

Request for Proposals

The City of Santa Barbara Waterfront Department

Waterfront Tenant Revenue Examinations

Release Date: May 11, 2016

Due Date: June 3, 2016 at 3 p.m.

Background

The Waterfront Department is established under Title 17 of the Santa Barbara Municipal Code. The Department manages approximately 252 acres of tideland and submerged lands for the City encompassing the Harbor and Stearns Wharf. These lands belong to the State and are held in trust by the City. The Department consists of three major operational areas, Harbor Operations, Facilities Management, and Business Services. The mission is to provide the community with a high quality waterfront for recreation and commerce. As an enterprise fund, the Department operates from revenues generated from the lands it manages.

The Waterfront currently is party to approximately 61 lease agreements that involve revenue reporting by the lessees. The type of businesses are as follows: 13 retail, 10 food service, 10 service, 22 other, and 6 vessel operators. Past experience has shown that approximately 6-8 revenue examinations per year are ordered by the Waterfront Department.

Project Description

The City of Santa Barbara (City) is soliciting proposals from qualified firms of Certified Public Accountants to perform revenue examinations. The revenue examinations will be performed to ensure compliance with lease agreement terms from enterprises that lease property from the City. The engagement term would begin July 1, 2016 and last for one fiscal year (July 1- June 30), with the option to continue for two subsequent fiscal years. These examinations are to be performed in accordance with standards established by the American Institute of Certified Public Accountants and will be performed to ensure compliance with lease agreement terms from percentage rent lessees that lease property from the City.

All of the information in this RFP should be studied carefully. Applicants are encouraged to submit with the proposals any relevant supplementary information that may be supportive of the applicant's qualifications to provide these services. Under the terms of this RFP, the City is not obliged to contract with the applicant lowest in cost. The evaluation and review will consider all aspects of the proposals, may negotiate additional terms and conditions, and will award the contract to the applicant most responsive to the needs of the City and most capable of providing the services to meet those needs. The City will be the sole judge concerning responsiveness and capabilities of applicants.

Scope of Work

The City leases property to private enterprises for the purpose of conducting business at a profit. Lease agreements are entered into that specify terms and conditions that must be met by both parties. A primary requirement is that the lessees and sublessees report revenues earned through the business to the City of Santa Barbara. Since the rent payments may be partially or wholly determined by the amount of gross revenues, it is important that these revenues be reported correctly by the lessees and, in some cases, sublessees.

In order to determine the accuracy of revenues reported by the lessees/sublessees, the City is seeking Certified Public Accountants with experience in examining the applicable financial records of specific lessees/sublessees. If the records maintained by the lessees/sublessees are inadequate or incomplete, the auditor must be able to reconstruct the accounting records from available source documents. The scope of work will require the contractor to regularly communicate with the assigned tenants via e-mail, phone and likely on site.

The examinations would include, but not be limited to, the following:

- Comparing gross receipts and profits against prior year and industry averages;
- Examining the General Ledger, Cash Receipts Journal, and Cash Disbursement Journal for accuracy, consistency, and reliability;
- Completing test work on source documents to determine the reliability of revenue postings;
- Verifying through the examination of bank deposits and tax returns that gross receipts are properly recorded;
- Determining if the lessee is a subordinate/subsidiary of a larger organization, and, if so, comparing any subsidiary reports to the General Ledger and to the reports submitted to the City;
- Determining, through analytical reviews of similar businesses, reasonableness of revenue reporting for that particular business type;
- Preparing a written report on the results of the examination to the lessee and to the City.

In addition, the auditor may be required to work closely with the City Attorney's Office in any legal action that the City may institute as a result of an examination finding. The auditor should be prepared to testify on behalf of the City in any legal proceedings that the City may institute or to which it is a party.

The lessees/sublessees to be audited would be determined by the City.

Deliverables

1. Develop a draft Revenue Examination Report for each lessee/sublessee assigned by the Waterfront Department for review and approval by staff.
2. Develop a Final Revenue Examination Report for each lessee/sublessee assigned by the Waterfront Department

Proposal Requirements

Firms responding shall submit one (1) electronic and two (2) hard copies of the proposal, which shall include the items listed below.

1. General Requirements

The purpose of the proposal is to demonstrate the qualifications, competence and capacity of the firms seeking to undertake the examinations of the City in conformity with the requirements of this request for proposal. As such, the substance of proposals will carry more weight than their form or manner of presentation.

The Proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the request for proposals. While additional data may be presented, the following subjects, item numbers 2 through 11, must be included. They represent the criteria against which the proposal will be evaluated.

2. A Transmittal Letter which must:

- a) Identify the submitting organization;
- b) Identify the name, title, telephone and e-mail address of the person authorized by the organization to contractually obligate the organization;
- c) Identify the name, title, telephone and e-mail address of the person authorized to negotiate the contract on behalf of the organization;

- d) Identify the names, titles, telephone and e-mail addresses of persons to be contacted for clarification;
- e) Be signed by the person authorized to contractually obligate the organization;

3. Independence

The firm should provide an affirmative statement that it is independent of the City as defined by generally accepted auditing standards.

The proposal must include a list of clients, if any, that are also tenants of the City of Santa Barbara. A list of tenants is available upon request.

4. License to Practice in California

An affirmative statement should be included that the firm and all assigned key professional staff are properly registered/licensed to practice in California.

5. Firm Qualifications and Experience

The proposer should state the size of the firm, the location of the office which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be so employed on a part-time basis.

The firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.

6. Prior Engagements with the City

List separately all engagements within the last five years, ranked on the basis of total staff hours, for the City by type of engagement (i.e. audit, management advisory services, other). Indicate the scope of work, date, engagement partners, total hours, the location of the firm's office from which the engagement was performed, and the name and telephone number of the principal client contact.

7. Similar Engagements With Other Entities

List the most significant engagements (maximum – 3) performed in the last five years that are similar to the engagement described in this request for proposal. These engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact.

8. Specific Revenue Examination Approach

The proposal should set forth a work plan, including an explanation of the examination methodology to be followed, to perform the services required of this request for proposal. Proposers will be required to provide the following information on their examination approach:

- a. Level of staff and number of hours to be assigned to each proposed segment of the engagement;
- b. Sample size and the extent to which statistical sampling is to be used in the engagement;
- c. Type and extent of analytical procedures to be used in the engagement;
- d. Approach to be taken in drawing examination samples for purposes of tests of compliance.

9. Identification of Anticipated Potential Revenue Examination Problems

The proposal should identify and describe any anticipated potential revenue examination problems, the firm's approach to resolving these problems and any special assistance that will be requested from the City.

10. Report Format

The proposal should include sample formats for required reports.

11. Project Schedule

A schedule indicating the time necessary to complete the proposed scope of services. Provide a projected timeline, outlining the number of months and specific milestones/phases, from inception of the assignment to the completion of the revenue examinations.

12. Fee proposal

The fee proposal shall cover all costs to perform the described work.

- a) State the proposed cost **per** revenue examination. Again, 6-8 examinations will be requested per year.

NOTE: Quoted fees shall be valid for a minimum of 60 days upon receipt.

The City reserves the right without prejudice to reject any or all proposals.

Additional documents (see exhibits) that will be required of the selected consultant include:

1. Professional Services Contract, including Contractor's Nondiscriminatory Employment Certificate, Living Wage Certification, Living Wage Notice
2. Non-Collusion Declaration filled out and signed

Selection Process and Criteria

From the proposals received, Waterfront Department staff will select the most qualified consultant/firm to begin negotiations with the intent to enter into a Professional Services Agreement. If more than one proposal is selected, the consultants/firms will be scheduled for interviews. Consultant/firm selection will be based on the RFP response, qualifications and demonstrated experience, knowledge of local conditions, understanding of the project, acceptance of the City's Professional Services Agreement, and ability to complete the work within the Waterfront Department's desired timeframe. The City reserves the right to request best and final offers and/or to negotiate with any or all proposers. Selection will be based on the following criteria (note: criteria are not in order of importance):

1. Project Manager's qualifications and demonstrated ability to perform the work as outlined above, based on information provided by the Firm and client references.
2. Qualifications of the Firm's, knowledge of local conditions and ability to perform the work as outlined in the RFP.
3. The Firm's responsiveness and availability to Waterfront Staff, and the ability of the Firm's key staff to effectively and efficiently complete the project.
4. The Firm's understanding of the project as demonstrated by the project approach, the proposal's responsiveness to the RFP and project needs, and their demonstrated ability to meet the Waterfront Department's desired time frame.
5. The Firm's proposed project schedule.
6. The Firm's performance on similar projects; cite client references.
7. The Firm's fee proposal for the project.

The Firm receiving the highest rating by Waterfront Department staff will be notified and start negotiations. If negotiations are not successful, the Waterfront Department will then contact the Firm with the next highest rating and start negotiations. As part of entering into agreements with the successful firms, the Firm is required to sign an agreement including the indemnification and hold harmless language and to provide the Waterfront Department with evidence to obtain insurance with an insurer or insurers that are satisfactory to the Waterfront Department within 14 calendar days from notice of award. Failure to meet the insurance regulation set forth will result in the proposer's disqualification.

The successful firm shall execute the professional services contract with the Waterfront Department which is subject to the approval of the City Council. A sample copy of this contract is included for reference as Exhibit 1. Included in the contract is language regarding Nondiscriminatory Employment and Living Wages. The successful consultant will be required to complete the "Contractor's Nondiscriminatory Employment Certificate" and "Contractor's Living Wage Certification" included in the document before the Waterfront Department awards a contract. The proposer is required to obtain a business license from the City prior to the execution of the agreement for consulting services.

Acceptance or Rejection of Proposals

The contract will be awarded to the consultant whose proposal most closely satisfies the needs of the Waterfront Department. The Waterfront Department reserves the right to waive any minor informality or irregularity in any proposal. The Waterfront Department reserves the right to negotiate the scope of work and final cost of the project after selection of the consultant. The Waterfront Department reserves the right to reject any and all proposals or portions thereof, received in response to this RFP.

Failure to provide the signed declarations and certificates and to meet the insurance regulations and professional liability requirements as set forth shall result in the Firm's disqualification.

Disclosure of Proposal Contents

All proposals will be treated as confidential documents until the selection process has been completed. Once the selection has been made, all proposals will become a public record. Under the California Public Records Act, any information submitted with a response is a public record subject to disclosure unless a specific exemption applies.

Contractual Agreement

Attached to this RFP is a sample Professional Services Agreement. The successful consultant/firm will be required to sign a similar agreement (Exhibit 1). As stated in the Professional Services Agreement:

- As part of the consideration for this agreement, Consultant/Contractor agrees to purchase and maintain at its sole cost and expense during the entire term of this agreement insurance coverage as specified.
- Contractor shall obtain necessary City business tax certificate prior to the execution of this Agreement at Contractor's expense, and shall maintain such certificate through the term of this Agreement.

State any exceptions to the terms and conditions in the Professional Service Agreement, the reason why you are taking an exception, and proposed alternative language. Acceptance of the Waterfront Department's terms is one of the evaluation factors.

Proposal Submittal Information

Submit one (1) electronic and two (2) hard copies of the proposal by 3:00 p.m. on Friday, June 3, 2016. Proposals are to be submitted to the Waterfront Department Office, 132-A Harbor Way Santa Barbara, CA 93109. Parking is at a premium on Friday afternoons, so please plan accordingly. Late responses will be rejected.

Contact Brian J. Bosse, Waterfront Business Manager, at 805-564-5525 or via e-mail at bbosse@santabarbaraca.gov with questions about this RFP.

Exhibits:

1. Sample Professional Services Contract, including Contractor's Nondiscriminatory Employment Certificate, Living Wage Certification, Living Wage Notice
2. Non-Collusion Declaration filled out and signed

EXHIBIT 1 – Sample Contract

CITY OF SANTA BARBARA AGREEMENT NO. _____

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on *(this is the date that Council approves it, assuming it goes to Council. If not, it is the date that the last person has signed.)* by and between the

The CITY OF SANTA BARBARA,

and

SAMPLE

(Name of Contractor),
hereinafter referred to as
"Contractor",

WITNESSETH:

Whereas, the City of Santa Barbara requires the services of professionals having the appropriate background, training, and experience necessary to assist the City of Santa Barbara in the performance of *(text description of contract services)*.

Now, therefore, the City of Santa Barbara and Contractor agree as follows:

1. CONTRACTOR'S SERVICES

Contractor shall, as authorized and directed by the City of Santa Barbara, provide the personnel, supervision, equipment, supplies, services, administration, transportation, and other needs to complete the work described in the attached Exhibit A. Contractor is responsible for obtaining and administering the employment of personnel having the training, experience, licenses, and other qualifications necessary for the work assigned. Contractor is an independent contractor and shall not be considered an agent or employee of the City of Santa Barbara for any purpose. Contractor and its employees and agents are not entitled to any of the benefits of City of Santa Barbara employees. All project-related costs shall be assumed and paid by Contractor. This contract provides the exclusive means of payment and reimbursement of costs to Contractor by the City of Santa Barbara.

Such work shall include the following:

- a. Contractor shall perform those services as described in Exhibit A, attached hereto and incorporated herein by this reference, in full compliance with adopted City of Santa Barbara policies and guidelines as provided to Contractor, and in compliance with all other applicable laws and regulations.
- b. Contractor shall perform all services and prepare all documents in professional form, exercising the special experience, skill, and education required for such service.

c. Contractor shall provide finished documents of presentation quality that evidence the highest standards of investigation, professional review, public participation, and presentation.

2. CLAIMS AND PAYMENT

a. City of Santa Barbara shall reimburse Contractor for personnel costs reasonably and necessarily incurred in the performance of required services according to the schedule of hourly rates included in the attached Exhibit A. Any changes in personnel or in rates of compensation specified in Exhibit A must be made in writing and require the prior written approval of (City of Santa Barbara **employee-contract administrator**).

b. City of Santa Barbara shall reimburse Contractor for other necessary costs including the actual costs of copies, printing, postage, shipping and documents expense, as well as the costs of other materials, equipment, services and supplies, as required to complete the work and approved by (City of Santa Barbara **employee-contract administrator**), according to the attached Exhibit A. Any costs associated with subcontractor work shall not include more than a 10% surcharge (of total cost of additional subcontractor work) for Contractor's supervision, administrative costs, profit and overhead.

c. Total compensation for services pursuant to this agreement, including all reimbursable expenses, shall not exceed the sum of (**contract amount in text**) (\$,000.00) without the express written approval of the City of Santa Barbara.

d. Contractor shall request payment by submitting a claim to the (**City employee-contract administrator**) for review and approval. Each Contractor claim shall contain an itemized statement showing the hours spent on each task by which employees following the budget format included in Exhibit A. Copies of subcontractors' invoices shall be attached to any Contractor claim seeking reimbursement for subcontractor expenses. Any claim requesting reimbursement for a direct expenditure (i.e., travel, postage, phones, etc.) in excess of \$100 shall include evidence of expenditure. A summary report of work completed shall be submitted with each claim.

e. Contractor shall submit claims for payment to the City of Santa Barbara on a monthly basis.

f. Contractor shall keep records concerning payment items on a generally recognized accounting basis and such records shall be maintained for a period of two (2) years following the completion of the work assigned. Such records shall be made available for copying, inspection or audit by City of Santa Barbara employees, or independent agents during reasonable business hours.

3. SCHEDULE OF PERFORMANCE AND BUDGET

Contractor shall satisfactorily perform the services described in Paragraph 1 of this Agreement within the Time Schedule shown in Exhibit A. Contractor shall review the remaining work and remaining budget at least monthly (or at such other interval as directed by City of Santa Barbara staff) and shall confirm that completion may be expected within the budget approved or, in the alternative, give immediate notice when it shall first appear that the approved budget will not be sufficient, together with an explanation for any projected insufficiency. Contractor shall immediately inform the (City of Santa Barbara **employee-contract administrator**) of any problems, obstructions or deviations of which Contractor becomes aware affecting Contractor's ability to complete the project in a timely, efficient and competent manner.

4. TERMINATION

The City of Santa Barbara may terminate this Agreement at any time, with or without cause, by giving seven (7) days written notice to Contractor. Upon such termination, Contractor shall be entitled only to compensation for services performed satisfactorily in accordance with this Agreement prior to notice of termination.

5. **NO ASSIGNMENT**

This Agreement for professional services is awarded on the basis of demonstrated personal skills and abilities and Contractor shall not assign this Agreement without the prior written consent of City of Santa Barbara, which may be granted or withheld at City of Santa Barbara's sole discretion.

6. **OWNERSHIP OF DOCUMENTS**

All documents prepared by Contractor pursuant to this Agreement shall become the property of the City of Santa Barbara upon full and complete compensation to Contractor for services performed herein. Contractor may retain copies of said original documents for Contractor's file.

7. **INDEMNITY**

a. Consultant/Contractor shall, to the extent permitted by law, investigate, defend, indemnify and hold harmless the City of Santa Barbara, its officers, employees and agents from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including reasonable attorneys' fees) and causes of action of whatsoever character which the City of Santa Barbara may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed under this Agreement other than as such work relates to Professional Liability insurance, except that loss, damage, liability, claim, demand, detriment, cost, charge and/or expense arising out of the established sole negligence or willful misconduct of the officers or employees of the City of Santa Barbara.

8. **INSURANCE REQUIREMENTS**

As part of the consideration of this Agreement, Consultant agrees to purchase and maintain at its sole cost and expense during the life of this agreement insurance coverage 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 the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- A. **Commercial General Liability (CGL)**: Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations with limits of no less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.
- B. **Automobile Liability**: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and Code 9 (non-owned), with limits of no less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- C. **Workers' Compensation**: In accordance with the provisions of the California Labor Code, Consultant is required to be insured against liability for Workers' Compensation or to undertake self-insurance. Statutory Workers' Compensation and Employers' Liability of at least \$1,000,000 shall cover all Consultant's staff while performing any work incidental to the performance of this agreement.

- D. Professional Liability:** Professional Liability (Errors and Omission) Insurance appropriate to the Consultant's profession, with limit no less than One Million Dollars (\$1,000,000) per occurrence or claim and Two Million Dollars (\$2,000,000) aggregate to cover all services rendered by the Consultant pursuant to this Agreement.

If the Consultant maintains higher coverage limits than the amounts shown above, then the City requires and shall be entitled to coverage for the higher coverage 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.

OTHER INSURANCE PROVISIONS

Each insurance policy shall contain, or be endorsed to contain, the following five (5) provisions:

1) *Additional Insured Status*

The City of Santa Barbara, its officers, employees, and agents, shall be covered as additional insureds on the Commercial General Liability and the Automobile Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Consultant. Additional Insured coverage shall be provided in the form of an endorsement to the Consultant's insurance (at least as broad as Insurance Services Office Form CG 20 10 11 85). A copy of the endorsement evidencing that the City of Santa Barbara has been added as an additional insured on the policy, must be attached to the certificate of insurance.

2) *Subcontractors*

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that the City is an additional insured on insurance required from subcontractors. For Commercial General Liability coverage subcontractors shall provide coverage with a format at least as broad as Insurance Services Office form CG 20 38 04 13.

3) *Notice of Cancellation*

A provision that coverage will not be cancelled or subject to reduction without written notice given to the City Clerk, addressed to P.O. Box 1990, Santa Barbara, California 93102-1990.

4) *Primary Coverage*

For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

5) *Waiver of Subrogation*

Consultant hereby agrees to waive rights of subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors.

ACCEPTABILITY OF INSURERS

All insurance coverage shall be placed with insurers that have a current rating from AM Best of no less than A: VII; and are admitted insurance companies in the State of California. All other insurers require prior approval of the City.

CLAIMS MADE POLICIES

If the required Professional Liability (Errors and Omissions) policy provides coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

COVERAGE LIMITS SPECIFICATIONS

Approval of the insurance by City or acceptance of the certificate of insurance by City shall not relieve or decrease the extent to which the Consultant may be held responsible for payment of damages resulting from Consultant's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.

If, for any reason, Consultant fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from the Consultant resulting from said breach. Alternately, City may purchase such required insurance coverage, and without further notice to Consultant, City may deduct from sums due to Consultant any premium costs advanced by City for such insurance.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the Consultant shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

EVIDENCE OF COVERAGE

Consultant must provide evidence that it has secured the required insurance coverage before execution of this agreement. A Certificate of Insurance supplied by the City or the appropriate ACORD and Insurance Services Office forms evidencing the above shall be completed by Consultant's insurer or its agent and submitted to the City prior to execution of this Agreement by the City.

Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

9. NOTICES

Notice may be given by personal delivery or by placing the notice in a properly addressed envelope and depositing that envelope in the United States mail with first class postage paid.

10. PROHIBITION AGAINST DISCRIMINATION

Section 9.126.020 of the Santa Barbara Municipal Code, prohibiting unlawful discrimination in employment practices is attached and described in Exhibit B and incorporated herein by reference. Contractor shall fulfill all obligations of a contractor under the provisions of such section.

11. CITY SERVICE CONTRACTOR MANDATORY MINIMUM WAGE

Chapter 9.128 of the Santa Barbara Municipal Code establishes a mandatory minimum wage for employees of contractors providing services to the City. In the performance of this Agreement, Contractor and any subcontractor, agent, or assignee of Contractor under this Agreement shall comply with the provisions of Chapter 9.128 of the Municipal Code as such Chapter existed upon the adoption of this Agreement or the last date this Agreement was amended.

12. BUSINESS TAX CERTIFICATE

Contractor shall obtain necessary City business tax certificate prior to the execution of this Agreement at Contractor's expense, and shall maintain such certificate through the term of this Agreement.

13. RIGHT TO PERFORM SIMILAR SERVICES

Nothing in this Agreement shall restrict the City of Santa Barbara from providing the same or similar services through City of Santa Barbara employees, other contractors, other resources, or by arrangements with other agencies. Contractor may engage in similar activities to the extent that such work does not conflict with the proper performance of services under this Agreement.

14. CONFLICT OF INTERESTS

Contractor warrants by execution of this Agreement that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage or contingent fee, and that Contractor maintains no agreement, employment, or position which would be in conflict with the duties to be performed for the City of Santa Barbara under this Agreement. Contractor further agrees that during the term of this agreement, Contractor will not obtain, engage in, or undertake any interests, obligations or duty which would be in conflict with, or interfere with, the services or duties to be performed under the provisions of this Agreement.

15. NO WAIVER OF PROVISIONS

No waiver of a breach of any provision of this Agreement shall be construed to be a continuing waiver of that provision, nor a waiver of any breach of another provision of this Agreement.

16. APPLICABLE LAWS, PARTIAL INVALIDITY

This agreement shall be subject to the laws, rules, regulations, Charter and ordinances in effect within the City of Santa Barbara, County of Santa Barbara, California, and any interpretation of the law that may be necessary shall be pursuant to the laws applicable within that jurisdiction. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable for any reason, that

provision shall be deleted from this Agreement and such deletion shall in no way affect, impair, or invalidate any other provision of this Agreement, unless it was material to the consideration for the performance required. If a provision is deleted which is not material to such consideration, the remaining provisions shall be given the force and effect originally intended.

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

CITY OF SANTA BARBARA
A Municipal Corporation

Entity Name

Paul Casey
City Administrator

Signature

ATTEST:

Type or Print Name

Sarah Gorman
City Clerk Services Manager

Title

APPROVED AS TO CONTENT:

Address

Scott Riedman
Waterfront Director

City State Zip

Telephone Number

APPROVED AS TO FORM:
Ariel Calonne
City Attorney

By _____

Business Tax Compliance:
Certificate No. _____

By _____

Approved as to Insurance:

Mark Howard
Risk Manager

EXHIBIT 2 CONT. – NONDISCRIMINATORY EMPLOYMENT CERTIFICATE

Santa Barbara Municipal Code § 9.126.020

A. Certificate Generally

Consistent with a policy of nondiscrimination in employment on contracts of the City of Santa Barbara and in furtherance of the provisions of Section 1735 and 1777.6 of the California Labor Code a "contractor's obligation for nondiscriminatory employment certificate" as hereinafter set forth shall be attached and incorporated by reference as an indispensable and integral term of all bid specifications and contracts of the City for purchases, services, and the construction, repair, or improvement of public works.

B. Contents of Certificate

The Contractor's obligation for nondiscriminatory employment is as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. The Contractor will take positive action or ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.
3. The Contractor will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City advising the said labor union or workers' representative of the Contractor's commitments under this provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the City, the Fair Employment Practices Commission, or any other appropriate agency of the State designated by the City for the purposes of investigation to ascertain compliance with the Contractor's Obligation for

Nondiscriminatory Employment provisions of this contract, or Fair Employment Practices statute.

5. A finding of willful violation of the nondiscriminatory employment practices article of this contract or of the Fair Employment Practices Act shall be regarded by the City as a basis for determining that as to future contracts for which the Contractor may submit bids, the Contractor is a "disqualified bidder" for being "nonresponsible". The City shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the Contractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426 or obtained an injunction under Labor Code Section 1429.

Upon receipt of any such written notice, the City shall notify the Contractor that unless he demonstrates to the satisfaction of the City within a stated period that the violation has been corrected, he shall be declared a "disqualified bidder" until such time as the Contractor can demonstrate that he has implemented remedial measures, satisfactory to the City, to eliminate the discriminatory employment practices which constituted the violation found by the Fair Employment Practices Commission.

6. Upon receipt from any person of a complaint of alleged discrimination under any City contract, the City Administrator shall ascertain whether probable cause for such complaint exists. If probable cause for the complaint is found, the City Administrator shall request the City Council to hold a public hearing to determine the existence of a discriminatory practice in violation of this contract.

In addition to any other remedy or action provided by law or the terms of this contract, the Contractor agrees that, should the City Council determine after a public hearing duly noticed to the Contractor that the Contractor has not complied with the nondiscriminatory employment practices provisions of this contract or has willfully violated such provisions, the City may, without liability of any kind, terminate, cancel, or suspend this contract, in whole or in part. In addition, upon such determination the Contractor shall, as a penalty to the City, forfeit a penalty of \$25.00 for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance. Such moneys shall be recovered from the Contractor. The City may deduct any such penalties from any moneys due the Contractor from the City.

7. The Contractor certifies to the City that he has met or will meet the following standards for positive compliance, which shall be evaluated in each case by the City:
 - a. The Contractor shall notify all supervisors, foremen and other personnel officers in writing of the content of the nondiscrimination provision and their responsibilities under it.
 - b. The Contractor shall notify all sources of employee referrals (including unions, employment agencies, advertisements, Department of Employment) of the content of the nondiscrimination provision.
 - c. The Contractor shall file a basic compliance report as required by the City. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also specify the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire.
 - d. The Contractor shall notify the City of opposition to the nondiscrimination provision by individuals, firms or organizations during the period of this contract.
8. Nothing contained in this Contractor's Obligation for Nondiscriminatory Employment Certificate shall be construed in any manner to prevent the City from pursuing any other remedies that may be available at law.

9. The Contractor certifies to the City that he will comply with the following requirements with regard to all subcontractors and suppliers:
 - a. In the performance of the work under this contract, the Contractor will include the provisions of the foregoing paragraphs (1) through (8) in all subcontracts and in any supply contract to be performed within the State of California, so that such provisions will be equally binding upon each subcontractor and each supplier.
 - b. Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction by the City, the Contractor may request the City to enter into such litigation to protect the interests of the City.

EXHIBIT 2 CONT. - APPENDIX C - LIVING WAGE CERTIFICATION

Official Notification to: _____

The service contract that is pending between your company and the City of Santa Barbara is subject to the City of Santa Barbara Living Wage Ordinance, SBMC Chapter 9.128 (hereinafter referred to as "the Ordinance"). Pursuant to this ordinance, you are hereby notified that your company is required to demonstrate compliance by **completing and returning the attached compliance statement. This statement must be completed and returned before contract commencement.** You may fax the compliance statement to: either the requesting department or to the City of Santa Barbara Finance Department (Purchasing) at (805) 897-1977.

Please Note: Current living wage rates will apply to all subsequent contracts and amendments during the remainder of the current fiscal year ending June 30, 2014.

The City of Santa Barbara Living Wage Ordinance was adopted on April 4, 2006 (Ordinance number 5384). All capitalized terms used herein are used as defined in the Ordinance. The Ordinance requires that persons directly working on City of Santa Barbara contracts, for services specified in the ordinance, are to be paid a living wage while working on the City of Santa Barbara contract. The Ordinance only applies to those persons directly providing services to the City and does not apply to administrative or support staff employees of a Service Contract, such as administrators, payroll, personnel, or similar employees. The Ordinance also does not apply to employees who are Handicapped, Apprentices, Learners, or Student Interns, who are otherwise part of an employer's training program as those terms are defined in the Ordinance. The Ordinance also states that employees have the right to expressly negotiate and agree to wage and benefit levels different than those required by the Ordinance.

The Ordinance requires that employees working for your firm on this contract be notified that the City of Santa Barbara Living Wage Ordinance applies to them. As part of compliance for this contract, you are required to notify affected employees.

Effective from July 1, 2013, through June 30, 2014, the current rate for minimum compensation to employees is:

- 1. If benefits are not provided to an Employee, a wage of no less than \$16.39 per hour.**
- 2. If Basic Medical Insurance and Compensated Holidays are provided to the Employee, a wage of no less than \$14.05 per hour**
- 3. If Supplemental Employee Benefits are provided to the Employee, a wage of no less than \$12.88 per hour.**

(All capitalized terms used herein are used as defined in the Ordinance, SBMC Chapter 9.128)

Also be advised that the City may request any or all certified payrolls associated with this contract, however, any such request will be made to your firm in writing and provide fourteen calendar days to respond. The City may also conduct on-site audits to verify compliance. These audits may include, but are not limited to, employee interviews.

Direct questions regarding this Ordinance to General Services Manager, City of Santa Barbara Finance Department, P.O. Box 1990, Santa Barbara, CA 93102.

1. * Select A, B C or D below.

- A. The Living Wage Ordinance does not apply to this contract because:**
 - Exemption for Handicapped Individuals and Apprentices.** For the purposes of this form, an employee shall not include a “handicapped employee” employed pursuant to a special license issued under Sections 1191 and 1191.5 of the state Labor Code or an “apprentice” or “learner” employed pursuant to a special license issued under Section 1192 of the state Labor Code.
 - Exemption for Student Interns.** For the purposes of this form, an employee shall also not include a student intern which shall be defined as a person receiving educational or school credit at a duly licensed and accredited school or educational institution as part of or in connection with his or her employment or service with the City Service Contractor.
 - Public Entity**
 - Non-profit exemption.**
 - Workers are part of a bona fide collective bargaining agreement.**
 - Persons employed are defined as executive or professional as used in the federal Fair Labors Standards Act of 1938 (29 USC Section 201 et. seq.).**
 - Including this agreement, the amount awarded by the City to your firm through one or more agreements is less than seventeen thousand & five hundred & sixty-one dollars (\$17,561) when calculated on a City fiscal year basis (July to June)**
 - Services are incidental. Explain:**

** Complete the certification portion on page 3.*

- B. Employees working on City of Santa Barbara contracts receive a pay rate that meets or exceeds the City of Santa Barbara Living Wage requirement of \$16.39 per hour without benefits.**

** Complete items #2, #3, #4, #5 and the certification portion on page 3.*

- C. Employees working on City of Santa Barbara contracts receive a pay rate that meets the City of Santa Barbara Living Wage requirement of \$14.05 per hour with the following benefits:**

1. A combined twelve days compensated leave time annually for full-time employees, and prorated leave for employees working less than full time

2. Basic Medical Insurance Coverage for the Employee.

* Complete items #2, #3, #4, #5, #6 and the certification portion on page 3.

D. Employees working on City of Santa Barbara contracts receive a pay rate that meets the City of Santa Barbara Living Wage requirement of \$12.88 per hour with all of the following benefits:

1. A combined twelve days compensated leave time annually for full-time employees, and prorated leave for employees working less than full time
2. Basic Medical Insurance Coverage for the Employee.
3. Basic Medical Insurance Coverage for the Employee's spouse, domestic partner or family.
4. One additional Supplemental Benefit as defined in the Ordinance.

Pension or deferred compensation retirement plan.

Childcare or dependent care.

Equivalent of ten (10) eight hour days of compensated leave over and above the compensated leave in item 1.

Other: _____

* Complete items #2, #3, #4, #5, #6 and the certification portion on page 3.

2. Will any subcontractors perform work on this contract? **Yes** **No**

If yes, please indicate company(s) on an additional page.

3. Will you post employee notification form in an area accessible to employees working on City of Santa Barbara contracts? **Yes** **No**

4. You may be required to provide certified payroll records, time cards, and other records any time during the contract period to demonstrate compliance. These payroll records must include the following information for each employee working on this contract: employee name, job classification, employer benefit contribution, and hourly pay under this contract.

Do you agree to provide this information within 14 calendar days when requested? **Yes** **No**

The City may also perform on site payroll audits that may include, but are not limited to, employee interviews.

5. a) Please provide the total affect that the Living Wage requirements had on your bid price (i.e., no cost affect, increase bid price by \$..., etc.)?

b) How many employees benefited from the living wage requirement? _____

c) How much did the above employees benefit in aggregate during the contract: \$_____

6. The City has several insurance plans. To qualify for a lower wage tier, you must offer insurance at no cost to your employees and match one of the following plans in terms of co-pays/out-of-pocket expenses.

Aetna HMO: No deductible, \$100 co-pay for emergency room visits, no charge for preventative care, \$25 co-pay for office visits to Primary Care Physicians/\$35 co-pay to

Specialists; Prescriptions: \$20 co-pay for generics; \$30 co-pay for brand, & \$45 co-pay for non-formulary

Kaiser HMO: No deductible, \$35 co-pay for emergency room visits, no charge for preventative care, \$10 co-pay for office visits; Prescriptions: \$5 co-pay for generics; \$15 co-pay for brand, & non-formulary is not covered

Aetna Open Access Managed Care PPO: Deductibles: \$500/individual \$1,000/family, \$100 co-pay + 20% coinsurance for emergency room visits, no charge for preventative care, \$25 co-pay for office visits; Prescriptions: \$20 co-pay for generics; \$30 co-pay for brand, & \$45 for non-formulary

Aetna Health Reimbursement PPO: Deductibles: \$2,000/individual \$4,000/family, 20% coinsurance for emergency room visits, no charge for preventative care, 20% coinsurance for office visits; Prescriptions: \$10 co-pay for generics; \$20 co-pay for brand, & \$35 for non-formulary

Aetna Health Savings Account PPO: Deductibles: \$2,500/employee only coverage, \$5,000/family, 20% coinsurance for emergency room visits, no charge for preventative care, 20% coinsurance for office visits; Prescriptions: \$15 co-pay for generics; \$25 co-pay for brand, & \$40 for non-formulary

The signatory below hereby certifies, under penalty of perjury, that the forgoing information is correct:

Company Name

Company Address

City, State, Zip

Contact Name

Phone number

Fax number

Name and Title (Please print)

Signature

Date

You may fax the compliance statement to: City of Santa Barbara Finance Department (Purchasing) at (805) 897-1977.

LIVING WAGE NOTICE

The company you are working for has a contract or contracts with the City of Santa Barbara that is subject to the Living Wage requirements.

Effective from July 1, 2013, through June 30, 2014, the current rate for minimum compensation to employees is:

- 1. If benefits are not provided to an Employee, a wage of no less than \$16.39 per hour.**
- 2. If Basic Medical Insurance and Compensated Holidays are provided to the Employee, a wage of no less than \$14.05 per hour.**
- 3. If Supplemental Employee Benefits are provided to the Employee, a wage of no less than \$12.88 per hour.**

(All capitalized terms used herein are used as defined in the Ordinance, SBMC Chapter 9.128)

If you believe that there has been a violation of any provision of these regulations or the City's Living Wage Ordinance, please report such acts to the City along with any pertinent records that will assist the City in its investigation. The City will investigate the claim of violation and determine whether a violation of the Living Wage Ordinance is apparent or not.

Upon receipt of notice of a possible violation, the City shall notify the Service Contractor of the complaint and shall seek a mutually acceptable resolution within twenty (20) days from receipt of the complaint form. If resolution is not accomplished, the City shall make a determination regarding the alleged violation and advise the Employee of how he or she may pursue their right to a legal action to determine whether a violation has occurred or not.

If the City determines that no violation of the City's Living Wage Ordinance is apparent, the City Finance Director shall issue a written notice of its determination to both you and the Service Contractor. However, the making of such a determination shall not preclude you from initiating legal action seeking a legal determination that a violation of SBMC Chapter 9.128 has occurred.

Service Contractors shall not discharge, reduce the compensation of, or otherwise discriminate against or retaliate against you for making a complaint to the City, participating in any of its proceedings, using any civil remedy to enforce his or her rights, or otherwise asserting his or her rights under these regulations or SBMC Chapter 9.128.

If you feel that you are being retaliated against (such as termination, reduction in wages or benefits or adverse changes in working conditions) for alleging contractor non-compliance with these regulations, you may report the alleged retaliation in the same manner as the initial complaint.

EXHIBIT 2- NON-COLLUSION DECLARATION

This declaration is submitted with a proposal to the City of Santa Barbara. I declare under penalty of perjury, as follows:

That any statement of fact in such proposal is true, without reservation;

That such proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company association or corporation;

That such proposal is genuine and not collusion or sham;

That I have not, directly or indirectly, by agreement, communication or conference with anyone, attempted to induce action prejudicial to the interest of the City of Santa Barbara, or any other bidder or proposer or anyone else interested in the proposed contract; and further,

That prior to the public opening and reading of this proposal,

- a. I did not, directly or indirectly, induce or solicit anyone else to submit a false or sham proposal;
- b. I did not, directly or indirectly, collude, conspire, connive or agree with anyone else that I or anyone else would submit a false or sham proposal, or that anyone should refrain from bidding or withdraw this proposal;
- c. I did not, in any manner, directly or indirectly, seek by agreements, communications, or conference with anyone to raise or fix any overhead, profit, or cost element of this proposal price, or that of anyone else; and
- d. I did not, directly or indirectly, submit the proposal price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any other corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any individual or group of individuals, except to the City of Santa Barbara (and to persons who are not bidders separately and who have a partnership or other financial interest with me in my business).

I declare under penalty of perjury that the foregoing is true and correct.

(Date and Place)
Signature

Name of Bidder