food service establishments; AB 1826 – landscaping waste generators; AB 341/AB 1826 – schools.

### **Task 3: Legal Assistance**

Assist in reviewing attorneys' works of updating the City's solid waste ordinances to ensure its effectiveness in implementation of all programs under the Franchise Agreement. Specifically, ensure the new Ordinances that are being developed by attorneys' provide what is needed in the field to secure compliance with the regulatory requirement provides the City with the tools needed to implement the franchise agreement. Assist in interpretation of franchise agreement requirements, as needed, and provide recommendation if a change has to be made during the implementation of the agreement.

### **Task 4: Perform Other Duties As Assigned by the City**

Consultant shall perform other duties as assigned by the City to ensure for successful support of existing recycling programs and the successful implementation of new recycling programs, compliance with state solid waste and recycling mandates, and administration of the City's waste hauling franchise agreement.

**E. PROJECT SCHEDULE**

The following proposed project schedule is approximate and provided for reference only:

<b>Milestone</b>	<b>Date</b>
RFP Issued	October 2, 2019
Due date for RFP Questions	October 16, 2019 by 5:00 P.M.
Responses to RFP Questions	October 21, 2019 by 5:00 P.M.
RFP Submittal (“RFP Due Date”)	October 28, 2019 by 2:00 P.M.
City Council Award of Contract	November 19, 2019

**IV. EVALUATION AND AWARD**

**A. EVALUATION CRITERIA**

The City of Laguna Niguel will review and evaluate the Proposals based on the following criteria:

<b>Description</b>	<b>Percent</b>
Scope of Services (Approach and Recommendations)	30%
Qualifications and Relevant Experience	25%
Project Understanding	15%
Proposed Team Organization	15%
Cost	15%
Total	100%

**B. EVALUATION PROCEDURE**

An Evaluation Committee will be appointed to review and Proposals. The Committee will be comprised of City staff and may include outside personnel at the City’s discretion. Following the Evaluation Criteria above, a point formula will be used by each Committee member to score Proposals. The Evaluation Committee will then be convened to review and discuss these individual scores and arrive at an average composite score for each Proposal. At that point, Proposals with an unacceptably low average composite score will be eliminated from further consideration. All Proposals under consideration will be submitted to the Public Works Director for final determination.

During the evaluation process, the Committee may, at its discretion, request any one or all Consultants to make oral presentations. Such presentations will provide Consultants with an opportunity to answer any questions the Committee may have on their Proposal. Not all Consultants may be asked to make such oral presentations. The interview process will primarily focus on the individuals proposed by the Consultant to act as the project design manager and design engineer. The City may also request the presence of the Consultant’s principal-in-charge, if necessary.

**C. NOTIFICATION OF AWARD**

Consultants who submit a Proposal in response to this RFP shall be notified by email regarding the firm who was awarded the contract. The notification of award will be emailed at the City's discretion.

**D. TERM OF AGREEMENT**

As stated in paragraph three (Term) of Exhibit D, sample "Agreement for Professional Services," this Agreement shall become effective on November 19, 2019 and will continue until June 30, 2022, subject to renewal administratively by two one-year periods.

**EXHIBITS:**

- A. Franchise Agreement
- B. Proposal Acknowledgment Form
- C. Acknowledgment of Non-Collusion
- D. Sample Agreement for Professional Services

**EXHIBIT A**  
**Franchise Agreement**  
(located at [www.cityoflagunaniguel.org/bids](http://www.cityoflagunaniguel.org/bids))

**EXHIBIT B**  
**Proposal Acknowledgement Form**

## PROPOSAL ACKNOWLEDGMENT FORM

The Proposer hereby acknowledges receipt of addenda number (s) \_\_\_\_\_.

By signing below, you agree to all terms and conditions in this RFP, except where expressly described in your cover letter.

\_\_\_\_\_  
Original Signature by Authorized Officer/Agent

\_\_\_\_\_  
Vendor's Tax ID Number (FEIN)

\_\_\_\_\_  
Type or print name of person signing

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Consultant Mailing Address

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Proposal Valid Until (at least 90 days)

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Website Address

The Proposer is organized as a (corporation, partnership, etc.) \_\_\_\_\_

If a corporation, the state where it is incorporated:

**EXHIBIT C**  
**Acknowledgement of Non-Collusion**



CITY OF LAGUNA NIGUEL, CALIFORNIA  
NON-COLLUSION AFFIDAVIT

RFP Name: Solid Waste Management Consulting Services  
RFP Number: 20-005-0000-29

STATE OF CALIFORNIA

CITY OF LAGUNA NIGUEL, COUNTY OF ORANGE

I, \_\_\_\_\_ being first duly sworn, deposes and says that he/she is  
\_\_\_\_\_ (Sole owner, a partner, president, etc.) of  
\_\_\_\_\_, the party making the foregoing bid.

That such bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that 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 that anyone shall refrain from bidding; that 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, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that 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, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

SUBSCRIBED BEFORE ME on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

My Commission Expires:

\_\_\_\_\_ Notary Public: \_\_\_\_\_

**EXHIBIT D**  
**Sample Professional Services Agreement**

AGREEMENT FOR PROFESSIONAL SERVICES

SOLID WASTE MANAGEMENT CONSULTING SERVICES

THIS AGREEMENT is made and entered into the 19 day of November 2019, by and between the City of Laguna Niguel, a municipal corporation, hereinafter the "City", and \_\_\_\_\_, a California \_\_\_\_\_ hereinafter the "Consultant".

R E C I T A L S:

1. The City of Laguna Niguel requires solid waste management consulting services to ensure compliance with the City's franchise agreement and provide other support services as required.
2. On October 2, 2019, the City requested issued a Request for Proposals (RFP) for solid waste management consulting services.
3. Consultant submitted a proposal to the City to provide the required services dated October 28, 2019 in the amount of \$\_\_\_\_\_.
4. City staff has reviewed the proposal, and after considering the demonstrated competence and professional qualification of Consultant, and the fairness and reasonableness of their proposed cost, City staff has determined that an agreement to provide the required services should be awarded.
7. The City desires to enter into an Agreement with Consultant for Consultant to provide the required services.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. Services to be Performed by Consultant. Consultant agrees to perform the professional services for City and to prepare and deliver the work products to City, in a manner satisfactory to City, as described in Consultant's proposal dated October 28, 2019, ("Scope of Services") which is attached hereto as Exhibit A "Scope of Services."

2. Additional or Different Services. Any proposed changes in the Scope of Services and/or professional services which are the subject of this Agreement shall be made only by written amendment to this Agreement.

3. Term. This Agreement shall become effective on November 19, 2019 and will continue until June 30, 2022, subject to renewal administratively by two one-year periods. Based upon recommendation by the Public Works Department that the Consultant has fully complied with the Agreement requirements and that it is in the interest of the City to continue the Agreement, the Agreement may be extended administratively by the City Manager, subject to termination as provided in paragraph 27 except the indemnification provisions contained in paragraph 18 shall remain in full force and effect after the Agreement is terminated.

4. Payment for Services. The City agrees to pay Consultant for providing the professional service which are described in the Scope of Services, and to pay for those services in the amount, and in the manner and at the times set forth in Exhibit "B" in the amount of \$\_\_\_\_\_, in the total amount not to

exceed the sum of \$ \_\_\_\_\_. Further, it is understood that the City shall not be required to pay any amount in excess of \$ \_\_\_\_\_ for completion of the services and tasks by the Scope of Services.

Upon submission of each invoice, if the City is satisfied that the Consultant has performed the services described therein, the City shall promptly approve the invoice, in which event, payment shall be made within thirty (30) days of receipt of the invoice by City. Such approval shall not be unreasonably withheld. If City does not approve an invoice, the City shall notify Consultant in writing of the reasons for the non-approval within seven (7) days of receipt of the invoice.

5. Ownership of Documents and Drawings. All original drawings, plans, designs, reports, notes, calculations, maps, and other documents developed during the course of Consultant providing the professional services required by Exhibit A "Scope of Services" shall be the property of the City and shall be provided by Consultant to City upon their completion. Further, even if this Agreement is terminated, said documents shall be the property of the City and may be used by City as it determines appropriate.

6. Time is of the Essence. Consultant agrees to perform the services and deliver the work products provided for herein in strict accordance with any schedules set forth in the attached Exhibit "A".

7. Consultant to Supply Instrumentalities. Consultant shall supply all instrumentalities required to perform the services under this Agreement.

8. Licenses; Standard of Care.

- a. Consultant represents and agrees that all personnel engaged by Consultant in performing services are and shall be fully qualified and are authorized or permitted under state and local law to perform such services. Consultant represents and warrants to City that it has all licenses, permits, qualifications, and approvals required of its profession to provide the services and work required to be performed by this Agreement. Consultant further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.
- b. Consultant shall perform the services under this Agreement in a skillful and competent manner. The Consultant shall be responsible to City for any errors or omissions in the performance of work pursuant to this Agreement. Should any errors caused by Consultant be found in such services or products, Consultant shall correct the errors at no additional charge to City by redoing the professional work and/or revising the work product(s) called for in the Scope of Services to eliminate the errors.

9. Legal Responsibilities. Consultant shall keep itself informed of all State and Federal laws and regulations which may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Consultant shall, at all times, observe and comply with all such laws and regulations. City, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Consultant to comply with this paragraph.

10. Non-Assignability. Neither this Agreement nor any rights, title, interest, duties or obligations under this Agreement may be assigned, transferred, conveyed or otherwise disposed of by Consultant without

the prior written consent of City.

11. Subcontracting Subject to Approval. Consultant may not subcontract any portion of the work required by this Agreement to other persons or firms unless Consultant first obtains the written consent of City to engage in such subcontracting.

12. Independent Consultant. Consultant is and shall at all time remain as to City a wholly independent contractor. Neither the City nor any of its officers, employees, or agents, shall have control over the conduct of the Consultant or any of the Consultant's officers, employees, or agents. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents, are officers, employees, or agents, of the City. Except as specified in writing by City, Consultant shall have no authority, expressed or implied, to act on behalf of City, and Consultant shall have no authority, expressed or implied, to incur any obligation or liability against the City. Consultant shall be responsible for and pay all taxes and other payments for Consultant and its employees for Federal and State income taxes, including withholding of taxes, Social Security, worker's compensation insurance, State disability insurance, unemployment insurance, and all other similar items.

13. Administration. This Agreement will be administered by the Public Works Department. The Public Works Director or her designee shall be considered the Project Administrator and shall have the authority to act for the City under this Agreement. The City Manager or her designee shall represent the City in all matters pertaining to the services to be rendered pursuant to this Agreement.

14. Progress. Consultant is responsible to keep the Project Administrator and/or his designee informed on a regular basis regarding the status and progress of the work being performed pursuant to this Agreement.

15. Cooperation of City. City agrees to comply with all reasonable requests of Consultant and provide access to all documents reasonable necessary for the performance of Consultant's duties under this Agreement.

16. Confidentiality. No news releases, including photographs, public announcements, or confirmations of the same, of any part of the work being performed pursuant to this Agreement shall be made without prior written approval of the City. The information which results from performing the services required by this Agreement is to be kept confidential unless the release of information is authorized by the City.

17. Conflicts of Interest. Consultant represents that it is not currently engaged in and has not contracted to perform work on the behalf of any party or parties whose interests are or would reasonably appear to be adverse to those of City. In the event that Consultant should discover that it has represented, is representing or is being requested to perform work for a party or parties with interests adverse to those of City, Consultant shall immediately notify City in writing of such situation. Said notification requirement shall apply to all work performed by Consultant for another party or parties, with interests adverse to those of City, on a subcontract as well as on a contract or other basis. Further, the Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose financial interest that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest. If subject to the Act, Consultant shall comply with all requirements of the Act. Failure to do so constitutes a material breach and is grounds for termination of this

Agreement by the City.

Consultant agrees not to provide services within the City boundaries for any other public or private entities without prior written approval from City.

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

- a. To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably approved by City), indemnify and hold the City, its elected officials, officers, attorneys, agents, employees, volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and harmless with respect to any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages and/or injury of any kind, in law or equity, to property or persons, including personal injury and wrongful death, in any manner arising out of, pertaining to, or incidental to any acts, errors, omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, this Agreement or any Task Order, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, or any of the Indemnitees.
- b. For Design Professional Services: If Consultant's Services hereunder include the performance of professional services by a "design professional," as the term is defined under California Civil Code § 2782.8(c), then to the fullest extent permitted by law, Consultant shall, at its sole cost and expense, indemnify and hold harmless the Indemnitees, and each of them, from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants and other professionals, and all costs associated therewith, and reimbursement of attorneys' fees and costs of defense, whether actual, alleged or threatened, to the extent arising out of, pertaining to, or relating to, in whole or in part, the negligence, recklessness or willful misconduct of the Consultant, and/or its officers, agents, servants, employees, subcontractors, contractors or their officers, agents, servants or employees (or any entity or individual for whom the Consultant shall bear legal liability) in the performance of design professional services under this Agreement. Notwithstanding the foregoing and as required by Civil Code § 2782.8(a), in no event shall the cost to defend the Indemnitees that is charged to Consultant, exceed Consultant's proportionate percentage of fault.
- c. The provisions of this Section 18 shall survive the termination of this Agreement

19. State Labor Code. If this Agreement calls for services that, in whole or in part, constitute "public works" as defined in the California Labor Code, then Consultant shall comply in all respects with all applicable provisions of the California Labor Code, including but not limited to, the following:

- a. Consultant and all sub-consultants shall pay the general prevailing rate of per diem

wages as determined and as published by the State Director of the Department of Industrial Relations pursuant to Article 2 of Chapter 1 of Part 7, of Division 2 of the State Labor Code, including, but not limited to, Sections 1770, 1771, 1773, 1773.2 and 1774. Copies of these rates and the latest revisions thereto are on file in the office of the City Clerk of the City of Laguna Niguel and are available for review upon request.

- b. Consultant and sub-consultants who are ineligible to bid for work on, or be awarded, a public works project pursuant to State Labor Code Sections 1777.1 and 1777.7 are prohibited from bidding on, being awarded, or performing work as a subcontractor, on this Project pursuant to Public Contract Code Section 6109.
- c. Consultant's attention is directed to the provisions in Sections 1774, 1775, 1776, 1777.5 and 1777.6 of the State Labor Code. Consultant shall comply with the provisions in these Sections. The statutory provisions for penalties for failure to comply with the State's wage and hours laws will be enforced. Pursuant to Section 1775 of the State Labor Code, Consultant and any sub-consultants, shall, as a penalty to the City forfeit the prescribed amounts per calendar day, or portion thereof, for each worker paid less than the prevailing wage rates.
- d. Consultant shall post at the work site a copy of the wage rates and post other information as required by law or regulation of the State Labor Commissioner.
- e. Pursuant to Labor Code Section 1771.4, the Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

The Consultant and each sub-consultant shall furnish the records specified in State Labor Code Section 1776 directly to the State Labor Commissioner at least monthly in the format prescribed by the State Labor Commissioner.

- f. Sections 1774 and 1775 require Consultant and all subconsultants to pay not less than the prevailing wage rates to all workmen employed in the execution of the contract and specify forfeitures and penalties for failure to do so. The minimum wages to be paid are those determined by the State Director of the Department of Industrial Relations. Section 1776 requires the Consultant and all subconsultants to keep accurate payroll records, specifies the contents thereof, their inspection and duplication procedures and certain notices required of Consultant pertaining to their location.
- g. Section 1777.5 of the Labor Code requires Consultant or consultants employing tradesmen in any apprenticeable occupation to apply to the Joint Apprenticeship Committee nearest the site of the public works project, which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen to be used in the performance of the Agreement. Consultant is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade and if other contractors on the public works site are making such contributions. Information relative to apprenticeship standards,

contributions, wage schedules and other requirements may be obtained from the State Director of Industrial Relations or from the Division of Apprenticeship Standards. Section 1777.6 of the Labor Code provides that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age.

- h. Eight hours labor constitutes a legal day's work, as set forth in Labor Code Section 1810. The statutory provisions for penalties for failure to comply with the State's wage and hour laws will be enforced as set forth in Labor Code Section 1813.”

20. Insurance.

- a. Without limiting Consultant's indemnification of City as described in paragraph 18, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.
  - i. General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted.
  - ii. Auto liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.
  - iii. Professional liability (errors and omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.
  - iv. Worker's compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.
- b. Other insurance provisions or requirements.



- i. Proof of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- ii. Duration of coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, his agents, representatives, employees or subconsultants.
- iii. Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or selfinsurance shall be called upon to protect it as a named insured.
- iv. City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.
- v. Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
- vi. Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of

recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

- vii. Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.
- viii. Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- ix. Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.
- x. Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.
- xi. Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
- xii. Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.
- xiii. Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request,

all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

- xiv. City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.
- xv. Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.
- xvi. Timely notice of claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.
- xvii. Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

20. Nondiscrimination by Consultant. Consultant represents and agrees that Consultant, its affiliates, subsidiaries, or holding companies do not and will not discriminate against any subcontractor, consultant, employee, or applicant for employment because of race, religion, color, sex, handicap, or national origin. Such nondiscrimination shall include, but not be limited to, the following: employment, upgrading, demotion, transfers, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

21. City's Rights to Employ Other Consultants. City reserves the right to employ other consultants in connection with the subject matter of the Scope of Services.

22. Consultant's Records. Consultant shall keep records and invoices in connection with its work performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

23. Notices. Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery or by mail. Mailed notices shall be addressed to the address of the parties to be notified which appears below, but each party may change its address by written notice given in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of five (5) calendar days following the

date of mailing of the notice.

CITY: City of Laguna Niguel  
Attn: City Manager  
30111 Crown Valley Parkway  
Laguna Niguel, California 92677

CONSULTANT: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

24. Entire Agreement. This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services described in Exhibit A "Scope of Services" hereto by Consultant for City and contains all of the covenants and agreements between the parties with respect to the rendering of such services. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made with regard to such services by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise regarding such services not contained in this Agreement shall be valid or binding. Any modification or amendment of this Agreement will be effective only if it is in writing and signed by both [all] parties to this Agreement.

25. Exhibits. The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement.

26. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California. Any legal action in which enforcement of the terms and conditions of this Agreement is requested, or in which it is alleged that a breach of this Agreement has taken place, shall be filed and prosecuted in the County of Orange, California.

27. Termination. City may terminate this Agreement, without cause or penalty, by providing written notice to the other party that the Agreement is terminated. Said written notice shall be provided at least fifteen (15) days in advance of the termination date. Unless terminated as provided herein, this Agreement shall continue in effect for the period set forth in Section.

28. Breach of Agreement. If Consultant defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity, or under this Agreement. The failure of City to object to any default in the performance of the terms and conditions of this Agreement shall not constitute a waiver of either that term or condition or any other term or condition of this Agreement.

29. Attorney Fees. If any legal proceeding, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorney's fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

10/2/2019 RN

30. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

31. Successors and Assigns. The terms and conditions of this Agreement shall be binding on the successors and assigns of the parties to this Agreement.

32. Authority to Sign. The person executing this Agreement on behalf of the Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind the Consultant to the performance of the obligations hereunder.

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

"CITY"

CITY OF LAGUNA NIGUEL

By: \_\_\_\_\_

Print Name: Tamara Letourneau

Title: City Manager

ATTEST:

\_\_\_\_\_  
Eileen Gomez  
City Clerk

APPROVED AS TO FORM BY THE  
CITY ATTORNEY FOR THE  
CITY OF LAGUNA NIGUEL,  
CALIFORNIA

\_\_\_\_\_  
Kevin Ennis, Esq.  
City Attorney

"CONSULTANT"

Company Name: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signatures are to be notarized; attach Acknowledgement. Need two signatures if Consultant is a corporation.

EXHIBIT "A"  
SCOPE OF SERVICES

EXHIBIT "B"  
FIXED FEE PROPOSAL