



Request for Proposal (RFP)

for

Business License Software

April 1, 2019

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PROJECT OVERVIEW

The City of Tustin (“City”) is soliciting proposals from qualified vendors to provide a Business License Software solution for the City that will replace the existing solution. The objective of this project is to identify a robust and easy to use system that’ll meet the City’s current and future needs associated with issuing, managing, and renewing business licenses.

THE CITY OF TUSTIN

Incorporated in 1927, the City of Tustin is a General Law city. The Constitution of the State of California establishes two types of cities: Charter and General Law. A General Law City, may exercise only those powers expressly given under State law. All cities begin as General Law cities, and the City of Tustin has chosen to remain such. Tustin is located in central Orange County and encompasses an area of 11.08 square miles. The City is bounded on the south by the cities of Irvine and Santa Ana, on the north by the unincorporated portions of the County of Orange and the City of Orange, and on the east by unincorporated County territory and the City of Irvine. Within the context of the larger Southern California region, Tustin is located approximately two miles north of Orange County's John Wayne Airport and is transected by two major regional freeways: the I-5 (Santa Ana) Freeway, divides the City into north and south; and the SR-55 (Costa Mesa) Freeway, divides westerly portions of the City.

SCHEDULE OF EVENTS

Request for Proposal published **Monday, April 1, 2019**

Addendums to the RFP may be distributed based on the needs of the City. Prospective bidders may submit questions in writing via email to the following email address stran@tustinca.org or addressed to: Sean Tran, 300 Centennial Way, Tustin, CA 92780, by **Friday, May 3, 2019 @ 5:00 PM**.

A unified response to all questions will encompass the questions and answers, distributed via email to all bidders by **Friday, May 10, 2019 @ 5:00 PM**.

All proposals are due **Friday May 31, 2019 by 10:00 AM**.

Proposal evaluations will take place during **June 3, 2019** and **June 28, 2019** during which time the evaluation team may invite the top candidates to make a presentation of their proposal.

The selection process will conclude with preliminary notification to occur on **Monday, July 1, 2019**.

It is anticipated that the City Council would award the contract at its July 16 meeting.

The proposed project planned to commence **Thursday, August 1, 2019**.

The City reserves the right to reject all proposals, disqualify nonconforming or incomplete proposals at its sole discretion, waive deviations from the RFP, and determine whether proposers are qualified, or to

make no award. The City reserves the right to issue addenda to the RFP, to modify the RFP, to modify the franchise agreement, or to withdraw the RFP. The City may request clarification or additional information from any of the proposers at any point in the RFP process. Proposals must comply fully with the requirements detailed in this RFP. Required supporting documentation must be included as attachments and be appropriately identified. All proposers should take whatever steps they believe are necessary to reasonably establish the actual existing service information when preparing their proposals

PROJECT SCOPE OF WORK

The intent of the City is to seek a Business License software solution that meet or exceed the specifications outlined in this Scope of Work. Currently, the City utilize a Business License software, Knowles-McNiff, which unable to meet its current and future requirements. In general, the City is seeking a software solution that provides greater usability and functionality that meets staff's needs and requirements as well as business owners, the general public, and other public and private entities.

The proposed software solution should meet these minimum requirements:

- Must be updated regularly to be compliant with all State and Federal requirements as they change, which includes Government Code 6254.21 & 6254.24
- Ability to submit new business license application, renew existing business licenses, close existing license (with restrictions), and apply for address changes online without the need for the applicant/business owner to submit any document(s) either by mail or in person, unless otherwise required by the City
- Ability to effectively and efficiently manage business license processes, which include past due, final notices, administrative citations, track code enforcement, in & out of City State License Contractors, independent contractor, cosmetologist, and etc.
- Ability to enter reminders and receive notifications of reminders
- Ability to link independent contractors to a master license such as independent cosmetologist to a Salon, Massage Establishments, etc. Ideal solution should include the ability to attach photos and certifications, which are viewable in the field
- Ability to tailor the requirement(s) based on the applicant's business type
- A comprehensive tool for managing, accepting, and maintaining Massage Establishment permits and massage technician business licenses. Ideal solution, should have a interface with California Massage Therapy Council (CAMTC)
- A comprehensive tool for managing, accepting, printing, and maintaining Permits issued, which include Live Entertainment, Mobil Detailing, etc.
- Ability to use the software in the field for inquiry and/or to issue Notice of Violations and Administrative Citations
- Ability to allow citizens, businesses, and staff to lookup business licenses through a web interface on the City's website
- Ability to convert Standard Industrial Classification system (SIC) codes to North American Industry Classification System (NAICS) code. The solution should provide a mechanism to allow the applicant to look up their NAISC code.
- Ability to interface or integrate with other software solutions, which include but are not limited to State websites (State Licensed Contractors, Massage Therapist, Cosmetologists, etc.), Tyler

Technology products (Energov, Munis, etc.), Accela Springbrook, State of California Franchise Tax Board (FTB), etc.

- Ability to route approvals electronically and it would be preferred that approvals are routed to multiple approvers at the same time
- Ability to block / restrict fields (like social security number, tax ID number, etc.) from being viewable in the application based on security settings, including the ability to control which fields are displayed on reports.
- Comprehensive set of tools that can be used to manage user access, security, and track changes entered into the system by user
- Robust reporting capability which allow users to produce reports with the following information:
 - New license activity
 - License renewal activity
 - Business listing by NAISC & SIC code
 - Delinquent / past due
 - Fee type activity
 - Cash receipt detail & summary by batch and payment activity
 - Aging report
 - Label / mail merge export
 - Ability to export and email reports
 - Adhoc reporting to include reports by:
 - License number, business name, and/or status
 - Address range
 - In & Out of City
 - SIC / NAICS

USER TRAINING

User training – The vendor must include at least two (2) training sessions at the conclusion of the implementation of the software solution prior to go-live date.

PROPOSAL FORMAT

Section 1: INTRODUCTION

A letter of introduction to include the history of the company and experience in the type of work being proposed.

Section 2: EXPERIENCE

Explanation of specific qualifications, training and years of prior experience

Section 3: RECOMMENDED SOLUTION

Detailed explanation of the software solution, which include any hardware and infrastructure requirements, if not included with the software solution.

Section 4: REFERENCES

Include five (5) reference locations/Cities in California which the proposed vendor implemented a Business License solution within the last five (5) years.

Section 5: COSTS

Pricing broken down into components

Section 6: MAINTENANCE AND SUPPORT

Priced annually with a two, three, and four year options. It is required that the first year be covered under warranty.

DEFINITIONS

City – is defined as the City of Tustin, a municipal government

Project Manager -

For the City of Tustin, is defined as the person assigned by the City to oversee the project on behalf of the City.

For the Vendor, is defined as the individual assigned to oversee the project on behalf of the vendor.

TERMS AND CONDITIONS

1.1 Insurance Requirements

The Proposer shall be required to submit proof of the required insurance prior to the award of contract. These minimum levels of coverage are required to be maintained for the duration of the project and during the maintenance thereafter:

1. **General Liability and Automobile Liability Coverage** - \$1,000,000 per occurrence for bodily injury and property damage. If Commercial General Liability Insurance or other form with a general limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Professional Liability Coverage** - \$2,000,000 per occurrence (note: A “claims made” policy is acceptable). If consultant provides “claims made” coverage, consultant shall also agree in writing to either:
 - a) Purchase Tail Insurance in the amount required by the resulting agreement to cover claims made within five years of completion of vendor’s services under the agreement.
 - b) Maintain professional liability insurance coverage with the same carrier, or with an equivalent carrier in the amount required by the resulting agreement five years after completion of vendor’s services under the agreement.
3. **Worker’s Compensation Coverage** - State statutory limits.

Deductibles, Self-Insurance Retentions, or Similar Forms of Coverage Limitations or Modifications, must be declared to and approved by the City of Tustin, which reserves the right to deny authorization to use such limitations.

The Proposer is encouraged to contact its insurance carriers during the proposal stage to ensure that the insurance requirements can be met if selected for negotiation of a contract agreement. All insurance shall be endorsed to be primary and the City's insurance shall not be contributory. **The City shall be named as Additional Insured and no policy may be modified or cancelled prior to thirty (30) days written notice.**

Certificates of insurance and insurer endorsements evidencing the required insurance shall be provided. The worker's compensation policy shall be endorsed to waive subrogation rights against the City and its officials, officers, employees, and agents.

1.2 Standard Form of Agreement

The vendor will enter into an agreement with the City based upon the contents of the RFP and the vendor's proposal. The City's standard form of agreement is included as Attachment A. The Proposer shall carefully review the agreement, and include with the proposal a description of any exceptions requested to the standard contract. If there are no exceptions, a statement to that effect shall be included in the proposal.

1.3 Disclaimer

This RFP does not commit the City to award a contract, or to pay any costs incurred in the preparation of the proposal. The City reserves the right to extend the due date for the proposal, to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified vendor, or to cancel this RFP in part or in its entirety. The City may require the selected vendor to participate in negotiations and to submit such technical, fee, or other revisions of their proposals as may result from negotiations.

1.4 Assigned Representatives

The City will assign a responsible representative to administer the contract, and to assist the vendor in obtaining information. The vendor also shall assign a responsible representative (project manager) and an alternate, who shall be identified in the proposal. The vendor's representative will remain in responsible charge of the vendor's duties from the notice-to-proceed through project completion. If the vendor's primary representative should be unable to continue with the project, then the alternate representative identified in the proposal shall become the project manager. The City's representative shall first approve any substitution of representatives or subcontractors identified in the proposal in writing. The City reserves the right to review and approve/disapprove all key staff and subcontractor substitution or removal, and may consider such changes not approved to be a breach of contract.

1.5 City Business License

A city business license will be required of the vendor and any subcontractors for services performed in connection with any agreement entered into through this RFP process.

ADMINISTRATION SPECIFICATIONS

2.1 The City of Tustin's Rights to Proposals

All proposals, upon submission to the City of Tustin shall become its property for use as deemed appropriate. By submitting a proposal, the Proposer covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. The City of Tustin reserves the right to take one or more of the following actions as determined in the best interest of the organization:

1. to accept or reject in whole or in part any or all proposals;
2. to cancel this RFP in whole or in part without prior notice. Thereafter, City may issue a solicitation for new proposals;
3. City makes no guarantee as to the usage of the services by City;
4. to waive, at its discretion, any minor errors, informalities or irregularities, which the City deems correctable or otherwise not warranting rejection of the RFP;
5. to correct any arithmetic errors in any or all proposals submitted;
6. to negotiate with any Proposer(s) as necessary to serve the best interest of the City and to negotiate the final contract(s) with the most responsive, responsible Proposer
7. to investigate the qualifications of any Proposer under consideration;
8. to disqualify a proposal upon evidence of collusion with the intent to defraud or other illegal practices on the part of the Proposer;
9. to require confirmation of information furnished by the Proposer;
10. to award one contract for the total SYSTEM, or make multiple awards if it is in the best interest of the City.
11. to utilize any or all the ideas from proposals submitted;
12. to change the proposal's due date upon appropriate notification;
13. to adopt any or all of a vendor's proposal; and
14. to negotiate modifications to the scope and fee with selected Proposer(s) prior to contract award.

2.2 Interviews/On-Site Demonstrations/Equipment Testing

City reserves the right to conduct interviews, and/or to require on-site demonstrations and/or product testing with some or all of the Proposers at any point during the evaluation process. However, City may determine that interviews/on-site demonstrations/equipment testing are not necessary. In the event interviews/on-site demonstrations/equipment testing are conducted, information provided during the interview/on-site demonstrations/equipment testing shall be taken into consideration when evaluating the stated criteria. City shall not reimburse the Proposer for the costs associated with the interview/on-site demonstrations/equipment testing process. Equipment testing will be held at a time and place specified by the City. The Proposer's key project team members will be invited to attend the interview and/or on-site demonstrations and/or equipment testing. The Proposers should be prepared to discuss at the interview, their specific experience providing services and equipment similar to those described in this RFP, project approach, estimated work effort, available resources, and other pertinent things distinguishing the Proposer from others.

2.3 Proposal Instructions

Deadline for submitting proposals **Friday May 31, 2019 by 10:00 AM**. Hand delivery to City Hall, City Clerk's Office, 300 Centennial Way, Tustin, CA 92780. Five (5) copies of each submission are required along with one electronic copy on flash drive. All submissions must be sealed in a package with

reference to "RFP for Business License Software" on the outside. Proposals received after the deadline will be returned, unopened, to the Proposer.

2.4 Addendum and Supplements to the RFP

If it becomes necessary to revise any part of this RFP, an addendum or revision will be transmitted to all prospective vendors by email and will be posted on the City's website. Questions concerning the RFP document must be submitted in writing to City of Tustin, Attn: Sean Tran, 300 Centennial Way, Tustin, CA 92780, or email at stran@tustinca.org. Questions will be received through **Friday, May 10, 2019, by 5:00 PM**. Responses to all questions will be distributed in writing via email to all known Proposers and will be posted on the City of Tustin's website (www.tustinca.org) as an addendum by **5:00 PM on Friday May 10, 2019**. Proposers are cautioned that any statements made by the contact person that materially change any portion of the RFP shall not be relied upon unless subsequently ratified by a formal written amendment to this RFP.

2.5 Award of Contract

The City reserves the right to reject any and all Proposals. A formal contract award is anticipated for the best overall vendor as determined by the Evaluation Committee and approved by City Council as a result of this RFP. The City reserves the right, in its sole discretion, to waive minor irregularities in proposals. A minor irregularity is a variation of the RFP, which does not affect the funding request, or gives one party an advantage or benefit not enjoyed by the other parties, or adversely impacts the interest of the City. Waivers, when granted, shall in no way modify the RFP requirements or excuse the party from full compliance with the RFP specifications and other contract requirements, if the party is awarded the contract.

2.6 False or Misleading Statements

Any submittals containing, in the opinion of the City, false or misleading statements will be rejected.

2.7 Prospective Vendor Costs

Costs for developing submittals are entirely the responsibility of the vendor and shall not be chargeable in any manner to the City.

2.8 Evaluation Process

The City will form an Evaluation Committee to review all submittals received by the deadline. Any submittal failing to meet any of the qualifications documented in this RFP may be rejected. The purpose for the Evaluation Committee is to recommend which vendor is best able to provide, install, maintain and support the SYSTEM, to the City's requirements, and within the City's budget. A submission in response to this RFP indicates your acceptance of the City's evaluation criteria.

ORGANIZATION BACKGROUND

- Company's demonstrated capabilities and local staffing levels to meet the project's needs, service requirements and the company's safety record

RECOMMENDED SOLUTION

- Understanding of requirements
- Project management methodologies
- Proposed approach
- Quality assurance plan

TECHNICAL COMPETENCE AND EXPERIENCE

- Project Manager and key personnel's demonstrated experience and expertise
- Meets technical system requirements as outlined in the Request for Proposal

REFERENCES

- Vendor has completed three projects similar in scope, scale, and budget

COST

- The cost proposal is comprehensive and realistic to complete the project

2.9 Clarification of Proposals

The City reserves the right to obtain clarification information on any item in any vendor's submittal or to obtain additional related information necessary to properly evaluate the submittal. Failure of a vendor to respond to a request for more information may result in the proposal being rejected.

2.10 Confidential Information

All responses to this RFP become the property of City and will be kept confidential until such time as recommendation for award of contract has been announced. Thereafter, proposals are subject to public inspection and disclosure under the California Public Records Act (Cal. Government Code Section 6250, et seq.). If a vendor believes that any portion of its proposal is exempt from public disclosure, such portion may be marked "confidential." City will use reasonable means to ensure that such confidential information is safeguarded but will not be held liable for inadvertent disclosure of such materials, data and information. Proposals marked "confidential" in their entirety will not be honored and City will not deny public disclosure of all or any portion of proposals so marked. By submitting information with portions marked "confidential", the Proposer represents it has a good faith belief that such material is exempt from disclosure under the California Public Records Act and agrees to reimburse the City for, and to indemnify, defend and hold harmless City, its officials, officers, employees and agents from and against: (a) any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses including, (collectively, "Claims") arising from or relating to City's non-disclosure of any such designated portions of a proposal if disclosure is deemed required by law or court order. Additionally, City may request that the Proposer directly defend any action for disclosure of any information marked confidential.

2.11 City Use of RFP Ideas

The City reserves the right to use any and all service and product ideas presented from prospective vendors. Selection or rejection of a vendor does not affect this right.

2.12 Copyrights and Patents

The vendor shall hold the City of Tustin and its officers, agents, servants, and employees harmless from liability of any nature or kind because of any copyrighted information, secret or proprietary process, patented or unpatented invention, disclosed or used in response to this RFP, and agrees to defend, at its own expense, any and all actions brought against the City of Tustin or its officers, agents, servants, or employees or the Vendor alleging or arising from unauthorized use of such information, process or invention.

2.13 Reliance on Information

VENDORS MAY RELY ONLY UPON WRITTEN INFORMATION AND/OR INSTRUCTIONS FROM THE CITY GIVEN HEREIN OR SUBSEQUENT TO THE ISSUANCE OF THIS RFP. VENDOR MAY NOT RELY ON ANY ORAL INFORMATION AND/OR INSTRUCTIONS GIVEN WITH REGARD TO THIS RFP.

Any City response to a question or request for clarification by a vendor will be made in the form of an addendum to the RFP, which will be sent via email to all parties to whom the RFP has been issued not later than five (5) business days prior to the due date for receipt of the Proposal and will become part of the RFP.

2.14 Replacement of Incompatible Staff

The City reserves the right to request and receive a replacement for any vendor staff member whom the City, in its sole and absolute discretion, determines is not working effectively with the City's staff assigned to this project, or who is inadequately qualified to perform the services to be provided, or who is unsuitable to be performing services in secure areas.

2.15 Security Check

All vendor personnel and subcontractors may be required to pass an extensive security background check before they are allowed to perform any services for the City. The vendor or individual employees of the vendor may be excluded from providing services based on the results of the background checks, in the sole and absolute discretion of the City. All proposals should acknowledge this fact, and project timelines should reflect this fact.

PROFESSIONAL SERVICES AGREEMENT

This Agreement for Professional Services (herein "Agreement"), is made and entered into this **DATE** ("Effective Date"), by and between the CITY OF TUSTIN, a municipal corporation ("City"), and **CONTRACTOR**, a California Corporation ("Contractor").

WHEREAS, the City desires to retain **CONTRACTOR** to **provide a Business License Software for the City**;

WHEREAS, Contractor submitted to City a proposal, dated **DATE**, a copy of which is attached hereto as Exhibit "A" ("Proposal"), and which is incorporated herein by this reference;

WHEREAS, Contractor is qualified to provide the necessary services and has agreed to provide such services; and

WHEREAS, City desires to retain Contractor to provide the necessary services subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Contractor agree as follows:

1. SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor shall provide those services specified in the Proposal (the "Services" or the "Work"). Contractor warrants that all Services shall be performed in a competent, professional, and satisfactory manner in accordance with all standards prevalent in the industry. In the event of any inconsistency between the terms contained in Proposal and specific terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement shall govern.

1.2 Compliance with Law. All Services rendered hereunder shall be provided in accordance with all laws, ordinances, resolutions, statutes, rules, and regulations of the City of Tustin and of any federal, state or local governmental agency of competent jurisdiction.

1.3 Licenses and Permits. Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the Services required by this Agreement.

1.4 Familiarity with Work. By executing this Contract, Contractor warrants that Contractor (a) has thoroughly investigated and considered the Work to be performed, (b) has investigated the site of the Work and become fully acquainted

with the conditions there existing, (c) has carefully considered how the Work should be performed, and (d) fully understands the facilities, difficulties and restrictions attending performance of the Work under this Agreement. Should the Contractor discover any latent or unknown conditions materially differing from those inherent in the Work or as represented by the City, Contractor shall immediately inform City of such fact and shall not proceed with any Work except at Contractor's risk until written instructions are received from the Contract Officer.

1.5 Care of Work. Contractor shall adopt and follow reasonable procedures and methods during the term of the Agreement to prevent loss or damage to materials, papers or other components of the Work, and shall be responsible for all such damage until acceptance of the Work by City, except such loss or damages as may be caused by City's own negligence.

1.6 Additional Services. Contractor shall perform services in addition to those specified in the Proposal when directed to do so in writing by the Contract Officer, provided that Contractor shall not be required to perform any additional services without compensation. Any additional compensation not exceeding ten percent (10%) of the original contract sum must be approved in writing by the Contract Officer. Any greater increase must be approved in writing by the City Manager.

2. COMPENSATION

2.1 Compensation of Contractor. For the Services rendered pursuant to this Agreement, the Contractor shall be compensated and reimbursed only for such Services and such amounts as are expressly prescribed in the Proposal, in an amount not to exceed **AMOUNT (AMOUNT)**.

THE MAXIMUM AMOUNT OF CITY'S OBLIGATION UNDER THIS AGREEMENT IS THE AMOUNT SPECIFIED IN THIS SECTION. IF THE CITY'S MAXIMUM OBLIGATION IS REACHED BEFORE THE CONTRACTOR'S SERVICES UNDER THIS AGREEMENT ARE COMPLETED, CONTRACTOR WILL NEVERTHELESS COMPLETE THE SERVICES WITHOUT LIABILITY ON THE CITY'S PART FOR FURTHER PAYMENT BEYOND THE MAXIMUM AMOUNT.

2.2 Method of Payment. In any month in which Contractor wishes to receive payment, Contractor shall, no later than the first working day of such month, submit to City in the form approved by City's Director of Finance, an invoice for Services rendered prior to the date of the invoice. City shall pay Contractor for all expenses stated thereon which are approved by City consistent with this Agreement, no later than the last working day of said month.

2.3 Changes. In the event any change or changes in the Work is requested by City, the parties hereto shall execute an addendum to this Agreement, setting forth with particularity all terms of such addendum, including, but not limited to, any additional Contractor's fees. Addenda may be entered into:

A. To provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product or work;

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Contractor's profession.

2.4 Payment for Changes. Changes approved pursuant to an Addendum shall be compensated at the personnel hourly rates prescribed in the Proposal.

3. PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance. All Services rendered pursuant to this Agreement shall be performed within any time periods prescribed in the Proposal.

3.3 Force Majeure. The time for performance of Services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if the Contractor shall within ten (10) days of the commencement of such condition notify the Contract Officer who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the Services for the period of the enforced delay when and if in the Contract Officer's judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

3.4 Term. Unless earlier terminated in accordance with Sections 7.6 or 7.7 of this Agreement, this Agreement shall continue in full force and effect until satisfactory completion of the services but not exceeding **AMOUNT** from the date hereof for one year, unless extended by mutual written agreement of the parties.

4. COORDINATION OF WORK

4.1 Representative of Contractor. The following Principal of the Contractor is hereby designated as being the principal and representative of Contractor authorized to act in its behalf with respect to the Work specified herein and make all decisions in connection therewith: **NAME**

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing Principal shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the Services hereunder. The foregoing Principal may not be changed by Contractor without the express written approval of City.

4.2 Contract Officer. The Contract Officer shall be the Director of Finance. The Co-Contract Officer shall be the Deputy Director of Finance – Administrative Services. It shall be the Contractor's responsibility to keep the Contract Officer, or the Co-Contract Officer in the Contract Officer's absence, fully informed of the progress of the performance of the Services and Contractor shall refer any decisions, which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer or the Co-Contract Officer.

4.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the Services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City.

4.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees perform the Services required herein, except as otherwise set forth herein. Contractor shall perform all Services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. Contractor shall be solely responsible for compliance with State and Federal Law with respect to the wages, hours, benefits, and working conditions of its employees, including requirement for payroll deductions for taxes. Employees or independent contractors of Contractor are not City employees.

5. INSURANCE / INDEMNIFICATION

5.1 Insurance Requirements

A. Types of Required Coverages. Contractor shall maintain in full force and effect during the term of this Agreement the following insurance policies:

(1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, with minimum limits of at least \$1,000,000 each occurrence, and if written with an aggregate, the aggregate shall be double the each occurrence limit.

(2) Products-Completed Operations: Contractor shall procure and submit to City evidence of insurance for a period of at least three (3) years from the time that all Work under this contract is completed.

(3) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Code 1) with minimum limits of \$1,000,000 each accident.

(4) Professional Liability: Professional Liability insurance with minimum limits of \$2,000,000 each claim. Covered Professional Services shall specifically include all Work to be performed under the contract and delete any exclusion that may potentially affect the Work to be performed.

(5) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.

B. Endorsements

Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

(1) The insurance coverages required by Section (1) Commercial General Liability; and (3) Automobile Liability Insurance shall contain the following provisions or be endorsed to provide the following:

(a) Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents and representatives

shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Contract.

Additional Insured Endorsements shall not:

- i. Exclude "Contractual Liability"
- ii. Restrict coverage to the "Sole" liability of contractor
- iii. Exclude "Third-Party-Over Action"
- iv. Contain any other exclusion contrary to the Contract

(b) Primary Insurance: This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

(c) The policy or policies of insurance required by Section (5) Workers' Compensation shall be endorsed, as follows:

- i. Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

C. Notice of Cancellation

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

D. Evidence of Insurance

The Contractor, concurrently with the execution of this Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

E. Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

F. Contractual Liability

The coverage provided shall apply to the obligations assumed by the Contractor under the indemnity provisions of this contract.

G. Failure to Maintain Coverage

Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Contract.

In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

H. Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City.

I. Claims Made Policies

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the Effective Date of the initial Contractor's Contract with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least three (3) years from termination or expiration of this Contract.

Upon expiration or termination of coverage of required insurance, Contractor shall procure and submit to City evidence of "tail" coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from the time that all Work under this contract is completed.

J. Insurance for Subcontractors

Contractor shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured to the Subcontractor's policies.

K. Insurance Obligations of Contractor

The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Contractor; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Contractor under this contract.

5.2 Indemnification. The Contractor shall defend, indemnify and hold harmless the City, its officers and employees, from and against any and all actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys' fees, for injury to or death of person or persons, for damage to property, including property owned by City, arising from errors and omissions of Contractor, its officers, employees and agents, or arising out of or related to Contractor's performance under this Agreement, except for such loss as may be caused by City's sole negligence.

The Contractor shall also defend, indemnify and hold the City harmless from any claims or liability for City health and welfare, retirement benefits, or any other benefits of part-time or fulltime City employment sought by Contractor's officers, employees, or independent contractors, whether legal action, administrative proceeding or pursuant to State statute.

Such indemnity shall extend, but not be limited to, claims, damages and liabilities arising from injuries or damages to persons or property and to workers' compensation claims and award of attorney's fees. Such indemnity shall not apply to any injuries to persons or property, which result in the sole negligence of Contractor.

6. RECORDS AND REPORTS

6.1 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require.

6.2 Records. Contractor shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and enable the Contract Officer to evaluate the performance of such Services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit and make records and transcripts from such records.

6.3 Ownership of Documents. All drawings, specifications, reports, records, documents and other materials prepared by Contractor in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights or ownership of the documents and materials hereunder. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein.

6.4 Release of Documents. All drawings, specifications, reports, records, documents and other materials prepared by Contractor in the performance of Services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

7. ENFORCEMENT OF AGREEMENT

7.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

7.2 Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefor. The injured party shall continue performing its obligations hereunder so long as the injuring party cures any default within ninety (90) days after service of the notice, or if the cure of the default is commenced within thirty (30) days after service of said notice and is cured within a reasonable time after commencement; provided that if the default is an immediate danger to the health, safety and general welfare, the City may take immediate action under Section 7.6 of this Agreement. Compliance with the provisions of this Section shall be a condition precedent to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured.

7.3 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Contractor. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.4 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights

and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.5 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment or any other remedy consistent with the purposes of this Agreement.

7.6 Termination Prior to Expiration of Term. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Contractor, except that where termination is due to the fault of the Contractor and constitutes an immediate danger to health, safety and general welfare, the period of notice shall be such shorter time as the City's Contract Manager in his or her sole discretion determines is appropriate. Upon receipt of the notice of termination, Contractor shall immediately cease all Services hereunder except such as may be specifically approved by the Contract Officer. Contractor shall be entitled to compensation for all Services rendered prior to receipt of the notice of termination and for any Services authorized by the Contract Officer thereafter.

7.7 Termination for Default of Contractor. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may take over the Work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the compensation herein stipulated, provided that the City shall use reasonable efforts to mitigate damages, and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed to City.

8. CITY OFFICERS AND EMPLOYEES; NON-DISCRIMINATION

8.1 Non-Liability of City Officers and Employees. No officer or employee of City shall be personally liable to the Contractor, or any successor-in-interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, or ancestry. Contractor shall take affirmative action to insure that

applicants and employees are treated without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, or ancestry.

9. MISCELLANEOUS PROVISIONS

9.1 Notice. Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

To City:

CITY OF TUSTIN
300 Centennial Way
Tustin, CA 92780
Attention: Deputy Director of Finance

To Contractor:

NAME
ADDRESS
ADDRESS
Attention: NAME

9.2 Integrated Agreement. This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.

9.3 Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

9.4 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

9.5 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

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

"City"

Dated: _____

CITY OF TUSTIN, a municipal corporation

By: _____

Matthew S. West
Acting City Manager

APPROVED AS TO FORM:

David E. Kendig
City Attorney

"Contractor"

NAME
COMPANY NAME
ADDRESS
ADDRESS

By: _____

Exhibit A
Proposal