



**City of Laguna Niguel**

**Energy Assessment Study**

**Request for Proposals (RFP)**

**Issued:** September 7, 2022 / **Due:** October 12, 2022 by 2:00 p.m. PST



RFP Summary	
<b>RFP Title:</b>	Energy Assessment Study
<b>Scope of Work:</b>	See Section I-4 (Scope of Work)
<b>RFP Submittal Information:</b>	<p>Interested Consultants will submit a PDF copy of your Proposal through the City's electronic procurement system (PlanetBids).</p> <p>Late proposals will not be accepted.</p>
<b>RFP Due Date:</b>	<b>October 12, 2022 by 2:00 p.m. PST</b>
<b>RFP Submittal Requirements:</b>	<p>Your proposal must include the information described in Section III (Proposal Form and Content) of this RFP.</p> <p>Consultant proposals will be considered non-responsive if the proposal does not provide all the information requested in Section III.</p>
<b>Prior to Award of Contract:</b>	The successful Consultant must submit a Certificate of Insurance and related endorsements that meets the City's criteria as described in the draft Agreement (Attachment B of this RFP).
<b>RFP Questions:</b>	Questions regarding this RFP must be submitted through the City's electronic procurement system (PlanetBids). The deadline to submit questions is <b>September 28, 2022 by 10:00 a.m. PST</b> .
<b>City Contact / Project Manager:</b>	<p>Kelli Everett  Management Analyst  City of Laguna Niguel  Phone: (949) 362-4048  Email: <a href="mailto:keverett@cityoflagunaniguel.org">keverett@cityoflagunaniguel.org</a></p>

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## SECTION I – PROJECT INFORMATION

### I-1. PROGRAM BACKGROUND

The City of Laguna Niguel (“City”) is requesting proposals from qualified firms (“Consultant”) for an Energy Assessment Study which will culminate in the development of a ten-year Energy Action Plan (“Plan”). The Plan shall identify potential energy saving measures, to include upgrading citywide energy, building, and water infrastructure. The energy saving measures should improve the City’s operations, provide sustained revenue enhancement, technology advancement, and reduce operational costs. The Plan should include an approach for a smart, connected infrastructure utilizing the Internet of Things (IoT) and related solutions.

The successful Consultant will be tasked with performing energy assessments of potential energy efficiency measures. A comprehensive analysis of both the environmental and financial costs and benefits of each measure shall be included. The Consultant will present the City with a detailed action plan to implement certain energy conservation, energy generation, and energy efficiency measures and services.

The Plan must identify potential energy savings opportunities at specified City sites as well as the estimated implementation costs for the recommended energy conservation measures. The Plan shall also present an overall potential energy cost and consumption savings of implementing the energy conservation measures. Finally, the Plan must define a strategy for the City to use in evaluating and prioritizing the measures identified in addition to future measures.

### I-2. CITY BACKGROUND

The City of Laguna Niguel is a 14.72 square mile bedroom community with a population of approximately 67,208 located in Orange County, California. The City was incorporated on December 1, 1989 as a master planned community. The City is known for its mild coastal climate, low crime rate, and its numerous parks and public trails. Over the course of the year, the temperature typically varies from 49°F to 78°F and is rarely below 43°F or above 86°F.

### I-3. PROJECT GOALS AND PROJECT DELIVERABLES

The Plan will be developed by a qualified Consultant with relevant experience serving other local government agencies. The Plan will provide a comprehensive overview, analysis summary and clear recommendations.

The awarded Consultant will develop the Plan as outlined in Section I-4 (Scope of Work). The Plan will be considered successful if the following project deliverables are met:

1. The Consultant attends an on-site kick-off meeting with City staff.
2. The Consultant will communicate with the City no less frequently than bi-monthly progress meetings via GoTo Meeting that will include at a minimum meeting agendas and next steps from previous meetings.
3. The Plan will include tangible, “quick win” energy-saving projects recommendations along with larger-scale, comprehensive projects recommendations that would require additional planning and design.

#### I-4. SCOPE OF WORK

The awarded Consultant will develop an itemized proposal that provides a full description and breakdown of fees for each of the study tasks listed in this section of the RFP. The City will then determine which of the study tasks to award in consideration of the City's budget.

##### **Task 1: Project Management and Meetings**

The Consultant's Key Personnel will attend an on-site kick-off meeting with City staff to discuss project goals and objectives, confirm the project schedule, and key points of contact. City staff and the Consultant team will identify existing documents, data, and City programs and facilities that will be investigated as part of the study. Bi-monthly progress meetings will be scheduled via GoTo Meeting.

*Deliverables: Meeting agenda, meeting minutes, action items, facility/equipment photographs, PowerPoint presentations and action plans.*

##### **Task 2: Energy Assessment and Best Practices Memo**

Consultant will perform an Energy Assessment of the City's infrastructure and equipment for potential energy efficiency measures, energy generation and storage options, and vehicle electrification that would reduce City energy usage and greenhouse gas (GHG) emissions. At a minimum, Energy Assessments will be performed for the following measures:

- Heat ventilation and air conditioning (HVAC) Systems Replacement
- Energy Management Systems Installation
- Building Automation Systems Replacement/Installation
- Traffic signal and street LED lighting solutions
- Interior and exterior LED lighting solutions
- Renewable energy generation, including, but not limited to, Solar Photovoltaic
- Energy storage (electrical & thermal)
- Replacement, repair, or retrofit of Water Pumps

- Municipal and Transit Fleet Electrification

The assessment will include, at a minimum:

1. Identify potential cost-saving measures, determine the cost savings of each measure, and present a verification plan to validate future savings of each measure. Assessments will be performed according to ASHRAE level 2 standards, and, at a minimum, address all building systems identified in the preceding paragraph. The assessment will clearly identify start-up and ongoing costs, benefits in energy and associated GHG emissions reductions, and simple payback schedule of each energy efficiency measure.
2. Perform a site feasibility and economic analysis of renewable energy generation, identifying:
  - The current maximum load requirements and critical load requirements (during emergency and disaster response scenarios) of each potential renewable energy site;
  - The maximum system size (in kW or MW) and annual electricity generation capacity (in kWh or MWh) of each renewable energy site;
  - An estimated solar and battery storage sizing estimate for each potential renewable energy site;
  - The estimated total start-up cost, annual maintenance costs, and cost per kWh of each renewable energy installation;
  - An estimated simple payback period for the installation of each renewable energy installation.
  - A recommendation as to whether each site is suitable for a solar power purchase agreement and/or an onsite solar system with battery storage for business continuity purposes.
3. Utilize the findings from the Energy Assessment to prepare a Best Practices Memo that will include an engineer's estimate and a cost-benefit analysis of each measure. The memo will also identify outside funding sources, financing mechanisms, and options to integrate smart city infrastructure as part of the implementation of various measures. As required, the Best Practices Memo will include site maps, photographs, graphs, charts, and other visual illustrations to improve the readability of the Memo.

*Deliverables: Best Practices Memo including the findings from the Energy Assessment*

### **Task 3: Implementation Report**

Consultant will draft an Implementation Report for the energy-savings measures identified in the Best Practices Memo. The Report will:

- Propose a phasing schedule for all energy-savings measures identified in the Best Practices Memo.
- Propose a phasing plan for the replacement of internal combustion engine vehicles with electric vehicles (EV), and the associated EV charging infrastructure to meet the operational needs of the City.
- Recommend a scoring mechanism and project development road map for the City to evaluate and prioritize the recommended energy-savings measures. The intent will be to utilize the scoring mechanism to evaluate any additional sustainability and energy efficiency proposals and projects as they arise.
- Recommend a project delivery method for each energy-saving measure that would be most suitable to the project requirements and organizational constraints, considering design/build and design/build/operate/maintain models as well as the traditional design-bid-build project delivery model.
- Propose funding mechanisms to help meet the financial costs of these projects by:
  - Calculating the annual Capital Improvement Program (CIP) and Operating budget allocations required.
  - Identifying outside funding including pass-through and competitive grant opportunities, utility incentives and financing programs, as well as generalized timing to apply for these programs to have funding available for use with applicable projects.
  - Comparing the benefits and drawbacks of available financing mechanisms including utility on-bill financing, power purchasing agreements, and Efficiency as a Service (EAAS) financing through Energy Services Companies; and identifying applicable projects that would meet the requirements of any one program.

*Deliverables: Implementation Report*

#### **Task 4: Draft Energy Action Plan**

Consultant will submit a Draft Energy Action Plan to reduce Municipal energy consumption and GHG emissions. The Energy Action Plan will consist of the following sections:

1. Executive Summary
2. Introduction
3. Emissions Inventory and Forecast (Using Baseline (GHG) Emissions and Long-term Forecast as a basis for this section)
4. Energy Profile (Using the Best Practices Memo as a basis for this section)
5. Energy Efficiency Strategy (Using the Best Practices Memo and Implementation Report as a basis for this section)
6. Implementation Plan (Using the Implementation Report as a basis for this section)
7. Conclusion

Consultant will present an initial version of the Draft Energy Action Plan to City staff and make necessary edits in advance of presentation of the Draft Energy Action Plan to the City Council.

Consultant will provide support to City staff for public meetings and presentations of the Draft Energy Action Plan. This will include both the development of draft presentation slides and presentation at a minimum of two (2) City Council Meetings.

*Deliverables: Draft Energy Action Plan and related presentation materials*

#### **Task 5: Final Energy Action Plan**

Consultant will make any necessary edits considering feedback and recommendations from the City Council and submit the Final Energy Action Plan.

*Deliverables: Final Energy Action Plan*

#### **Task 6: Web-based Tool (Optional)**

Consultant will provide an option to utilize a web-based Energy Action Plan implementation, monitoring and management tool, including:

- Build out a database of municipal energy usage, energy costs, and GHG emissions for municipal operations.
- Provide the capability to track progress towards the City's GHG reduction targets, energy usage reductions, cost savings, and project-specific milestones.
- Set up reporting for Key Performance Indicators to assess the effectiveness of various energy efficiency measures implemented through the Energy Action Plan.
- Train staff in the use and maintenance of the monitoring and management tool to report GHG emissions reductions and project-specific milestones in future years.

#### **Task 7: Other Recommendations (Optional)**

Consultant will propose additional recommendations consistent with their experience supporting other local government agencies.

## SECTION II – RFP PROCESS

### II-1. RFP TIMELINE

The following is the anticipated RFP Timeline. The timeline is subject to change if additional time is needed. Any timeline changes will be communicated via a RFP addendum.

Milestone	Date
RFP Issued	September 7, 2022
Due date for RFP Questions	September 28, 2022 by 10:00 a.m. PST
Responses Provided to RFP Questions	October 5, 2022
<b>RFP Submittal (“RFP Due Date”)</b>	<b>October 12, 2022 by 2:00 p.m. PST</b>
Optional Consultant Interview(s) – GoTo Meeting	Tentatively scheduled for the week of October 17-21, 2022
City Council Award of Project	On or about December 20, 2022
Kick-Off Meeting	On or about January 10, 2023

### II-2. RFP QUESTIONS AND RESPONSES

Consultants interested in submitting a proposal are asked not to contact other City staff or City Council Members in connection with the RFP prior to the City Council Award of the Study.

Please submit any questions pertaining to the RFP through the City’s electronic procurement system (PlanetBids) on or before September 28, 2022 by 10:00 a.m. PST. No questions will be accepted via phone or email. Once all questions are received, the City will summarize all questions and their responses in an addendum to the RFP. The addendum will be provided by October 5, 2022. The addendum will be posted to the City’s electronic procurement system (PlanetBids): <https://pbsystem.planetbids.com>.

In case additional clarifications need to be provided after October 5, 2022 and before the RFP Due Date, the City will post additional addenda to PlanetBids.

Each Consultant is responsible for obtaining all addenda prior to submitting a proposal and shall acknowledge in its proposal the receipt of each addendum as part of its proposal. Failure of Consultant to acknowledge receipt of all addenda as part of its proposal may result in rejection of its proposal.

## II-3. RFP DUE DATE AND OPENING

Proposals are due on or before the RFP Due Date, October 12, 2022 by 2:00 p.m. PST.

Proposals will be addressed to the City Contact:

City of Laguna Niguel (City Hall)  
c/o Kelli Everett  
30111 Crown Valley Parkway  
Laguna Niguel, CA 92677

Interested Consultants will submit a PDF copy of your proposal through PlanetBids.

It is the responsibility of the Consultant to ensure the proposal was received by the RFP Due Date. Late proposals will not be accepted. The City will not publicly open or read proposals aloud.

## II-4. RFP EVALUATION PROCESS

This RFP is not a formal bid process governed by formal bid rules typically associated with public projects. The evaluation and selection process are based upon consideration of a variety of factors as described below. Accordingly, the City reserves the right to waive technical errors, alter submission dates, issue subsequent requests for proposals, etc.

An Evaluation Committee comprised of City staff, will review and score all proposals based on the Evaluation criteria stated below. The selection will be made based on the recommendation of the team and presented to the City Council for approval to award and agreement execution. The individual rating and/or evaluation forms prepared by the team members will not be revealed; however, a summary of the evaluation results will be presented to the City Council.

During the evaluation process, the Committee may, at its discretion, request any one or all Consultants to make oral presentations by participating in a virtual interview. Such presentations will provide Consultants with an opportunity to answer any questions the Committee may have on their qualification package. Not all Consultants may be asked to make such oral presentations. The interview process will primarily focus on the key personnel proposed by the Consultant to perform work for this City. The City may also request the presence of the Consultant's principal-in-charge, if necessary.

The City of Laguna Niguel will review and evaluate the proposals based on the following factors to select the most qualified Consultant:

1. Proposed Key Personnel – The experience and qualifications of the proposed key personnel and the firm on similar projects. The designated Project Manager must be able to perform as the

sole point of contact and provide day to day direction to team members and subconsultants. Expertise and background of the Project Manager and key team members and their availability to participate on this Study will be evaluated and overall firm capabilities to meet the additional needs of the City.

2. Project Approach – The proposed project approach and services that the firm is capable of providing and the firm's approach to meet the needs of the City. The Consultant understands the study specific issues and is able to identify study challenges as well as possible solutions.
3. Project Controls – The firm's ability to control costs and provide accurate and timely invoices, stay within budget, monitor schedule, and describe the techniques used to complete projects within the proposed time frames.
4. Relevant Experience and Client References
5. Cost – The proposed fee will be evaluated based on reasonableness of the proposed costs. Costs will be evaluated on costs the City or other comparable public agencies have paid for similar services, and in accordance with what is to be considered with the industry's standard and customary costs for the Services.

Selection by the City shall be based on demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required and shall not be awarded solely based on project cost. Selection will be made to ensure that such services are engaged based on demonstrated experience and qualifications at fair and reasonable prices to the City.

## II-5. REQUEST FOR COUNCIL ACTION

Following evaluation and rating by the City's Evaluation Committee, the City will recommend a Consultant for award at a City Council Meeting. The selected Consultant will enter into an agreement with the City based upon the contents of the RFP and the Consultant's proposal. Consultants not chosen will be informed following the City Council Meeting.

## II-6. EXECUTION OF AGREEMENT

A sample Professional Services Agreement is attached herein as an Attachment "B". The term of the Agreement will begin once the Agreement is fully executed, and a W9 and a certificate of insurance and related insurance endorsements that meet the City's requirements have been received and approved.

## II-7. ACCEPTANCE OF AGREEMENT AND TERM

After the City Council awards the Study, the City will work to fully execute the Professional Services Agreement (Attachment "B"). The term of the Professional Services Agreement will be for one year or, until this RFP's Scope of Work (Section I-4) is completed.

## SECTION III – PROPOSAL FORM AND CONTENT

### III-1. GENERAL INFORMATION

The City reserves the right to retain all proposals submitted. Submission of a proposal indicates Consultant's acceptance of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the agreement between the City and the Consultant selected.

The City reserves the right to reject any or all proposals, in whole or part, to waive any informality in any proposal, and to accept the proposal which, in its discretion, is in the best interest of the City. Any Consultant may withdraw their proposal, without obligation, at any time prior to the RFP Due Date. A withdrawal will not be effective unless made personally in writing to the City Contact prior to the RFP Due Date. Proposals may later be referred to the City Council for appropriate action.

Proposals must be valid for a minimum of 90 days.

### III-2. PROPOSAL SUBMISSION REQUIREMENTS AND RESPONSE FORMAT

Consultant is responsible for preparing a well-organized and concise written proposal. Emphasis should be on completeness, clarity of content, and cost effectiveness of the proposal.

To be considered for selection, Consultants must submit a complete response to this RFP that includes the following mandatory information and/or requirements in the following format and order. Failure to provide any of the information requested below may be cause for the proposal to be considered non-responsive.

1. Certification Statement
2. Letter of Transmittal
3. Work Approach and Draft Study Schedule
4. Experience
5. Key Personnel
6. Itemized Cost Proposal

## 7. Other Information

Additional guidelines for the mandatory information and/or requirements listed above are described in the next sections.

### III-3. CERTIFICATION STATEMENTS

All submitted proposals must contain a signed certification statement (see Section VI-1). Additionally, Consultant shall affirmatively state that they have reviewed and are ready to execute the City's standard form Professional Services Agreement (Attachment "B") in its Letter of Transmittal.

### III-4. LETTER OF TRANSMITTAL

All proposals must include a cover letter addressed to the City's Project Manager and signed by a duly constituted official legally authorized to bind the Consultant to both its proposal and cost schedule. The cover letter must include the name, address, phone number, and email address of the Consultant's main point of contact (to whom the City should direct correspondence). The main point of contact can be different from the Consultant's Project Manager.

### III-5. WORK APPROACH AND DRAFT STUDY SCHEDULE

Provide a detailed work plan, discussing the Consultant's approach and draft study schedule for providing the tasks described in the Scope of Work section of this RFP. The proposal should discuss how the Consultant will conduct each task, in detail sufficient to demonstrate clear understanding of the Study and identify deliverables. The City facilities that the Consultant shall evaluate for this Study are listed in Attachment "A" to this RFP, subject to change based upon the available City budget.

### III-6. EXPERIENCE

Describe the Consultant's capabilities and experience. List Consultant's experience working with similar projects. A summary (no longer than one page each) of at least three (3) studies similar in subject matter and scope to this Study. Note: The focus should be on recent and local project experience that is relevant to the Scope of Work section of this RFP.

### III-7. KEY PERSONNEL

Provide an overview of the key personnel that will staff this project. Submit a resume or other breakdown listing the experience of key personnel. Provide an organization chart that reflects the titles of key staff and management contacts of each individual assigned to provide the requested services.

### III-8. ITEMIZED COST PROPOSAL

Provide an itemized cost proposal to provide the tasks described in the Scope of Work outlined in this RFP.

### III-9. OTHER INFORMATION

Provide additional information to help the City's review team evaluate your proposal in comparison to the proposal(s) submitted by other Consultant(s).

## SECTION IV – EVALUATION / SELECTION OF PROPOSALS

### IV-1. CLARIFICATIONS

The City reserves the right to seek written clarification of each proposal submitted. The City also reserves the right to require other evidence of minimum qualifications, technical, managerial, financial, or other abilities prior to selection.

### IV-2. PROPOSAL EVALUATION AND SELECTION

The City will select a Consultant based on the evaluation of the submitted proposals. The City reserves the right to request a Best and Final Offer (BAFO) from the top ranked Consultants. The City will recommend the award of contract to the highest ranked and responsive Consultant.

### IV-3. SINGLE OR MULTIPLE CONTRACTS

The City will award only one Consultant to provide all services described in the Scope of Work in this RFP (Section I-4). If multiple Consultant's desire to work together, one Consultant will enter a contract with the City and agree upon a method of compensation with the other Consultant(s), separate from the City.

## SECTION V – GENERAL RFP INFORMATION

### V-1. PUBLIC RECORDS

Responses to this RFP become the exclusive property of the City and are subject to the California Public Records Act. Those elements in each proposal which are trade secrets as that term is defined in California Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as “TRADE SECRET”, “CONFIDENTIAL”, or “PROPRIETARY” may not be subject to disclosure. The City shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of the Court. Consultants who indiscriminately identify all or most of their proposal as exempt from disclosure without justification may be deemed non-responsive.

In the event the City is required to defend an action on a Public Records Act request for any of the contents of a proposal marked “confidential”, “proprietary”, or “trade secret”, the Consultant agrees, upon submission of its proposal for City’s consideration, to defend and indemnify the City from all costs and expenses, including attorney’s fees, if any action or liability arising under the Public Records Act.

### V-2. CANCELLATION

The City reserves the right to cancel this RFP or the contract award, at any time before execution of the contract by both parties, if cancellation is deemed to be in the best interest of the City. In no event shall the City have any liability for the cancellation of a contract award.

### V-3. LATE PROPOSALS

All proposals that are not received by the RFP Due Date will not be considered and will not be returned to the Consultant.

### V-4. DISPUTES

In case of any doubt or differences of opinion as to the items or services to be furnished hereunder, or the interpretation of the provisions of this RFP, the decision of the City shall be final and binding upon all parties.

## V-5. PROPOSER CERTIFICATIONS

By the act of submitting a Proposal in response to this RFP, the Proposer certifies that:

1. The Consultant has carefully examined all RFP documents, including the draft Agreement (attached as Attachment "B"), and all addenda, and fully understands the intention of the RFP is to perform all tasks as described in the Scope of Work of this RFP, and the proposal is made in accordance therewith. Except as otherwise noted as part of the proposal, the Consultant certifies that Consultant is ready, willing, and able to comply with all terms of the attached Agreement.
2. The Consultant is familiar with the local conditions under which the work will be performed.
3. The proposal is based upon the requirements described in the RFP, without exception, unless clearly stated in the response.
4. The Consultant accepts all of the terms of the City's Agreement and warrants that Consultant will fully meet all of the insurance requirements contained therein. If the Consultant wishes to amend or modify any terms of the Agreement, such amendment or modification must be stated in particularity in the Proposal. Proposed changes to the Agreement not stated at the time of proposal submission will not be considered. Changes stated will be considered but may not be agreed upon by the City for contract award. If the City does not agree with such noted changes, the Consultant may withdraw the proposed change, or the entire proposal and the City may elect to award the contract to the next highest ranked Consultant.
5. The Consultant certifies, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of Consultant's knowledge and belief, no elected official, employee, or person whose salary is payable, in whole or in part, by the City has a direct or indirect financial interest in the proposal or in the services to which it relates, or in any of the profits thereof, other than as fully described in the Consultant's response to this RFP.
6. The Consultant has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and if its proposal is accepted, the Consultant shall accept the contract documents thereto, unless substantive changes are made in same without the approval of the Consultant.
7. The Consultant, if an individual, is of lawful age; is the only one interested in this proposal; and no person, firm, or corporation, other than that named, has any interest in the proposal, or in the proposed Agreement.

8. The Consultant has quality experience providing the types of services and duties as described within the Scope of Work of this RFP.
9. The Consultant shall also certify Consultant's state of residence.

#### V-6. NONDISCRIMINATION

By the act of submitting a proposal in response to this RFP, the Consultant certifies, under penalty of perjury, that the Consultant has not discriminated against minorities, women, or emerging small business enterprises, or a business enterprise that is owned or controlled by or that employs a disabled veteran, in obtaining any required subcontracts.

#### V-7. PROPOSED LIABILITY

Consultants responding to this RFP do so solely at their expense, and the City is not responsible for any Consultant expenses associated with the RFP. By proposing, Consultants agree that doing so is at their own risk and the City shall have no liability related thereto. Finalists invited to participate in interview evaluations are responsible for scheduling and paying for their own travel arrangements. The City is not liable for any cost incurred by a Consultant in protesting any portion of the RFP documents or the City's selection decision.

#### V-8. CITY REQUESTS FOR CLARIFICATION, ADDITIONAL RESEARCH, AND REVISIONS

The City reserves the right to obtain clarification of any portion of a proposal or to obtain additional information necessary to properly evaluate a particular proposal. Failure of a Consultant to timely respond to such a request for additional information or clarification may result in a finding that the Consultant is non-responsive and consequent rejection of the proposal.

The City may obtain information from any legal source for clarification of any proposal. The City need not inform the Consultant of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of any Consultant. Information may include, but shall not necessarily be limited to, current litigation and contracting references. All such documents, if requested by the City, become part of the public record and may be disclosed accordingly.

The City reserves the right to request revisions of any proposal after the date and time due and before award for the purpose of obtaining best and final offers.

## V-9. REJECTION OF PROPOSALS

The City reserves the right to reject any or all irregularities or omissions in proposals submitted in response to this RFP to the extent it is determined to be in the best interest of the City to do so. Furthermore, the City reserves the right to reject any or all proposals or portions thereof submitted in response to this RFP. Proposals may be rejected for one or more of the following reasons, including but not limited to:

1. Failure of the Consultant to adhere to one or more of the provisions established in the RFP.
2. Failure of the Consultant to submit a proposal in the format specified herein.
3. Failure of the Consultant to submit a proposal within the time requirements established herein.
4. Failure of the Consultant to adhere to ethical and professional standards before, during, or following the proposal process.

The City may reject any proposal not in compliance with all prescribed public procurement procedures and requirements and may reject for good cause any or all proposals upon a finding by the City that it is in the public interest to do so. Rejected proposals are considered to be non-responsive.

## V-10. MODIFICATION OR WITHDRAWAL OF PROPOSAL BY CONSULTANT

A proposal may not be modified, withdrawn, or canceled by the Consultant following the time and date the proposals are due (RFP Due Date). Proposals submitted early may be modified or withdrawn only by notice to the City at the proposal submittal location prior to the time and date the proposals are due. Such notice shall be submitted to the Project Manager, by email, sent by a duly authorized representative of the Consultant submitting the proposal. All such communication shall be worded so as not to reveal the contents of the original proposal. Withdrawn proposals may be resubmitted prior to the time and date the proposals are due, provided that they are then fully in conformance with the RFP.

## V-11. DURATION OF PROPOSAL

Proposal prices, terms, and conditions shall be firm for a period of at least ninety (90) days from the time and date proposals are due. Proposals shall not be subject to future price escalation or changes of terms during the ninety (90) day period.

## V-12. LOCAL, STATE, AND FEDERAL REQUIREMENTS

The City intends to select a Consultant in accordance with California law and the City's municipal code. Selection of a Consultant under this process is not a guarantee of a contract award, nor is the award of

a contract for any portion of the project a guarantee of award of a contract for any subsequent work. All work is subject to budgetary and funding constraints of the City.

The selected Consultant shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under the Agreement, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

## SECTION VI – FORM TO BE SUBMITTED

**Please complete and submit the following form as part of your proposal:**

VI-1. Certification Statement

## VI-1. CERTIFICATION STATEMENT (SUBMIT WITH PROPOSAL)

This certification statement is provided in response to the City of Laguna Niguel's RFP titled:

### **Energy Assessment Study**

All proposals must include this certification statement, signed by a duly constituted official legally authorized to bind the Consultant to both its proposal and cost schedule.

1. Proposal may be released in total as public information in accordance with the requirements of the laws covering the same. Any proprietary information has been clearly marked.
2. Proposal and cost schedule shall be valid and binding for ninety (90) days following the proposal due date or any revised proposal submission date, whichever is later, and will become part of the contract that is negotiated with the City.
3. The Consultant has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, woman, or emerging small business enterprise.
4. The Consultant certifies that this proposal has been arrived at independently and has been submitted without collusion designed to limit independent bidding or competition.
5. The Consultant has not had any communication with a City Councilmember in relation to their proposal. If so, Consultant will provide a copy of such communication for the public record.
6. The Consultant has never been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation.

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Consultant's Signature

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Date

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Print Name

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Title

Consultant's Federal Taxpayer Identification Number:

## ATTACHMENT A – CITY FACILITY LIST

No.	Name	Address
1	Beacon Hill Park	24472 Beacon Hill Way
2	Bear Brand Park	32385 Bear Brand Park Road
3	Chapparosa Park	25191 Chapparosa Park Road
4	Clipper Cove Park	29325 Clipper Way
5	Crown Royale Park	29457 La Paz Road
6	Crown Valley Community Park & YMCA	29751 Crown Valley Parkway
7	El Lazo Basketball Park	23804 El Lazo
8	Hidden Hills Park	27802 Springwood
9	Juaneno Park	25078 Hidden Hills Road
10	Laguna Niguel City Hall	30111 Crown Valley Parkway
11	Laguna Niguel Blue Gates Skate & Soccer Park	27745 Alicia Parkway
12	La Hermosa Park	24462 La Hermosa Avenue
13	La Paz Sports Park	28051 La Paz Road
14	La Plata Park	25006 La Plata Drive
15	Long View Park	Old Ranch Road
16	Marina Hills Park	24802 Marina Hills Drive
17	Metrolink Train Station	28200 Forbes Road
18	Niguel Heights Park	27804 Niguel Heights Blvd
19	Niguel Road Park	30983 Killini
20	Niguel Woods Park	29883 White Otter Lane
21	Ocean Breeze Park	32311 Charles Road
22	Parc Vista Overlook Park	30618 Parc Vista Road
23	Parc Vista Park	30618 Parc Vista Road
24	Parc Vista View Park	31114 Parc Vista Road
25	Pooch Park	31575 Golden Lantern
26	Rancho Niguel Park	28333 Crown Valley Parkway
27	Redondo View Node Park	25575 Redondo
28	Reef View Node Park	25326 Reef
29	Ridge View Park	29061 Ridgeview
30	Sea Country Senior & Community Center	24602 Aliso Creek Road
31	Seminole Park	30802 Seminole Place
32	Vista Plaza Park	29541 Vista Plaza
33	Yosemite Park	24481 Yosemite Road

## ATTACHMENT B – CITY'S SAMPLE PROFESSIONAL SERVICES AGREEMENT

### AGREEMENT FOR PROFESSIONAL SERVICES (PUBLIC WORKS DEPARTMENT)

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into on \_\_\_\_\_, by and between the City of Laguna Niguel, a municipal corporation, hereinafter the "City", and [Company Name], a \_\_\_\_\_, hereinafter the "Consultant".

#### R E C I T A L S:

- A. The City desires to contract with selected professional consultants to provide professional [architectural/engineering/special inspection & testing services to support the Public Works Department in the following categories: 1) Design Engineering, 2) Plan Checking; 3) Project and Program Management and 4) Construction Management and/or Inspection Services.]
- B. The City circulated a Request for Proposals for the above-described professional services on \_\_\_\_\_, 20\_\_\_.
- C. Consultant submitted a proposal to City to provide the above-described professional services dated \_\_\_\_\_, 20\_\_\_.
- D. City Staff has reviewed all the proposals and after considering the demonstrated competence of Consultant, the professional qualifications of Consultant, and the fairness and reasonableness of Consultant's proposed cost, staff has determined that an agreement to provide the required services should be awarded to Consultant.
- E. The City desires to enter into an agreement with Consultant for the above-described professional services.

#### A G R E E M E N T:

NOW, THEREFORE, in consideration of the foregoing Recitals 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 the Scope of Services ("Scope of Services") which is attached hereto as Exhibit "A."

2. Additional or Different Services. Any proposed changes in the Scope of 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 the date stated above and will continue in effect [for a period of \_\_\_\_\_ days thereafter] [or until the work required by this Agreement is completed] subject to termination as provided in paragraph 28, except the indemnification provisions contained in paragraph 19 shall remain in full force and effect after the Agreement is terminated. The parties may mutually agree in writing to extend the Term of the Agreement.

4. Payment.

A. Payment for Services. City agrees to pay Consultant for providing the professional services 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 "A" for the not to exceed sum of \$xxxx.

B. Invoices. 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 30 days of receipt of the invoice by the City. Such approval shall not be unreasonably withheld.

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 the Scope of Services shall be the property of the City and shall be provided by Consultant to City upon their completion and payment of relevant invoices, or in the event the Agreement is terminated prior to completion, Consultant shall provide all work in progress, subject to payment of relevant invoices. 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. Reuse or modification of any such documents by the City for purposes outside of the Scope of Services set forth in this Agreement, without Consultant's written permission, shall be at City's sole risk, and City agrees to indemnify and hold Consultant harmless from all claims, damages, and expenses, including attorney's fees, arising out of such reuse by City or others acting through City; however, City shall not be liable for any unauthorized use by third parties.

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 "B" (Schedule). Notwithstanding any other provisions of this Agreement, the Consultant shall not have liability for, or be deemed in breach of delays caused by, any factor outside of its reasonable control, including but not limited to natural disasters, adverse weather, or acts of the City, third parties, or other governmental agencies.

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

8. Licenses; Standard of Care.

A. Qualifications. 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. Standard of Care. 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. Prevailing Wages.

A. Public Works. This Agreement calls for services that, in whole or in part, constitute "public works" as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code ("Chapter 1"). Further, Consultant acknowledges that this Agreement is subject to (a) Chapter 1 and (b) the rules and regulations established by the Department of Industrial Relations ("DIR") implementing such statutes. Therefore, as to those services that are "public works", Consultant shall comply with and be bound by all the terms, rules and regulations described in Chapter 1 and the rules and regulations established by the DIR implementing such statutes as though set forth in full herein.

B. Contracts. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of paragraph A of this Section.

C. Registration with DIR. Consultant shall be registered with the Department of Industrial Relations in accordance with California Labor Code Section 1725.5, and has provided proof of registration to City prior to the Effective Date of this Agreement. Consultant shall not perform work with any subcontractor that is not registered with DIR pursuant to Section 1725.5. Consultant and subcontractors shall maintain their registration with the DIR in effect

throughout the duration of this Agreement. If the Consultant or any subcontractor ceases to be registered with DIR at any time during the duration of the project, Consultant shall immediately notify City.

D. Compliance Monitoring. Pursuant to Labor Code Section 1771.4, Consultant's Services are subject to compliance monitoring and enforcement by DIR. Consultant shall post job site notices, as prescribed by DIR regulations.

E. Copies of Per Diem Wages. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Agreement are on file at City Hall and will be made available to any interested party on request. Consultant acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Consultant shall post such rates at each job site covered by this Agreement.

F. Penalties. Consultant shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Consultant shall, as a penalty to City, forfeit \$200.00 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Consultant or by any subcontractor.

G. Payroll Records. Consultant shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Consultant and each subcontractor to: (1) keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; (2) certify and make such payroll records available for inspection as provided by Section 1776; and (3) inform City of the location of the records.

H. Apprentices. Consultant shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects. Consultant shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Consultant shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding work pursuant to this Agreement, Consultant and each of its subcontractors shall submit to City a verified statement of the journeyman and apprentice hours performed under this Agreement.

I. Debarment or Suspension. The Consultant shall not perform work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. The Consultant and Subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. If the Consultant or any

subcontractor becomes debarred or suspended during the duration of the project, the Consultant shall immediately notify City.

J. Overtime. Consultant acknowledges that eight hours labor constitutes a legal day's work. Consultant shall comply with and be bound by Labor Code Section 1810. Consultant shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Consultant shall, as a penalty to City, forfeit \$25.00 for each worker employed in the performance of this Agreement by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Consultant in excess of eight hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

K. Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Consultant hereby certifies as follows: "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."

L. Subcontractors. For every subcontractor who will perform work on the project, Consultant shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Consultant shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Consultant shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Consultant shall diligently take corrective action to halt or rectify any failure.

M. Indemnification. To the maximum extent permitted by law, Consultant shall indemnify, hold harmless and defend (at Consultant's expense with counsel reasonably acceptable to City) City, its officials, officers, employees, agents and independent contractors serving in the role of City officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions arising out of the payment of prevailing wages by any person or entity (including Consultant, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Consultant under this Section shall survive the termination of the Agreement.

11. 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.

12. 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.

13. Independent Consultant. Consultant is and shall at all times 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.

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

15. Progress. Consultant is responsible to keep the Project Manager informed on a regular basis regarding the status and progress of the work being performed pursuant to this Agreement.

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

17. 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.

18. 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.

19. Indemnification.

A. General Indemnity. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent consultant in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

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 Liabilities, 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. Subconsultants. Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement.

D. Insurance Requirements not Limiting. 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. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

E. Survival and Offset. The provisions of this Section 19 shall survive the termination of this Agreement. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph.

## 20. Liability Insurance.

A. Insurance Policies. Without limiting Consultant's indemnification of City as described in paragraph 19, Consultant shall obtain and provide and maintain at its own expense during the term of this Agreement policy or policies of liability insurance of the type and amounts described below and satisfactory to the City Attorney. Such policies shall be signed by a person authorized by that insurer to bind coverage on its behalf and must be filed with the City prior to exercising any right or performing any work pursuant to this Agreement.

B. Named Additional Insured. The City of Laguna Niguel and its Council members, officers, officials, employees, agents, and volunteers shall be named as additional insureds under the policies required by subparagraphs General and Auto Insurances for all liability arising from Consultant's performance of services pursuant to this Agreement. This insurance shall be primary to any insurance maintained by the City. City insurance shall not contribute to any judgment rendered against the City.

C. Insurance Coverage. Prior to the commencement of any services hereunder, Consultant shall provide to City certificates of insurance with original endorsements, and copies of policies, if requested by City, of the following insurance coverage:

1) 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.

2) Automobile 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.

3) Professional Liability (errors & 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 (3) years after completion of the services required by this agreement.

4) Workers' 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.

D. 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 subconsultant.

E. 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 subcontractors.

F. 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 the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

G. 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.

H. 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.

I. 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 noncompliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. Pass Through Clause. Consultant agrees to ensure that its subcontractor, 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, subconsultant, and others engaged in the project will be submitted to City for review.

P. 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.

Q. 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.

R. 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.

S. 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.

21. 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, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or any protected class or basis prohibited by law. 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.

22. 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.

23. 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.

24. Notices. Every notice, demand or request (hereinafter described in this Section as a "Notice") that is given by either party to the other under or in connection with this Agreement shall be in writing, and shall be given: (i) by email, to the applicable email address specified below; or (ii) by United States certified mail, postage prepaid, return receipt requested, or by same-day or overnight reputable private courier, addressed to the party to be served at its address below. Either party may change its email address for Notices, or its address for Notices, by a Notice given in accordance with this Section. Notices shall be deemed to have been delivered: (i) if sent by email, on the next business day, provided the sender's email

system confirms has been delivered or does not indicate that delivery did not occur, as applicable; (ii) if sent by certified mail, three (3) days after deposit into the U.S. mail ; and (iii) if sent by private courier, one business day after deposit with the courier for overnight delivery (unless the delivery service indicates to the sender that delivery has not occurred, in which case delivery shall be deemed to occur when the delivery service indicates to the sender that it has actually occurred).

CITY: City of Laguna Niguel  
Attn: Public Works Director  
30111 Crown Valley Parkway  
Laguna Niguel, CA 92677  
Email:

CONSULTANT: Company Name  
Attn: Name  
Business Mailing Address  
City, State, Zip Code  
Email:

25. 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 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 parties to this Agreement.

26. 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.

27. 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.

28. Termination. City may terminate this Agreement, without cause or penalty, by providing written notice to the Consultant 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 3.

29. 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.

30. 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.

31. 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.

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

Authority to Sign. The person(s) executing this Agreement on behalf of the Consultant warrants and represents that they have the authority to execute this Agreement on behalf of the Consultant and have the authority to bind the Consultant to the performance of the obligations hereunder.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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

"CITY"

CITY OF LAGUNA NIGUEL

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

Tamara S. Letourneau  
City Manager

ATTEST:

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Marissa J. Asistin  
City Clerk

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

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Nicholas Ghirelli  
Interim City Attorney

"CONSULTANT"

COMPANY NAME

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**

**SCOPE OF SERVICES & COST PROPOSAL**

## EXHIBIT "B"

### SCHEDULE