NOTICE OF REQUEST FOR PROPOSALS

December 16, 2022

Re: Notice of Request for Proposals (“RFP”) No. 23-09 – City of Escondido Website Update, Consolidation, Hosting & Consulting Services

Notice is hereby given that the City of Escondido, a California municipal corporation (“City”), is soliciting proposals from qualified professionals with local government website design and consultation experience, to provide software, website and intranet design, content management services, and hosting services and to lead and facilitate the consolidation and conversion of our current websites. Please see Section H of this RFP for a schedule of deadlines.

Prospective consultants must submit via email one proposal to Christina Holmes at cholmes@escondido.org no later than 5 p.m. on January 12, 2023 (“Submission Deadline”). Any proposals received after the Submission Deadline will not be accepted.

Questions or comments concerning this RFP may be submitted via e-mail to Christina Holmes at cholmes@escondido.org no later than 5 p.m. on December 23, 2022 (“Questions Deadline”). Any questions or comments regarding this RFP received after the Questions Deadline will be disregarded. Emails concerning this RFP should state the following in the subject line: “RFP – City of Escondido Website Update, Consolidation, Hosting & Consulting Services.” Any communication regarding or relating to this RFP with any City employee or official other than Christina Holmes is strictly prohibited. A summary of questions from prospective Consultants and City responses will be posted on the City’s website at https://www.escondido.org/purchasing by 5 p.m. on December 30, 2022.

Each proposal shall be in accordance with the specifications, instructions, and information contained in this RFP. The City reserves the right to reject any or all proposals for any reason it deems necessary, to waive defects or irregularities in any proposal, and to accept the proposal deemed the most advantageous to the City. This RFP does not commit the City to award a contract or to pay any costs incurred in the preparation of a response to this request.

Sincerely,

Rob Van De Hey
Chief Information Officer
City of Escondido
A. Introduction
The City of Escondido is located in north San Diego County, approximately 30 miles north of the City of San Diego, California. Escondido is an established community incorporated on October 8, 1888, under the general laws of the State of California. The City’s current population is approximately 151,038.

The City of Escondido is a full-service city that operates under a City Council/City Manager form of government. Day-to-day activities of the City are carried out under the direction of the City Manager. The City provides the following services to its citizens: Police, Fire, Water, Wastewater, Public Works, Development Services, and Community Services.

The consultant awarded the contract (“Consultant”) will provide the City with website and intranet design, content development guidance, hosting services, and website consolidation and conversion services. Within 20 calendar days of the City’s notice of award of the Project, the Consultant shall enter into a Consulting Services Agreement in substantially the same form as the City’s standard Consulting Service Agreement (“Agreement”), which is attached to this RFP as Exhibit 1 and incorporated herein by this reference.

B. Federally Assisted Project
The contract resulting from this solicitation (“Contract”) will be federally assisted. Coronavirus State and Local Fiscal Recovery Funds (“CSLFRF”) will be used to fund all or a portion of this Project, and as such the Consultant shall comply with all applicable federal laws, regulations, executive orders, CSLFRF policies, procedures, and directives.

C. System of Award Management (SAM)
Active SAM registration is required for any entity to bid on and get paid for federal contracts or to receive federal funds.

D. Project Description
The City of Escondido is seeking to update its website to enhance the user experience, simplify content management, and provide improved citizen-centric information and customer service to its community while meeting high standards for design quality and visual appeal. The City would like to decentralize content management by empowering staff to easily create and manage website content in each department under the oversight of a central administrator. The new website must have a priority of striving to be ADA compliant and meeting all other applicable legal requirements for government websites.

The City seeks the assistance of an experienced Consultant that can accomplish the goals of the City with all the functionality identified in this RFP. Qualified Consultants will provide solutions for current needs and assist with evolving needs in the future.

The City also seeks a Consultant that has the capability of integrating additional features and functionality that may be identified in the future. The City requires vendors to provide hosting services for the website from a secure data center, with failover to alternate data center(s). Additionally, it is required that the vendor provide 24/7/365 support with reasonable response times, and meet industry standard or better SLA metrics for web hosting uptime.
The experienced Consultant should have a team of experts who understand the requirements for a local government website. The end product shall be in compliance with the California Government Code, sections 7405 and 11135, and the Web Content Accessibility Guidelines 2.0, or a subsequent version, as published by the Web Accessibility Initiative of the WWW Consortium at a minimum Level AA success criteria.

E. **Subcontractors**

In the event the Consultant utilizes subcontractors for any portion of the Project, the City expects the Consultant will be responsible for the entire project and for coordinating the work of other subcontractors. The Consultant will be responsible for verifying the experience and qualifications for any outsourced work to sub-contractors. The Consultant is also responsible for paying its employees and any sub-contractors that Consultant hires. None of the responsibilities of the Consultant under the resulting Agreement shall be delegated to another individual or entity.

F. **Scope of Services and Deliverables**

The Consultant will have extensive local government/municipal website design and implementation experience. They shall be experienced and able to deliver a custom evaluation of the City’s current website and Content Management System (CMS) platform and present the City with realistic and attainable solutions for a new platform and migration and consolidation of existing data. The City is looking for recommendations for a phased approach to ensure the new platform/website’s longevity and flexibility.

The information below represents required functional capabilities in the selected CMS. It is not all inclusive, other functionality may be recommended or added. The City’s new website vendor must be able to provide at a minimum, the components shown.

- **Alerts & Notifications** - Display alerts prominently on website with an opt-in notification system that can email and/or text message subscribers alerts and other subscription communications
- **Browser Based Administration** - Update, delete and create content from any device with internet access
- **Calendar** - Update/publish calendars for departments/categories with a main calendar to display all events
- **Content Scheduling** - Set dates for content to automatically publish and expire
- **Departmental Home Pages** - Ability for departments to have dedicated pages within the site that follow the same design as the other interior pages
- **Directories for Staff** - Ability to allow citizens to search for staff department information
- **Document and Image Centers** – Storage of website images, documents, and other self-hosted media within a Content Delivery Network (CDN) or database to ensure replaced versions are no longer accessible. Upload/download capability for files up to 1GB, back-end ability to search within published and unpublished documents and images
- **Frequently Asked Questions** - Ability to categorize FAQs by department or page
- **Integration Capabilities** – System should be configured to integrate as seamlessly as possible with other City systems (e.g. Esri ArcGIS, Cityworks AMS/PLL).
• **Intranet/Extranet** - Permission system to restrict pages by login
• **Levels of Rights/Permissions** - Allow system administrators to establish levels of rights for staff to view/update/manage/access content based upon roles. Optional ability to use Azure AD group membership to determine City employee security roles
• **Live Edit** - Add, edit and move content directly on the front end of the site without the need to utilize or be trained in writing HTML or CSS code
• **Multilingual Support** - Using Google Translate or similar
• **News & Announcements** - Post news releases or updates dynamically to relevant pages based on category
• **Online Forms** - Create unlimited customizable forms, track and export results
• **Printable Pages** - Print-friendly function
• **Responsive Web Design** - Fully mobile-first, responsive design - site adjusts to the screen size of all devices it’s viewed on, including forms, calendars, images, etc.
• **Rotating Photos/Banners** - Slideshow capabilities
• **RSS Feeds out** - Registration by Department or Category
• **Sharing Capability** - Links to share content via email and social media on every page
• **Site Search** - Internal site search engine and log of commonly searched terms
• **Site Statistics** - Analytics and site audit reports
• **Sitemap & Breadcrumbs** - Automatically generated and updated sitemap and breadcrumbs
• **Social Media Interface** - Display social media feeds
• **Website Visitor Profile** - Visitors can pick and choose the information that automatically becomes fed to their profile upon site login.

Optional Features:

The features below are not required by the City at this time; however, please include information and availability of integration in the future.

• **Activities** - Create classes, display class schedules, limit the number of persons that can sign up per class, and email those who have registered for specific classes
• **Agenda Management** - Upload existing, create new, categorize, approve and manage agendas.
• **Chat Bot** – using AI or other methods to communicate quickly with users
• **E-Communication platform** - Create unlimited subscriber lists and communicate over multiple channels – e-mail, text and social media from a single point of access
• **Request Tracking** - Citizens can submit requests with automated workflow to correct individual/department with exportable statistics and reports
• **RFP/RFQ/Bid Posting** - Allow for easy posting of bids to the site
• **Single Sign-On Integration** - Authentication through Azure Active Directory
• **Video Center** - Live streaming video capabilities
Deliverables:

- Detailed description of the project approach that will be used to gather requirements and determine an optimal user experience for the new site.
- A flexible user-friendly civic engagement platform along with recommendations for other items or products to maintain the site’s flexibility and ease of use.
- Updated employee Intranet to match the new public facing web platform.
- Plan for migration of data along with the written evaluation of which data needs to be transferred from the existing platform to the new CMS platform.
- Consultant’s written evaluation of how they plan to meet our needs with their recommended CMS platform. The recommended platform should include the items listed above.

G. Right to Submitted Material

This RFP does not commit the City of Escondido to award a contract, to pay any costs incurred in the preparation of a proposal or contract, or to procure or contract for, any services. The City reserves the right to accept or reject any or all proposals received as a result of this RFP, or to amend, cancel (in part or in whole) this RFP if it is in the City’s best interest to do so. All proposals, reports and data submitted to the City shall become the property of the City of Escondido and may not be returned.

H. Proposal Deadlines and Schedule

The following is an estimated schedule relating to this project:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Questions Deadline</td>
<td>December 23, 2022</td>
</tr>
<tr>
<td>Response to Questions Released</td>
<td>December 30, 2022</td>
</tr>
<tr>
<td>Proposal Submission Deadline</td>
<td>January 12, 2023</td>
</tr>
<tr>
<td>Staff Review of Proposals and follow-up demos/Q&amp;A sessions with finalists</td>
<td>January 16 – February 17, 2023</td>
</tr>
<tr>
<td>Contract Development/Negotiations</td>
<td>February 20, 2023 – March 17, 2023</td>
</tr>
<tr>
<td>Tentative Award of Contract</td>
<td>March 17, 2023</td>
</tr>
<tr>
<td>Final City Council Approval of Contract</td>
<td>TBD</td>
</tr>
</tbody>
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Note: The City reserves the right to make modifications to the estimated schedule outlined above.

I. Proposal Content

Prospective consultants are responsible for preparing and timely submitting an effective, clear, and concise proposal. Proposals must be limited to 25 pages. Each proposal shall demonstrate the qualifications, competence, and capacity of the prospective consultant to perform the services described within the timeframe in the table above, and in conformity with the requirements of this RFP.
By submitting a proposal in response to this RFP, prospective consultants certify that they take no exceptions to the terms and requirements of this RFP, including the terms of the City’s form Consulting Agreement (Exhibit 1).

To be considered responsive, proposals must contain the following information in the order listed below. The City of Escondido will evaluate vendor experience, qualifications and capabilities for developing and implementing a new City website. The response should be formatted to address all items outlined below. Responders are required to submit a written narrative addressing each of the underlined section items including section bullets.

Executive Summary – 2 page maximum
- Overview and summary of how your company will assist the City in achieving the goals outlined in this RFP
- Any differentiators that set your solution apart from your competitors

Company Profile
- Company overview
  - Legal name of company
  - Brief company history, highlighting your experience working with local governments
  - Length of time the company been in business
  - Number of current employees
- Name, telephone number, and email address for the main point of contact during RFP process

Project Team
- Name and define the different roles in your company’s project team
- Explain how your project team will communicate with the City and keep track of the development progress
- List any specific team leaders, including
  - Name and title
  - Description of role
  - Education and experience

One-source vendors are preferred. If Consultant plans to utilize subcontractors for any portion of the project; identify any services that will be outsourced to a sub-contractor. Describe the role and experience of any subcontractors participating in this Project and the history of the Contractor and subcontractor business relationship.

Experience
- Digital portfolio of past work, including case studies if available
- Public Sector/Municipal References (three to five, including the information below)
  - Client name
  - Website URL
  - Client contact person and title
  - Phone
  - Email address
Features, Functionality, & Design

At minimum:
- Detail availability of all features and functionality listed in the Required Features and Optional Features sections of this RFP
- Provide a short narrative outlining your company’s design process and benefits.

Implementation Plan

- Typical timeline/schedule
- Detailed explanation of all project phases, including consultation, design, development, content migration, training, implementation
- What role the City will play in the project

Ongoing Services

- Continuing Service & Support
  - Technical support services - emergency and non-emergency availability
  - Availability of online training manuals and ongoing support
  - Describe the product release, enhancement and upgrade process
- Hosting & Security
  - Provide a list of industry standards for security and cloud hosting reliability that are current being met or being worked toward
  - 99.9% uptime measured on a 30-day rolling basis (outside of scheduled maintenance) guaranteed by Service Level Agreement to be supplied upon request
  - Data Center
    - Tier II, managed network infrastructure, on-site power backup and generators, redundant network, 24/7/365 system monitoring, multiple data centers with failover capability
  - Hosting
    - Regular software updates and security patches applied on a fixed schedule, redundant firewall solutions, high performance SAN with N+2 reliability
  - Bandwidth
    - Multiple network providers, burst bandwidth of at least 22Gb/s
  - Disaster Recovery
    - 24/7 emergency support, online status monitor, event notification emails, recovery time objective no greater than eight hours, recovery point objective no greater than 24 hours, preemptive monitoring, geographically redundant backup
  - DDoS Mitigation

Investment Proposal

All-inclusive/Lump Sum pricing is required. Pricing should include:
- Development and implementation, including:
  - CMS Software
  - Number of pages for content migration & enhancement
  - Number of days/hours of training – Specify if virtual or on-site. If on-site, indicate if travel is included or a separate cost
  - Additional included products and/or functionality
Annual services, including:
- Hosting & security
- Maintenance
- Technical Support

Cost for future website redesign

Total first year cost (combined one-time fees and first year annual fees)

Costs for optional or third-party provided features and services

Implementation time and materials per-hour cost, per task, with a total not-to-exceed overall cost of implementation

Annual fees beginning year 2

All-in costs for 3-5 years, and an option to extend after that point is reached

Separately list any optional project enhancements that you believe will benefit the City’s project.

Additional Products Offered (limited to one (1) page)

- Give brief descriptions of other products offered by the company. Do not include marketing brochures, promotional collateral or excessive non-relevant information.

The successful consultant’s proposal submitted in response to this RFP will become part of the resulting Consulting Agreement (Exhibit 1). Any proposed waiver, or change to the resulting Consulting Agreement (Exhibit 1) must be clearly identified in Prospective consultant’s proposal. All contracts, and any addenda thereto, shall be subject to the City’s sole discretion and approval. The requirements and service standards of this RFP and the responses of the successful consultant will be incorporated by reference into the resulting agreement regarding the Project. The successful consultant shall enter into a contract within 30 calendar days of the City’s notice of award in substantially the same form as the Agreement (Exhibit 1).

J. Selection Process

The contract resulting from this RFP will be awarded to the most responsive and responsible consultant whose proposal conforms to the requirements of this RFP and is considered to be the most advantageous to the City, taking into consideration not just the proposal price, but also the evaluation criteria set forth in this RFP. The City will act as the sole judge of information submitted in response to this RFP. The City reserves the right to: (i) request additional information or clarification of any submitted information, (ii) cancel or amend this RFP, including the proposal evaluation process, at any time, and (iii) not enter into any contract resulting from this RFP and issue similar solicitations in the future.
Evaluation Criteria will be based on the following:

| 1. Qualification/experience of consultant with development of similar websites projects and resulting documents | 15 Points |
| 2. Proposed approach to the project | 20 Points |
| 3. Solutions for flexibility, adaptability, and growth of the site | 30 Points |
| 4. Value delivered | 20 points |
| 5. Timeline | 15 Points |
| **Total** | **100 Points** |

**General Conditions**

PLEASE READ CAREFULLY. THE FOLLOWING GENERAL TERMS AND CONDITIONS ARE A PART OF ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS RFP AND THE RESULTING CONTRACT.

This RFP as advertised, the specification requirements detailed in this RFP (including the following General Provisions) are subject to all provisions of the Ordinances of the City of Escondido. Each prospective consultant submitting a response to this RFP warrants that the submitted proposal is genuine and non-collusive, or made in the interest of any person, firm, or corporation. A non-collusion declaration shall be properly completed and returned with the proposal documents.

In submitting a proposal in response to this RFP, each prospective consultant agrees to the following general terms and conditions:

1. Public Information: The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal in response to this RFP indicates the prospective consultant’s acceptance of all terms and conditions contained in this RFP, including all exhibits and attachments hereto, unless clearly and specifically stated otherwise.

2. Confidential Information: Any information deemed confidential or proprietary should be clearly identified by the prospective consultant as such. Information identified as confidential or proprietary will be protected and treated with confidentiality to the extent permitted by applicable local, state, and federal law.

3. Addendums: The City reserves the right to amend, alter, or revoke this RFP at any time. Any modifications, clarification, or additions will be distributed via email as an addendum.
4. Proposal Preparation Cost: The City is not obligated to reimburse any prospective consultant for expenses incurred in preparing proposals in response to this RFP. All Prospective consultants shall bear their own costs, fees, and expenses incurred in preparing proposals in response to this RFP.

5. Withdrawal of Proposal: A prospective consultant may modify or withdraw their proposal, either personally or by written request via email, at any time prior to the Submission Deadline. Such requests should be directed to the City’s Project Manager.

6. Inaccuracies or Misinterpretations: Subject to the City’s sole discretion, the City may terminate a prospective consultant from the RFP process or terminate any agreement with the Prospective consultant if the City determines that said Prospective consultant has: (i) made a material misstatement, (ii) made a material misrepresentation, or (iii) provided materially inaccurate information.

7. Optional Items: Prospective consultants may elect to provide recommendations and pricing for optional items. Pricing for optional items shall not be included in the minimum requirements pricing.

8. Business License: The successful consultant shall be required to obtain a City of Escondido Business License pursuant to the terms of Exhibit 1.

9. Signature: All proposals shall be signed in the name of the prospective consultant and shall bear the original signature in longhand of the persons duly authorized to sign the proposal. Obligations assumed by such signature shall be fulfilled.

10. Right to Reject Proposal: The City reserves the right to reject any or all proposals, to waive any non-material irregularities or information in any proposal, and to accept or reject any items or combination of items. The City is not obligated to explain or justify its selection or rejection of any Prospective consultant. All proposals submitted in response to this RFP shall immediately become property of the City.

11. Right to Conduct Personal Interviews: The City reserves the right to conduct personal interviews or require oral presentations of any or all prospective consultants prior to selection.

12. Right to Request Additional Information: Prospective consultants shall furnish additional information as the City may reasonably require. The City reserves the right to investigate the qualifications of prospective consultants as it deems appropriate.

13. Right to Determine Financial Responsibility and Viability: The City reserves the right to request information pertaining to the financial stability of a prospective consultant to allow an appraisal of a prospective consultant’s current financial condition.

14. Understanding the Services to be Performed: By submitting a proposal in response to this RFP, each prospective consultant certifies that they have fully read and understand this RFP and have full knowledge of the scope, nature, quantity, and quality of services to be performed. Each prospective consultant understands that, if successful, they will be required to enter into a written contract in substantially the same form as Exhibit 1.
15. Award of Contract: Proposals submitted in response to this RFP will be analyzed and the contract awarded to the responsible prospective consultant whose proposal conforms to this RFP and is considered to be the most advantageous to the City, taking into consideration not just the proposal price, but also the evaluation criteria set forth in this RFP. If the prospective consultant does not execute a contract in substantially the same form as Exhibit 1 within 30 days after notification of award, the City may, subject to its sole discretion, (i) give notice to the Prospective consultant of the City's intent to select from the remaining Prospective consultants or (ii) issue a new RFP for the services.

16. Contract Funding: The City’s funding of any agreement resulting from this RFP shall be on a fiscal year basis and is subject to annual appropriations. Prospective consultant acknowledges that the City is a municipal corporation, is precluded by the State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this RFP shall constitute an obligation of future legislative bodies of the City or State to appropriate funds for any agreement resulting from this RFP. Accordingly, prospective consultants acknowledge and agree that the funding for any agreement resulting from this RFP shall be contingent upon appropriation of funds.

17. City Provisions to Prevail: The terms of this RFP and the terms of any agreement resulting from this RFP shall govern the services. Any standard terms and conditions of the successful consultant shall not be acceptable to the City unless expressly agreed to by the City by separate document. The City reserves the right to reject a proposal containing unacceptable conditions as non-responsive as a condition of evaluation or award of the proposal.

18. Equal Employment Opportunity: The consultant awarded the project shall comply with all equal employment opportunity provisions of federal, state, and local non-discrimination laws, orders, regulations and guidelines as may be applicable to the consultant and be in effect during the performance of any agreement resulting from this RFP.

19. Consulting Agreement: Consultants submitting a proposal in response to this RFP shall be prepared to use the City’s standard contract form (Exhibit 1) rather than its own contract form. Services may not commence until Agreement for services is executed.

20. Prospective Consultant’s Invoices: Invoices shall be prepared and submitted to City of Escondido, Accounts Payable Division, located at 201 N. Broadway, Escondido, CA 92025. Separate invoices are required for each purchase order. Invoices shall contain the following information: Purchase Order number, item number, description of supplies or services, sizes, units of measure, quantities, unit prices and extended totals. Invoices should include all applicable sales or other taxes, and shall be remitted to appropriate agencies on the City’s behalf. All payments made pursuant to this contract are not assignable and shall only be made payable to the seller.

21. Payment Terms: The City’s payment terms are Net 30 days from date of invoice. No pre-payment or partial up front down payment will be made for any services or equipment. The time period allowed for payment, as indicated on the face hereof or offered by quote, bid, or proposal shall commence upon receipt of Prospective consultant’s invoice or upon receipt of the goods or services, whichever is later.
22. Insurance Requirements: The successful consultant must have insurance in accordance with the requirements listed in Exhibit 1.

23. Executive Order N-6-22 – Russia Sanctions: On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. By submitting a proposal, Consultant represents that it is not a target of Economic Sanctions. Should the State determine Consultant is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Consultant’s proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by the State.

24. Public Agency Clause: It is intended that other public agencies (e.g., city districts, public authorities, municipal utilities, public school districts and other political subdivisions or public corporations of California) shall have the option to participate in any award made as a result of this solicitation. The City shall incur no financial responsibility for their order placement and payments to the successful consultant. This option shall not be considered in proposal evaluation. State whether said option is granted:

__________________________                  ________________________
YES                                          NO
NONCOLLUSION DECLARATION

TO BE EXECUTED BY PROSPECTIVE CONSULTANT AND SUBMITTED WITH PROPOSAL

The undersigned declares:

The foregoing proposal submitted in response to the City of Escondido’s Request for Proposals – Website Update & Consulting Services is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The prospective consultant has not directly or indirectly induced or solicited any other prospective consultant to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any prospective consultant or anyone else to put in a sham proposal, or to refrain from submitting a proposal. The prospective consultant has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the prospective consultant or any other prospective consultant, or to fix any overhead, profit, or cost element of proposal price, or of that of any other prospective consultant. All statements contained in the proposal are true. The prospective consultant has not, directly or indirectly, submitted their proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

Each individual executing this declaration on behalf of a prospective consultant that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that they have full power to execute, and does execute, this declaration on behalf of the prospective consultant.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on ______________________.

Date

Signature

Signature

Title ________________________________

Title ________________________________

Of ________________________________

Of ________________________________

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

By: ________________________________
CITY OF ESCONDIDO

CONSULTING AGREEMENT

This Consulting Agreement ("Agreement") is made and entered into as of this _____ day of ________________, 2022 ("Effective Date"),

Between: CITY OF ESCONDIDO

a California municipal corporation

201 N. Broadway

Escondido, CA 92025

Attn: Jennifer Schoeneck

760-839-4587

(“CITY”)

And:

[Name]

[Entity Type: e.g., “a California corporation”]

[Street address]

[City, state, zip code]

Attn: [name of contact]

[Telephone number]

(“CONSULTANT”).

(The CITY and CONSULTANT each may be referred to herein as a “Party” and collectively as the “Parties.”)

WHEREAS, the CITY has determined that it is in the CITY’s best interest to retain the professional services of qualified professionals who are knowledgeable creating, hosting, and developing municipal websites;

WHEREAS, CONSULTANT is considered competent to perform the necessary professional services for the CITY; and

WHEREAS, the CITY and CONSULTANT desire to enter into this Agreement for the performance of the Services described herein.
NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, and the mutual benefits derived therefrom, the Parties hereby agree as follows:

1. **Description of Services.** CONSULTANT shall furnish all of the Services described in the Scope of Work, which is attached to this Agreement as Attachment “A” and incorporated herein by this reference (“Services”).

2. **Compensation.** In exchange for CONSULTANT’s completion of the Services, the CITY shall pay, and CONSULTANT shall accept in full, an amount not to exceed the sum of [$Dollar Amount]. CONSULTANT shall be compensated only for performance of the Services described in this Agreement. No compensation shall be provided for any other work or services without the CITY’s prior written consent.

3. **Performance.** CONSULTANT shall faithfully perform the Services in a proficient manner, to the satisfaction of the CITY, and in accord with the terms of this Agreement. CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other information furnished by CONSULTANT pursuant to this Agreement, except that CONSULTANT shall not be responsible for the accuracy of information supplied by the CITY.

4. **Personnel.** The performance of the Services by certain professionals is significant to the CITY. As such, CONSULTANT shall only assign the persons listed on Attachment “B”, attached to this Agreement and incorporated herein by this reference (“Personnel List”), to perform the Services. CONSULTANT shall not add or remove persons from the Personnel List without the City’s prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City’s prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City’s prior written consent.

5. **Termination.** The Parties may mutually terminate this Agreement through a writing signed by both Parties. The CITY may terminate this Agreement for any reason upon providing CONSULTANT with 10 days’ advance written notice. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by CONSULTANT, then CONSULTANT shall be compensated based on the work satisfactorily performed at the time of such termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the Services.

6. **City Property.** All original documents, drawings, electronic media, and other materials prepared by CONSULTANT pursuant to this Agreement immediately become the exclusive property of the CITY, and shall not be used by CONSULTANT for any other purpose without the CITY’s prior written consent.

7. **Insurance Requirements.**
   a. CONSULTANT shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services, and the results of such work, by CONSULTANT, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:
City of Escondido
RFP – Website Update, Consolidation, Hosting & Consulting Services
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(1) **Commercial General Liability.** Insurance Services Office ("ISO") Form CG 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than $2,000,000 per occurrence and $4,000,000 general aggregate.

(2) **Automobile Liability.** ISO Form CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY’s Risk and Safety Division.

(3) **Workers’ Compensation.** Worker’s Compensation as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limits of no less than $1,000,000 per accident for bodily injury or disease.

(4) **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) appropriate to CONSULTANT's profession, with limits no less than $2,000,000 per occurrence or claim and $2,000,000 aggregate.

(5) If CONSULTANT maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONSULTANT.

b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:

(1) **Acceptability of Insurers.** Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best’s rating of no less than A-: FSC VII, or as approved by the CITY.

(2) **Additional Insured Status.** Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38, and CG 20 37 if a later edition is used. The Automobile Liability endorsement shall be at least as broad as ISO Form CA 20 01.

(3) **Primary Coverage.** CONSULTANT’s insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONSULTANT’s insurance and shall not contribute with it.

(4) **Notice of Cancellation.** Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.

(5) **Subcontractors.** If applicable, CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONSULTANT shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.

(6) **Waiver of Subrogation.** CONSULTANT hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers’ Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for
all work performed by the CONSULTANT, its agents, representatives, employees, and subcontractors.

(7) **Self-Insurance.** CONSULTANT may, with the CITY’s prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONSULTANT shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONSULTANT’s (i) net worth and (ii) reserves for payment of claims of liability against CONSULTANT are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. CONSULTANT’s utilization of self-insurance shall not in any way limit the liabilities assumed by CONSULTANT pursuant to this Agreement.

(8) **Self-Insured Retentions.** Self-insured retentions must be declared to and approved by the CITY.

c. **Verification of Coverage.** At the time CONSULTANT executes this Agreement, CONSULTANT shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.

d. **Special Risks or Circumstances.** The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

e. **No Limitation of Obligations.** The insurance requirements in this Agreement, including the types and limits of insurance coverage CONSULTANT must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.

f. Failure to comply with any of the insurance requirements in this Agreement, including, but not limited to, a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. In the event that CONSULTANT fails to comply with any such insurance requirements in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i) immediately terminate this Agreement; or (ii) order CONSULTANT to stop work under this Agreement and/or withhold any payment that becomes due to CONSULTANT until CONSULTANT demonstrates compliance with the insurance requirements in this Agreement.

8. **Indemnification, Duty to Defend, and Hold Harmless.**

a. CONSULTANT (including CONSULTANT’s agents, employees, and subCONSULTANTs, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney’s fees and other related litigation costs and expenses (collectively, “Claims”), of every nature caused by, arising out of, or in connection with CONSULTANT’s performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except where caused by the sole negligence or willful misconduct of the CITY.

b. CONSULTANT (including CONSULTANT’s agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all Claims caused by, arising under, or resulting from any
violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any work performed pursuant to this Agreement.

c. All terms and provisions within this Section 8 shall survive the termination of this Agreement.

9. Anti-Assignment Clause. Because the CITY has relied on the particular skills of CONSULTANT in entering into this Agreement, CONSULTANT shall not assign, delegate, subcontract, or otherwise transfer any duty or right under this Agreement, including as to any portion of the Services, without the CITY’s prior written consent. Any purported assignment, delegation, subcontract, or other transfer made without the CITY’s consent shall be void and ineffective. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY’s prior written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.

10. Attorney’s Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney’s fees and costs.

11. Independent CONSULTANT. CONSULTANT is an independent CONSULTANT, and no agency or employment relationship is created by the execution of this Agreement.

12. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONSULTANT.

13. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONSULTANT concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.

14. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.

15. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.

16. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.

17. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file with the City
is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.

18. **Provisions Cumulative.** The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.

19. **Notice.** Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and the CITY and CONSULTANT shall promptly provide the other Party with notice of any changes to such contact information.

20. **Business License.** CONSULTANT shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.

21. **Compliance with Laws, Regulations, Permits, Licenses, and Executive Orders.** CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. CONSULTANT shall obtain any and all permits, licenses, and other authorizations necessary to perform the Services. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section. The Parties acknowledge that Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) administrated by the U.S Department of Treasury (“Federal Awarding Agency”) under American Rescue Plan Act of 2021 (“ARPA”) funds will be used to fund all or a portion of this Agreement. The CONSULTANT shall comply with all applicable federal laws, regulations, executive orders, policies, procedures, and directives.

22. **Prevailing Wages.** If applicable, pursuant to California Labor Code section 1770 et seq., CONSULTANT agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the applicable “General Prevailing Wage Determination” approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at [http://www.dir.ca.gov/oprl/dpewagedetermination.htm](http://www.dir.ca.gov/oprl/dpewagedetermination.htm) and incorporated into this Agreement by this reference. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

23. **Immigration Reform and Control Act of 1986.** CONSULTANT shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 (“IRCA”). CONSULTANT represents and warrants that all of its employees and the employees of any subcontractor retained by CONSULTANT who perform any of the Services under this Agreement, are and will be authorized to perform the Services in full compliance with the IRCA. CONSULTANT affirms that as a licensed CONSULTANT and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will perform the Services. CONSULTANT agrees to comply with the IRCA before commencing any Services, and continuously throughout the performance of the Services and the term of this Agreement.
24. **Clean Air Act.** CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. CONSULTANT agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office. CONSULTANT agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by the Federal Awarding Agency.

25. **Federal Water Pollution Control Act.** CONSULTANT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONSULTANT agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office. CONSULTANT agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance provided by the Federal Awarding Agency.

26. **Debarment and Suspension.**
   a. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, CONSULTANT is required to verify that none of CONSULTANT’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
   b. CONSULTANT shall comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction CONSULTANT enters into.
   c. This certification is a material representation of fact relied upon by the CITY. If it is later determined that CONSULTANT did not comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, in addition to remedies available to the CITY, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
   d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

   a. Prior to entering into this Agreement, CONSULTANT shall file the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended)). Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the Federal Awarding Agency.
   b. Required Certification. At the time CONSULTANT executes this Agreement, CONSULTANT shall provide the CITY with a completed Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying. A blank Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying is attached to this Agreement as Attachment “C” and incorporated herein by this reference.
28. Procurement of Recovered Materials. In the performance of this Agreement, CONSULTANT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) competitively within a timeframe providing for compliance with the Agreement’s performance schedule, (2) meeting Agreement performance requirements, or (3) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines website, located at https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program. CONSULTANT shall also comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

29. Access to Records. The following access to records requirements apply to this Agreement: (1) CONSULTANT agrees to provide the CITY, the Federal Awarding Agency Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of CONSULTANT that are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. CONSULTANT agrees to provide the Federal Awarding Agency Administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement. In compliance with the Disaster Recovery Act of 2018, the CITY and CONSULTANT acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the Federal Awarding Agency Administrator or the Comptroller General of the United States.

30. Federal Awarding Agency Seal, Logo, and Flags. CONSULTANT shall not use the Federal Awarding Agency seal(s), logos, crests, or reproductions of flags or likenesses of Federal Awarding Agency officials without specific Federal Awarding Agency pre-approval.

31. No Obligation by Federal Government. The United States Federal Government is not a party to this Agreement and is not subject to any obligations or Agreement to the CITY, CONSULTANT, or any other party pertaining to any matter resulting from this Agreement.

32. Program Fraud and False or Fraudulent Statements or Related Acts. CONSULTANT acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to CONSULTANT’s actions pertaining to this Agreement.

33. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(Signature Page Follows)
IN WITNESS WHEREOF, this Agreement is executed by the Parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO

Date: __________________________  Rob Van De Hey, Chief Information Officer
[CONSULTANT COMPANY NAME]

Date: __________________________  Signature
Name & Title (please print)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, CITY ATTORNEY

BY: __________________________

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CAO: 9/17/2021
The Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") administrated by the U.S Department of Treasury ("Federal Awarding Agency") under the American Rescue Plan Act of 2021 ("ARPA") will be used to fund all or a portion of this Agreement, and as such CONTRACTOR shall also comply with any applicable sections of 2 CFR Appendix II Part 200 relating to required contract provisions for federal awards, any applicable sections will be incorporated by reference into the resulting agreement including without limitations, the following:

1. DEBARMET AND SUSPENSION
   a. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, CONTRACTOR is required to verify that none of CONTRACTOR's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
   b. The CONTRACTOR shall comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction CONTRACTOR enters into.
   c. This certification is a material representation of fact relied upon by the CITY. If it is later determined that CONTRACTOR did not comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C, in addition to remedies available to the CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
   d. The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C throughout the term of this Agreement. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

2. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS
   The CONTRACTOR acknowledges that Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") established by the American Rescue Plan Act of 2021 will be used to fund all or a portion of this Agreement. The CONTRACTOR shall comply with all applicable federal law, regulations, executive orders, SLFRF policies, procedures, and directives.

3. NO OBLIGATION BY FEDERAL GOVERNMENT
   The United States Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the CITY, CONTRACTOR, or any other party pertaining to any matter resulting from this Agreement.

4. PROGRAM FRAUD AND FALSE OR FRADULENT STATEMENT OR RELATED ACTS
   CONTRACTOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to CONTRACTOR’s actions pertaining to this Agreement

5. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

   Clean Air Act
   1. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
   2. The CONTRACTOR agrees to report each violation to the City of Escondido and understands and agrees that the City of Escondido will, in turn, report each violation as
required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The CONTRACTOR agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provide by ARPA.

Federal Water Pollution Control Act

1. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C.1251 et seq.

2. The CONTRACTOR agrees to report each violation to the City of Escondido and understands and agrees that the City of Escondido will, in turn, report each violation as required to assure notification to the Federal Awarding Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The CONTRACTOR agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provide by ARPA.


a. Prior to entering into this Agreement, CONTRACTOR shall file the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended)). Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

b. Required Certification. At the time CONTRACTOR executes this Agreement, CONTRACTOR shall provide the CITY with a completed Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying. A blank Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying is attached to this Exhibit B as Attachment 1 and incorporated herein by this reference.

7. PROCUREMENT OF RECOVERED MATERIALS

In the performance of this Agreement, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (1) competitively within a timeframe providing for compliance with the Agreement’s performance schedule, (2) meeting Agreement performance requirements, or (3) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines website, located at https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program. CONTRACTOR shall also comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

8. ACCESS TO RECORDS

(1) The CONTRACTOR agrees to provide the CITY, the Federal Awarding Agency Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of CONTRACTOR that are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
(2) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
(3) The CONTRACTOR agrees to provide the Federal Awarding Agency Administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.
(4) In compliance with the Disaster Recovery Act of 2018, the CITY and CONTRACTOR acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the Federal Awarding Agency Administrator or the Comptroller General of the United States.

9. FEDERAL AWARDING AGENCY SEALS, LOGO, AND FLAGS
CONTRACTOR shall not use the Federal Awarding Agency seal(s), logos, crests, or reproductions of flags or likenesses of Federal Awarding Agency officials without specific Federal Awarding Agency pre-approval.

10. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES
a. The prohibition of certain telecommunication and video surveillance services or equipment applies to all federally funded third-party contracts. As described in Public Law 115-232, section 889 and 2 C.F.R. §200.216 the City is prohibited from using federal funds on certain telecommunications products or from certain entities for national security reasons.
b. Unless an exception in paragraph (c) of this clause applies, the CONTRACTOR and its subcontractors may not use fund from this contract to:
   (1) Procure or obtain;
   (2) Extend or renew a contract to procure or obtain; or
   (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services (as described in Public Law 115-232, Section 889) as a substantial or essential component of any system, or as critical technology as part of any system.
c. Exceptions.
   (1) This clause does not prohibit CONTRACTOR from providing –
      i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements;
      ii. Telecommunication equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
   (2) By necessary implication and regulation, the prohibitions also do not apply to:
      i. Covered telecommunications equipment or services that are not used as a substantial or essential component of any system or as critical technology as part of any system;
      ii. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
d. Reporting requirement.
   1. In the event the CONTRACTOR identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the CONTRACTOR shall report the information in paragraph (d) (2) of this clause to the recipient or subrecipient.
2. The CONTRACTOR shall report the following information pursuant to paragraph (d) (2) of this clause:
   i. Within one business day from the date of such identification or notification: The contract number, the order number(s), if applicable; supplier name, supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
   ii. Within 10 business days of submitting the information in paragraph (d)(2) (i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the CONTRACTOR shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

11. COPYRIGHT AND DATA RIGHTS
   “License and Delivery of Works Subject to Copyright and Data Rights”
   The CONTRACTOR grants to the CITY, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the CONTRACTOR will identify such data and grant to the CITY or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S. C. §102, for example, any written reports or literacy works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sounds and/or video recordings, and architectural works. Upon or before the completion of this contract, the CONTRACTOR will deliver to the CITY data first produced in the performance of this contract and data required by the contract but no first produced in the performance of this contract in formats acceptable by the CITY.
ATTACHMENT “A”
Scope of Work

A. General

This section should include a general statement about the purpose/objective of the contract, including what is being done under the contract and who is doing it.

B. Location

This section should include the location(s) where the contract will be performed.

C. Services

This section should describe the services the Consultant is to provide to the City, dividing the services into separate tasks if applicable.

D. Scheduling

This section should describe when the services should be performed, including any related scheduling requirements.

E. Contract Price and Payment Terms

This section should state the contract price, what is included or not included within the contract price, and the terms and schedule for any payments.

F. Term

This section should provide the time frame for the entire project or term of the contract. If possible, provide the starting and completion date.

G. Other

Some contracts may include unique requirements or provisions that do not fall within the above general categories (e.g., license/permit requirements, warranties, reference and incorporation of technical specifications or other documents). Any of these unique requirements/provisions should be listed here, or delete this section if not applicable.
ATTACHMENT “B”

Personnel List

Pursuant to Section 4 of the Agreement, CONSULTANT shall only assign performance of Services to persons listed below. [Please indicate “N/A” if no person is designated (e.g., if CONSULTANT is a sole proprietor and will not use additional personnel).]

1. [Name, Title, Email Address, Company]; and

2. [Name, Title, Email Address, Company].

CONSULTANT shall not add or remove persons from this Personnel List without the City’s prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City’s prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City’s prior written consent.

Acknowledged by:

Date: ____________________________  [CONSULTANT Name/Title]
ATTACHMENT “C”

Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The CONTRACTOR, ____________________________, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Signature of Subrecipient’s Authorized Official

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Name and Title of Subrecipient’s Authorized Official

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Date