



**City of El Centro
Community Development Department
Planning & Zoning Division**

**REQUEST FOR
PROPOSALS**

**HOUSING ELEMENT UPDATE
2021-2029 Planning Period
Sixth Cycle**

Contact Information

City of El Centro
Community Development Department
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El Centro, CA 92243
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Deadline for Submission: September 4, 2020

I. INTRODUCTION

1. Request for Proposals (RFP)

The City of El Centro is requesting proposals from consultants who are qualified to prepare an update to the City of El Centro (“City”) Housing Element of the General Plan for the 2021-2029 planning period. The selected consultant shall review the existing Housing Element and shall revise the document to reflect current conditions, City policies, and methods to meet the housing requirements mandated by the State of California.

Under the direction of the Director of Community Development, the consultant will prepare the updated Housing Element and associated environmental document. The consultant will provide a range of services as necessary to carry out the needs and requests of the City, including the facilitation of public meetings, development of public outreach strategies, and development of a community-wide survey tool.

The City is seeking a qualified consultant with experience in the preparation of Housing Elements and corresponding environmental documents. The consultant must also have an established working relationship with the California Department of Housing and Community Development (“HCD”) and familiarity with State housing law. The consultant shall have the knowledge necessary to provide the requested services to the City in a cost effective and timely manner. The consultant must be proactive in maintaining communication with City staff, keeping staff informed with project status updates, meeting deadlines and ultimately meeting the requirements of HCD for the timely certification of the Housing Element.

2. Background

The City of El Centro is located along Interstate 8, about 120 miles east of San Diego, 60 miles west of Yuma, Arizona and 12 miles north of Mexicali, Baja California, Mexico. El Centro serves as the seat of Imperial County and is the largest city with a population of 44,657 residents. The City is approximately 11.9 square miles in size. Neighboring communities include the City of Imperial abutting the northern city boundary and the unincorporated community of Heber 1.5 miles to the south.

3. Project Description

The City’s Housing Element was last revised and adopted in 2013 and was deemed compliant with State housing element law by HCD. The existing adopted Housing Element covers the planning period from October 15, 2013 through October 15, 2021. The next housing cycle (Sixth Cycle) will extend from 2021 to 2029.

The purpose of this project is to update the City’s Housing Element to comply with State Housing Law and identify measures that can accommodate the City’s new Regional Housing Needs Assessment (RHNA) prior to the deadline for the Sixth Cycle Housing Element Planning Period. The Sixth Cycle Housing Element must be adopted and deemed compliant with State law by HCD by October 15, 2021.

The update shall ensure compliance with new State Laws applicable to the Housing Element, shall be internally consistent with the General Plan, and must demonstrate consistency with regional plans such as the Regional Transportation Plan and Sustainable Communities

Strategy. All new housing goals, objectives, policies, and programs within the Sixth Cycle Housing Element shall be developed through a variety of public engagement meetings/workshops where the consultant will be asked to provide meeting facilitation. This is expected to occur in close consultation with City Staff and City Council.

4. El Centro General Plan Update

The City of El Centro is currently updating the Land Use, Mobility, and preparing a new Environmental Justice Element of the General Plan. The General Plan update will be adopted by March of 2021. In preparing the update to the Housing Element, the selected consultant shall consider the changes to policies that will be adopted in the General Plan update.

5. COVID-19 Pandemic Considerations

At the time of the preparation of this RFP social distancing restrictions are in place prohibiting in-person meetings, public events, and other venues traditionally used for community engagement in the planning process. It is unknown whether such restrictions will lessen during the housing element update process. Recognizing this, consultants shall assist city staff in implementing the most effective public engagement methods appropriate for the target audience and stakeholders, while in compliance with public health guidance.

II. SCOPE OF WORK & REQUESTED SERVICES

1. Housing Capacity, Constraint, and Opportunities Analysis (1 Public Meeting)

- a. The consultant shall complete an assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs in conformance with Government Code section 65583(a).
- b. The consultant shall obtain and analyze the most current data available on demographics and housing in the City, including resources from Geographic Information Systems (GIS) data, the Southern California Association of Governments (SCAG), U.S. Census Bureau and the California Department of Finance.
- c. The consultant shall conduct interviews with developers and service providers active in Imperial County to discuss housing issues and needs.
- d. The following shall be addressed in the assessment:
 - i. Comparison of population, demographics, employment trends and housing projections to the City's Regional Housing Needs Allocation;
 - ii. Analysis of the City's current zoning designations and maximum density;
 - iii. An analysis of potential and actual governmental and non-governmental constraints on the development of housing for all income levels;
 - iv. Assessment of housing and market conditions and immediate needs within the City, including special housing needs;
 - v. Identify actual and potential constraints on development, maintenance, and improvement of housing for all income levels;
 - vi. Assess all City housing programs to determine their effectiveness;
 - vii. Identify infrastructure challenges and impediment to residential development which may include, extension of utility services, conflicts with

- utilities and water facilities (e.g. canal and drainage channels), and transportation improvements; and
- viii. Identification of housing resources available to the City of El Centro.
- e. Preparation and Presentation of the analysis to a joint meeting of the El Centro City Council and Planning Commission (1st Public Meeting).

2. Housing Site Inventory, Goals, Policies, and Implementation Program (2 Public Meetings)

- a. Identify and analyze sites suitable for future housing in compliance with site inventory analysis (Government Code Section 65583.2) and the “No Net Loss Law” (Government Code Section 65863).
- b. The consultant, with guidance from City staff, shall develop a community-wide survey tool to receive public input on potential policies, programs, and/or objectives to be implemented in the Housing Element:
 - i. Development of survey strategy; and
 - ii. Development and use of survey tool (web based or otherwise).
- c. The consultant, along with City staff, shall conduct a workshop to receive public input on potential policies, programs, and/or objectives to be implemented in the Housing Element (2nd Public Meeting).
- d. The consultant shall analyze received public input and applicable State Laws to develop proposed goals, policies, programs, and objectives necessary to meet the City’s RHNA.
- e. Investigate, analyze, and address all new state housing laws and make recommendations to the City on their implementation and incorporation into applicable City codes and regulations.
- f. Identify recommendation to City housing programs to improve their effectiveness.
- g. Development of such programs and policies shall satisfy all of the requirements of Government Code Section 65583(b) and (c).
- h. Identify sections of the City’s General Plan Land Use Element that may need to be amended to comply with State law, including all tables, maps, etc. consistent with the 2021-2029 Housing Element.
- i. Analysis of housing opportunities, along with an inventory of suitable sites and the City’s capacity to meet regional housing goals.
- j. Preparation and Presentation of community survey results and draft goals, policies, programs, and objectives to a joint meeting of the El Centro City Council and Planning Commission; (3rd Public Meeting).
- k. Prepare a Housing Element implementation program including quantifiable objectives and programs to goals and policies to be included in the Housing Element, that may include:
 - i. Recommended sites for rezoning to meet Regional Housing Needs Allocation;
 - ii. Revisions to the development code requirements that adversely affect residential development, in particular at in-fill sites; and
 - iii. Recommended financial mechanisms for the construction of housing related public infrastructure and facilities.

3. Preparation of Housing Element (2 Public Meetings)

- a. The consultant will be required to prepare and submit three (3) hard copies and one digital copy (editable Microsoft Word .doc) of the Administrative Draft Housing Element for review and comment by City staff. Once City staff has reviewed and commented on the draft, the consultant will modify the Administrative Draft as directed.
- b. The consultant shall prepare and submit sixteen (16) hard copies and one digital PDF copy of a Draft Housing Element for the City to provide to HCD, the City Council, Planning Commission, and the general public for review and comment.
- c. The consultant shall assist City staff responding to all Housing Element related questions from the general public, City Council, or any State agency as-needed.
- d. The consultant will prepare and submit sixteen (16) hard copies and one digital PDF copy of the Final Draft Housing Element for City staff to provide to the Planning Commission, City Council and the general public. The Final Draft Housing Element shall include any changes to the draft required by HCD.
- e. Preparation and Presentation to the Planning Commission for recommendation to the City Council (4th Public Meeting).
- f. Preparation and Presentation to the City Council for final adoption of Housing Element (5th Public Meeting).
- g. Upon adoption of the Housing Element by the City Council, the consultant will prepare a final adopted version with the date of adoption prominently displayed on the front cover and a containing a copy of the City Council Resolution adopting the document. The consultant shall provide ten (10) bound copies, one (1) electronic copy in Microsoft Word .doc format, and one (1) electronic copy in Adobe Portable Document Format (PDF) of the adopted Housing Element to City staff.

4. Environmental Review

- a. Prepare, post, and file all the appropriate environmental documents for compliance with the California Environmental Quality Act (CEQA), including the Initial Study, Notice of Intent to Adopt a Negative Declaration or other CEQA determinations as applicable, Response to Comments, Mitigation Measures, Mitigation Monitoring Program, and Notice of Completion to be filed with the County of Imperial Clerk. In addition, the consultant will be responsible for preparing all notices and mailings for SB 18 and AB 52.

5. Certification of Housing Element

- a. The consultant shall work closely with staff to ensure that the City meets all HCD deadlines and requirements.
- b. The consultant must follow through with assisting the City in achieving State certification of the Housing Element after adoption by the City;
- c. The consultant will work closely with HCD and City of El Centro to ensure that the City meets State requirements and will recommend modification to the Housing Elements, if required to obtain certification.

6. Required Work Products and Timeline

- a. In addition to frequent communication with staff via telephone and e-mail, the work program anticipates periodic teleconferences with City staff.
- b. Develop a task list and schedule with milestones for the review and certification of the Housing Element by the State Department of Housing and Community Development. The task list and timeline shall include a detailed explanation of all stages of the project and aforementioned tasks.
- c. Provide and maintain an internet-based folder for all project materials accessible to City staff and consultants.
- d. Prepare public meeting presentation materials, memos, letters, and other documents as required by City staff.
- e. Assist in the preparation of staff reports, exhibits, and presentations for Planning Commission and City Council.

III. PROPOSAL REQUIREMENTS

1. Submittal Requirements

Proposal responses must adhere to the requirements set forth in this section, both for content and sequence. Failure to adhere to these requirements or the inclusion of conditions, limitations or misrepresentations may be cause for rejection of the submittal.

- a. **Cover Letter:** Provide a cover letter and introduction, including the name and address of the organization and individual submitting the proposal, together with the name, address, telephone number, e-mail address of the contact person who will be authorized to represent the organization. The introduction shall express the consultant's ability and desire to meet the requirements of this Request for Proposals. The letter must be signed by an individual authorized to bind the firm contractually.
- b. **Consultant Qualifications:** Describe the firm's resources, experience, and capabilities as it relates to the Scope of Work described under Section II of this RFP. Submit in the order identified below:
 - a. **Executive Summary:** An executive summary should briefly describe the consultant's qualifications, including experience in Housing Element design and updates, resumes of key staff member(s) assigned to prepare the Housing Element, and a description of similar projects. The summary should include a description of similar projects completed for other cities or counties. The executive summary should also include a description of your understanding of the project.
 - b. **Project Approach and Scope of Work:** Describe the firm's approach to completing the Housing Element, providing summary of major tasks and key sub-tasks. Provide a detailed description of how public engagement will be conducted and experience conducting online public meetings. Provide a preliminary scope of work aligned with the key tasks and sub-tasks described in Section II of this RFP, with any additions or modifications recommended in the proposal.

- c. **Work Schedule:** Include a proposed schedule of work or timeline and phased milestones for completion of the scope of work, based on a start date of October 7, 2020. The work schedule should demonstrate how and at what point the consultant would complete the draft Housing Element, incorporate public outreach, public meetings, HCD and Public review period, complete CEQA review, and complete necessary revisions of the draft Housing Element pursuant to direction of the City Council/Planning Commission and in response to HCD review. The work schedule shall be consistent with the tasks and key subtasks presented in Section II of this RFP.
- d. **Qualifications and Experience:** Provide an outline of the firm's background and qualifications to perform requested services. Identify any subcontractors that will be working on this project. Identify all project personnel and their role in completing this project and summarize the relevant qualifications and experience of each. Provide a representative listing of similar projects completed for the past five (5) years. Include a list of references, with contact persons and phone numbers for these projects. Explain any experience with HCD on recent Housing Elements, particularly focusing on experience with current Housing Element law and with other jurisdictions in the Southern California Association of Governments ("SCAG") region.
- e. **References:** The consultant shall provide a minimum of four (4) client references, preferably city or county governments with whom the consultant previously had contracts for the provision of services of equal type and scope within the last five (5) years. Do not include references from the City of El Centro.
- c. **Fee Schedule & Cost Estimates (enclosed in separate sealed envelope with physical submittal only):** Provide a fee schedule with hourly rates for each person who will be involved in the preparation of the Housing Element update. List any travel costs and any other direct or indirect costs associated with performing the required services. Provide a detailed cost breakdown including the cost and hours for each task and subtask necessary for the proposed scope of work. Costs should include hours and staff assignments for each task. The cost estimates should include cost for all administrative and material costs and shall be a not-to-exceed total budget amount.

FEE SCHEDULE AND COST ESTIMATES SHALL ONLY BE ACCEPTED IN A SEPARATE SEALED ENVELOPE ALONG WITH PHYSICAL SUBMITTAL (HARDCOPY) OF RESPONSE TO PROPOSAL. DO NOT SUBMIT COST ESTIMATES WITH THE PDF SUBMITTAL.

2. Submittal Information

If you wish to be considered as a candidate for providing consultant services, please submit one (1) digital PDF copy AND one (1) hard copy of your RFP submittal to the City of El Centro. Email submissions must be received by the RFP deadline. Physical submittals must be

postmarked by the RFP deadline. **Do not include “Fee Schedule & Cost Estimates” of the submittals requirements in e-mail submittals.** Submittals should be sent to the e-mail and physical address below:

E-Mail submittal of PDF file to

angel_hernandez@cityofelcentro.org

E-mail submittals must be received by September 4, 2020

Physical submittal of one (1) hard copy to

City of El Centro
Community Development Department
Attn: Angel Hernandez, Associate Planner
1275 W. Main Street
El Centro, CA 92243

Physical submittals must be postmarked by September 4, 2020

3. Questions on RFP and Notification of Interest to Submit Proposal

Questions regarding this RFP and the Housing Element update shall be sent to angel_hernandez@cityofelcentro.org.

It is recommended that consultants interested in submitting a response to this RFP send an email to angel_hernandez@cityofelcentro.org notifying their intention. Answers to questions regarding the RFP will be distributed to those that have emailed their intention to submit and will be posted on the following webpage:

<http://www.cityofelcentro.org/communitydevelopment/index.asp?m=1&page=68>

IV. SELECTION PROCESS

1. Selection Method

All competitive proposals shall be evaluated with respect to the completeness of data provided, support for claims made, relevant experience, and the overall approach taken. The following list of evaluation criteria, which has in no manner been weighted or prioritized, shall be utilized in the technical evaluation of each consultant’s competitive proposal:

- Demonstrated understanding and ability to complete the project;
- Background and experience of the project team, including individual team members and sub-consultants assigned to various tasks;
- Project management approach;
- Response to all components of the RFP;
- Proven track record for completing similar projects on-time, within budget, and receiving certification from HCD; and
- Cost.

The City reserves the right to reject any and all submittals or to release a new Request for Proposals. The City also reserves the right to seek clarification of each RFP submitted and reserves the right to require other evidence of technical, managerial, financial, or other abilities as part of the selection process. The City may or may not invite one or more of those who submit RFP's to an interview held over teleconference, at no cost to the City. Consultant is responsible for all costs of response to the RFP.

2. Final Approval

Any contract resulting from this RFP will be awarded by final approval of the City Council.

3. Proposal Review Timeline

The tentative schedule of activities associated with this RFP includes:

Activity	Date
Advertisement of RFP	August 12, 2020
Deadline for Submittal	September 4, 2020
Interviews (if necessary)	September 7 to 18, 2020
Notification of Consultant Selection	By September 18, 2020
Contract Award by City Council	October 6, 2020
Contract Starting Date	October 7, 2020

4. Consultant Services Agreement

The selected Consultant(s) will be expected to enter into a standard Consultant Services Agreement to the satisfaction of the City, which is included as Attachment A. Please review the Agreement and include any requested changes with your submittal. A failure to do so will indicate your agreement to all terms and conditions, and any subsequent requests for changes will not be considered. The City may enter into agreement with a single firm to provide one or more of the desired services or may also enter into contracts with multiple firms to provide the desired services.

V. ONLINE REFERENCES

Consultants interested in existing city documents related to the project are advised to refer to the following links:

City of El Centro General Plan:

<http://www.cityofelcentro.org/communitydevelopment/index.asp?m=1&page=67&subpage=25>

City of El Centro 2040 General Plan Update:

<https://www.elcentro2040.com/>

City of El Centro Zoning Ordinance

https://library.municode.com/ca/el_centro/codes/code_of_ordinances?nodeId=CHCOTA_C H29Z0

City of El Centro Strategic Plan

<http://www.cityofelcentro.org/userfiles/Council%20Approved%2006-19-18%20Strategic%20Plan%20Update.pdf>

ATTACHMENT A - DRAFT CONSULTING AGREEMENT

THE CITY OF EL CENTRO

DEPARTMENT

AGREEMENT FOR CONTRACTING SERVICES

FOR THE HOUSING ELEMENT UPDATE

BETWEEN THE CITY OF EL CENTRO

AND

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CITY OF EL CENTRO PROFESSIONAL SERVICE AGREEMENT FOR NON-CONSTRUCTION PROJECT

This PROFESSIONAL SERVICE AGREEMENT (PSA) FOR NON-CONSTRUCTION PROJECT (“AGREEMENT”), is made and effective as of _____ between the City of El Centro (“CITY”), a municipal corporation and _____ (“CONSULTANT”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

I. TERM

This AGREEMENT shall commence on _____ and shall remain and continue in effect until tasks described herein are completed, but in no event later than _____ unless sooner terminated pursuant to the provisions of this AGREEMENT.

II. SERVICES

CONSULTANT shall perform the tasks described and set forth in **Exhibit A**, attached hereto and incorporated herein as though set forth in full. CONSULTANT shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A. To the extent that Exhibit A is a proposal from CONSULTANT, such proposal is incorporated only for the description of the scope of services and no other terms and conditions from any such proposal shall apply to this AGREEMENT unless specifically agreed to in writing.

III. PERFORMANCE

CONSULTANT shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this AGREEMENT.

IV. CITY MANAGEMENT

CITY’S Community Development Director or designee (“Community Development Director”) shall represent CITY in all matters pertaining to the administration of this AGREEMENT, review and approval of all products submitted by CONSULTANT, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to CONSULTANT. City’s Manager shall be authorized to act on CITY's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change CONSULTANT's compensation, subject to Section 5 hereof.

V. PAYMENT

A. The CITY agrees to pay CONSULTANT monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference as though set forth in full, based

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upon actual time spent on the above tasks. This amount shall not exceed dollars (\$) for the total term of the AGREEMENT unless additional payment is approved as provided in this AGREEMENT.

- B. CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and CONSULTANT at the time CITY's written authorization is given to CONSULTANT for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the AGREEMENT, but in no event shall such sum exceed ten-thousand dollars (\$10,000.00). Any additional work in excess of this amount shall be approved by the Governing Board.
- C. CONSULTANT will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the CITY disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this AGREEMENT shall be made within forty-five (45) days of receipt of an invoice therefore.

VI. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

- A. The CITY may at any time, for any reason, with or without cause, suspend or terminate this AGREEMENT, or any portion hereof, by serving upon the CONSULTANT at least ten (10) days prior written notice. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this AGREEMENT, unless the notice provides otherwise. If the CITY suspends or terminates a portion of this AGREEMENT such suspension or termination shall not make void or invalidate the remainder of this AGREEMENT.
- B. In the event this AGREEMENT is terminated pursuant to this Section, the CITY shall pay to CONSULTANT the actual value of the work performed up to the time of termination, provided that the work performed is of value to the CITY. Upon termination of the AGREEMENT pursuant to this Section, the CONSULTANT will submit an invoice to the CITY pursuant to Section 5.

VII. DEFAULT OF CONSULTANT

- A. The CONSULTANT's failure to comply with the provisions of this AGREEMENT shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this AGREEMENT, CITY shall have no obligation or duty to

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continue compensating CONSULTANT for any work performed after the date of default and can terminate this AGREEMENT immediately by written notice to the CONSULTANT. If such failure by the CONSULTANT to make progress in the performance of work hereunder arises out causes beyond the CONSULTANT's control, and without fault or negligence of the CONSULTANT, it shall not be considered a default.

- B. If the City Manager or his/her designee determines that the CONSULTANT is in default in the performance of any of the terms or conditions of this AGREEMENT, he/she shall cause to be served upon the CONSULTANT a written notice of the default. The CONSULTANT shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the CONSULTANT fails to cure its default within such period of time or fails to present the CITY with a written plan for the cure of the default, the 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.

VIII. OWNERSHIP OF DOCUMENTS

- A. CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by CITY that relate to the performance of services under this AGREEMENT. CONSULTANT shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of CITY or its designees at reasonable times to such books and records; shall give CITY the right to examine and audit said books and records; shall permit CITY to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this AGREEMENT. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.
- B. Upon completion of, or in the event of termination or suspension of this AGREEMENT, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this AGREEMENT shall become the sole property of the CITY and may be used, reused, or otherwise disposed of by the CITY without the permission of the CONSULTANT. With respect to computer files, CONSULTANT shall make available to the CITY, at the CONSULTANT's office and upon reasonable written request by the CITY, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. CONSULTANT hereby grants to CITY all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and

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other documents prepared by CONSULTANT in the course of providing the services under this AGREEMENT.

IX. INDEMNIFICATION

A. Indemnity for professional liability

When the law establishes a professional standard of care for CONSULTANT'S Services, to the fullest extent permitted by law, CONSULTANT shall indemnify, protect, defend and hold harmless CITY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs, caused in whole or in part by any negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or sub-consultants (or any CITY or individual that CONSULTANT shall bear the legal liability thereof) in the performance of professional services under this AGREEMENT.

B. Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this AGREEMENT by CONSULTANT or by any individual or CITY for which CONSULTANT is legally liable, including but not limited to officers, agents, employees or subcontractors of CONSULTANT.

C. Duty to defend

In the event the CITY, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this AGREEMENT, and upon demand by CITY, CONSULTANT shall have an immediate duty to defend the CITY at CONSULTANT's cost or at CITY's option, to reimburse CITY for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, or agents, CONSULTANT will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. CONSULTANT will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

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X. INSURANCE

CONSULTANT shall maintain prior to the beginning of and for the duration of this AGREEMENT insurance coverage as specified in **Exhibit C** attached to and part of this agreement.

XI. INDEPENDENT CONSULTANT

- A. CONSULTANT is and shall at all times remain as to the CITY a wholly independent consultant and/or independent contractor. The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the CITY. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against CITY, or bind CITY in any manner.
- B. No employee benefits shall be available to CONSULTANT in connection with the performance of this AGREEMENT. Except for the fees paid to CONSULTANT as provided in the AGREEMENT, CITY shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for CITY. CITY shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

XII. LEGAL RESPONSIBILITIES

The CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this AGREEMENT. The CONSULTANT shall at all times observe and comply with all such laws and regulations. The CITY, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

XIII. UNDUE INFLUENCE

CONSULTANT declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the CITY in connection with the award, terms or implementation of this AGREEMENT, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the CITY has or will receive compensation, directly or indirectly, from CONSULTANT, or from any officer, employee or agent of CONSULTANT, in connection with the award of this AGREEMENT or any work to be conducted as a result of this AGREEMENT.

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Violation of this Section shall be a material breach of this AGREEMENT entitling the CITY to any and all remedies at law or in equity.

XIV. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of CITY, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this AGREEMENT.

XV. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

- A. All information gained by CONSULTANT in performance of this AGREEMENT shall be considered confidential and shall not be released by CONSULTANT without CITY's prior written authorization. CONSULTANT, its officers, employees, agents, or sub-consultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this AGREEMENT or relating to any project or property located within the CITY. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.
- B. CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents, or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this AGREEMENT and the work performed there under or with respect to any project or property located within the CITY, unless the CITY is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONSULTANT is prohibited by law from informing the CITY of such Discovery. CITY retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless CITY is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to CONSULTANT in such proceeding, CONSULTANT agrees to cooperate fully with CITY and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, CITY's right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.
- C. CONSULTANT covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having such interest shall be employed by them as an officer, employee, agent, or sub-consultant. CONSULTANT further covenants that

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AGREEMENT, CONSULTANT shall provide CITY with the identity of the proposed CONSULTANT, a copy of the proposed written contract between CONSULTANT and such sub-consultant which shall include and indemnity provision similar to the one provided herein and identifying CITY as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed sub-consultant carries insurance at least equal to that required by this AGREEMENT or obtain a written waiver from CITY for such insurance.

XVIII. LICENSES

At all times during the term of this AGREEMENT, CONSULTANT shall have in full force and effect, all licenses required of it by law for the performance of the services described in this AGREEMENT.

XIX. GOVERNING LAW

The CITY and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this AGREEMENT and also govern the interpretation of this Agreement. Any litigation concerning this AGREEMENT shall take place in the municipal, superior, or federal district court with jurisdiction over the CITY.

XX. ENTIRE AGREEMENT

This AGREEMENT contains the entire understanding between the parties relating to the obligations of the parties described in this AGREEMENT. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this AGREEMENT or with respect to the terms and conditions of this AGREEMENT, are merged into this AGREEMENT and shall be of no further force or effect. Each party is entering into this AGREEMENT based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

XXI. WORK SCHEDULED/TIME OF COMPLETION

Note: This section is optional and should be included only when the project is particularly time-sensitive.

CITY and CONSULTANT agree that time is of the essence in this AGREEMENT. CITY and CONSULTANT further agree that CONSULTANT's failure to perform on or at the times set forth in this AGREEMENT will damage and injure CITY, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, CITY and CONSULTANT agree that any failure to perform by CONSULTANT at or within the times set forth herein shall result in liquidated damages of _____ dollars (\$ _____ .00) per day for each and every day such performance is late or delayed. CITY and CONSULTANT agree that such sum is reasonable and fair. Furthermore, CITY and CONSULTANT agree that this AGREEMENT is subject to Government Code Section 53069.85 and that each party

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hereto is familiar with and understands the obligations of said Section of the Government Code.

XXII. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

CONSULTANT is bound by the contents of CITY's Request for Proposal, Exhibit " " hereto and incorporated herein by this reference, and the contents of the proposal submitted by the CONSULTANT, Exhibit "E" hereto. In the event of conflict, the requirements of CITY's Request for Proposals and this AGREEMENT shall take precedence over those contained in the CONSULTANT's proposals. The incorporation of the CONSULTANT's proposal shall be for the scope of services to be provided only, and any other terms and conditions included in such proposal shall have no force and effect on this AGREEMENT or the relationship between CONSULTANT and/or CITY, unless expressly agreed to in writing.

XXIII. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this AGREEMENT on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this AGREEMENT on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CONSULTANT

By: _____
(Signature)

(Typed Name)

(Title)

City of El Centro
A Municipal Corporation

Marcela Piedra, City Manager

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ATTEST:

L. Diane Caldwell, City Clerk

APPROVED AS TO FORM:
City Attorney

Elizabeth L. Martyn, City Attorney

Attachments:	Exhibit A	Tasks to be Performed
	Exhibit B	Payment Schedule
	Exhibit C	Insurance Requirements
	Exhibit D	Request for Proposal

EXHIBIT A

TASKS TO BE PERFORMED

EXHIBIT B

PAYMENT SCHEDULE

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of CITY, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this AGREEMENT, policies of insurance of the type and amounts described below and in a form satisfactory to CITY.

Note: Verify minimum limit for each coverage with Risk Manager.

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.

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.

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.

Note: May need to delete workers' compensation and employer's liability insurance requirements for certain sole proprietorships, partnerships, or corporations without employees.

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.

Note: If the required limits for general liability, auto and employer's liability are \$1 million or less, the following paragraph may be omitted.

Umbrella or excess liability insurance. [Optional depending on limits required]. CONSULTANT shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at

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least as broad as the primary coverages set forth above, including commercial general liability and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Other provisions or requirements

Proof of insurance. CONSULTANT shall provide certificates of insurance to CITY as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with CITY at all times during the term of this contract. CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

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 sub-consultants.

Primary/noncontributing. Coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by CITY shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of CITY before the CITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

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.

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 VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

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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 sub-consultants.

Enforcement of contract provisions (non estoppel). CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the CITY nor does it waive any rights hereunder.

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.

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.

Additional insured status. General liability policies shall provide or be endorsed to provide that CITY and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

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.

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.

Pass through clause. CONSULTANT agrees to ensure that its sub-consultants, sub-contractors, 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

ATTACHMENT A - DRAFT CONSULTING AGREEMENT

of this section. CONSULTANT agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to CITY for review.

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.

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.

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.

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.

EXHIBIT D

REQUEST FOR PROPOSAL OR CONFLICT OF INTEREST

EXHIBIT E

CONSULTANT'S PROPOSAL