

CITY OF UPLAND



REQUEST FOR PROPOSAL FOR CITY NEWSLETTER

RFP: #20-002

Issue Date: **August 10, 2020**
Due Date: **September 15, 2020**
Tuesday, 10:00 a.m.

City Contact: **Stacey Guzman**
Phone: (909) 931-4289
Email: sguzman@ci.upland.ca.us

PURPOSE

The City of Upland is seeking proposals from experienced companies for creative support, text, copy, graphic design and layout, artwork services, print production, and mailing of the City's newsletter, ***Upland Today News Magazine***. The selected consultant will work closely with staff in ensuring the completion and production of the quarterly newsletter. The objective is to provide a cost-effective, quality publication, which will enhance the City's image and inform its public. The term of this contract is expected to be three (3) years with two (2) one-year options to renew.

INTRODUCTION

The City of Upland is a full-service municipality serving approximately 78,000 residents. The City of Upland produces and mails 36,750 copies of the ***Upland Today News Magazine*** on a quarterly basis (Spring, Summer, Fall, and Winter) to Upland households and businesses with the remaining copies available at City facilities. The newsletter serves as a vital communication tool between programs, special events, public service announcements, and other information of interest to the community.

PROPOSAL TIME SCHEDULE

Monday, August 10, 2020	Request for Proposal (RFP) posting on www.uplandca.gov
Monday, August 24, 2020	Final Questions Due from Proposers by 12 p.m. noon
Tuesday, September 1, 2020	Response to Questions and Clarifications posting on www.uplandca.gov
Tuesday, September 15, 2020	RFP due prior to 10:00 a.m. to Upland City Hall
Thursday, September 17, 2020	Evaluation of Proposals
Week of September 28, 2020	Interviews (If Needed)
Thursday, October 1, 2020	Notification to Proposers
Monday, October 12, 2020	Contract Awarded

DESCRIPTION

Scope of Services

1. Develop an updated design for the ***Upland Today News Magazine***.
2. Preparation of a mutually agreed upon deadline schedule. (Sample schedule attached as APPENDIX A). The production of the newsletter is extremely time sensitive and deadlines must be met.
3. Take and provide high resolution and high quality, professional digital photographs for inclusion in newsletter, which will become property of the City and available for their use.

4. Copy write original stories, articles and copy edit articles submitted by various staff members and/or departments. This may include contacting and interviewing members of the community, City officials, and City staff.
5. Design, layout, produce all artwork and graphic work, and format text for an 8.125" x 10.375" vertical, full color, printed two-sided, 36-page newsletter on 50# Offset, or other options recommended by consultant. Alternate format suggestions are encouraged and will be considered.
6. Provide City with preliminary and final PDF full color proofs for review/editing and approval.
7. Deliver final proofs to printer and supervise printing of 36,750 copies.
8. Coordinate delivery to mail house.
9. Simplified presort and delivery to post office.
10. Prepare and provide City PDF files for web viewing, downloading, and printing.

Services to be Performed by the Consultant

At a minimum, consultant will be required to:

1. Work with City staff in the development of the publication, which will include, but is not limited to, determination of appropriate photos and graphics, color and format, and appropriate time schedule. Consultant will attend meetings as necessary to prepare newsletter.
2. Design the newsletter, write and edit stories and articles; provide photography, prints from proof sheet; design format and layout; supervise typesetting and paste-up; proofread; deliver preliminary and final materials for review and approval by City; make any final corrections or changes; prepare final layouts; deliver final proof to printer and supervise printing; coordinate preparation and delivery to Post Office with mail house. Pay for all mailing costs related to postal distribution of publication.
3. Pay all costs for additional photos (if needed) and required by the City, as well as actual production-related expenses handled by consultant.
4. Submit itemized invoice on a quarterly basis after the publication has been distributed.
5. Designate one person to serve as project manager and liaison with the City.
6. Enter into an agreement with the City to perform the aforementioned services.

Services to be Performed by the City

1. Designate a primary representative(s) to work with consultant.
2. Cooperate and assist consultant in article research and editorial viewpoint.
3. Assist consultant with arrangements for interviews and photo sessions as necessary with City officials and staff at times mutually agreed upon.
4. Review preliminary copy and approve final copy within a mutually agreed upon time schedule.
5. Approve camera-ready copy.

Instructions to Proposers

Proposal Preparation

Proposal Format: Proposals must be typewritten.

Conformance to Proposal Requirements: Proposals must conform to the requirements of the Request for Proposal. All necessary attachments (references, descriptive literature, etc.) must be submitted with the proposal and in the required format. Proposal prices must be the unit indicated in the proposal. Failure to comply with all requirements may result in the rejection of your proposal.

Contract Requirement: Contractor shall execute a written contract with the City within ten (10) calendar days after notice of the award has been sent by mail to the address given in this proposal.

Signature on Proposal: Proposal must be signed in ink by an authorized representative of the proposer. Signature on a proposal certifies that the proposal is made without connection with any person, firm, or corporation making a proposal for the same goods and/or services and is in all respects fair and without collusion or fraud.

Signature on the proposal also certifies that the proposer had read and fully understands all proposal specifications, terms, and conditions. No consideration will be given to any claim resulting from bidding without comprehending all requirements of the Request for Proposal.

Proposal Submission: Sealed proposals must be received with date and time stamp noted by the City Clerk's Office, prior to proposal closing time. No proposal received after closing proposal time will be considered. To ensure proper identification and handling, all proposals must be submitted in a sealed envelope, with the proposal name and closing date clearly indicated on the outside of the envelope.

Proposal Modification: Modifications or erasures made before proposal submission must be initialed in ink by the person signing the proposal. Proposals, once submitted, may be modified in writing before the time and date set for proposal closing. Any modifications shall be prepared on company letterhead, signed by an authorized representative, and state that the new document supersedes or modifies the prior proposal. Modifications must be submitted in a sealed envelope clearly marked “Proposal Modification” and closing date. Proposers may not modify proposals after proposal closing time.

Proposal Withdrawals: Proposals may be withdrawn in person or in writing by presenting their withdrawal on company letterhead signed by an authorized representative, and received by the Recreation and Community Services Manager, prior to the proposal closing time.

Protest of Proposal Specifications: A proposer who believes proposal specifications are unnecessarily restrictive or limit competition may submit a protest, in writing, to the Recreation and Community Services Manager. To be considered, protests must be received at least five (5) days before the proposal closing date. Envelopes containing protests should be clearly marked as follows:

Proposal Specification Protest

Proposal Name: City Newsletter

Closing Date: September 15, 2020

Clarifications: Should a consultant require clarification to this RFP, the consultant shall notify the City in writing in accordance with directions for “submitting requests” outlined below. Should it be found that the point in question is not clearly and fully set forth in the RFP; the City may issue a written addendum clarifying the matter.

Submitting Requests: All consultant questions, clarifications or comments shall be submitted in writing and must be received by the City no later than **August 24, 2020**, and be addressed as follows:

**City of Upland
460 N. Euclid Avenue
Upland, CA 91786
Attn: Stacey Guzman**

or emailed to: sguzman@ci.upland.ca.us.

All correspondence shall be clearly marked on the outside in the case of written questions, or in the Subject heading in the case of e-mails, or on the cover sheet in the case of facsimiles, with “RFP – Proposal for City Newsletter-- Questions”.

Inquiries for clarification received after August 24, 2020 will not be accepted.

City Responses: Responses from the City will be communicated in writing by Addendum and will be posted on the City website no later than **September 1, 2020**.

PROPOSAL SUBMISSION REQUIREMENTS

A. CONSULTANT PROPOSAL ENVELOPE "A"

Envelope "A" shall consist of the technical proposal and shall contain the following information:

- A project approach for all work describing how the consultant and any proposed sub-consultants plan to accomplish the task described, including an estimate of the level of effort (personnel hours) to be expended.
- A discussion of the proposed project schedule for each phase of the project, and what methods your firm will use to meet the proposed schedule.
- The name(s) of the Consultant's staff to be assigned to this project, their proposed duties, and their relative experience.
- A description of similar projects, maximum of three, recently performed by your firm. The City would prefer projects in which the proposed team members had direct participation. References must be submitted for each project, including the name and telephone number of a current contact familiar with your performance on the identified project, a description of the work performed, the total value of the contract, and the beginning and end dates of the contract.
- Provide information on any instances where a contract was terminated for convenience or for cause. Note any convictions or indictments of the firm or any officers of the firm within the last three years involving alleged fraud, bribery, collusion, or violation of state or federal antitrust law, or discipline by any government body or professional association.
- Samples of relevant work completed in the past.
- Any requested modifications to the City's standard agreement (copy enclosed, APPENDIX B).
- Consultant shall complete and sign the Non-Collusion affidavit (APPENDIX C) and submit with proposal.

B. CONSULTANT PROPOSAL ENVELOPE “B”

Envelope “B” shall consist of the fee schedule for the project and shall be marked **“CITY OF UPLAND, City Newsletter – ENVELOPE “B” – FEE PROPOSAL – DO NOT OPEN”**. The fee schedule shall include the number of personnel hours, sub-consultants, and other direct costs listed by item and phase. The proposal estimate should itemize separately the cost for design, printing, mailing, postage, and PDF Files for Web viewing as well as any extra or incidental charges the City may potentially be responsible for. In addition, a current hourly fee schedule shall be included, along with a “Not-to-Exceed” or a “Lump Sum” total project fee.

SELECTION CRITERIA

The following selection criteria will be used in evaluating the proposals and selecting a successful consulting firm. Responsive proposals will be ranked in each of the criteria below.

- Ability to design, print, distribute (postage and mailing) and support distribution timelines for newsletter. Provide brief profile of firm including the year founded, number of employees, areas of expertise, location of offices. Strength and stability of the firm. Appropriateness of personnel to their assigned work tasks. (10 points)
- The performance and qualifications of the specific individuals who will work on publication and their experience on similar projects. Include brief resume of key personnel and understanding of applicable subject matter, experience on comparable projects, education, and applicable professional credentials. (10 points)
- The design and quality of the newsletter proposed. Depth of consultant’s understanding of City’s requirements. Understanding of projects issues and potential conflicts. Ability to meet deadlines. (10 points)
- Demonstrated record of success of the consultant’s work for other municipalities, public agencies, or similarly scoped services. Provide at least three (3) references include agency name, address, contact person, email and telephone, and dates of work performed. (20 points)
- The reasonableness of fees requested to do the work, which would enable the City to implement and begin production on the revised newsletter by a specified target date. Adequacy of data in support of figures quoted. Basis on which prices are quoted. (40 points)
- Evaluation of samples of past publications and promotional pieces. (10 points)

Selection of the successful consultant will be performed by the City Consultant Selection Committee, formed by the City. The committee may decide to interview several consultants

before making a choice. The recommended consultant chosen by this committee shall be submitted to the City Council for final approval.

Arrangements for compensation may be negotiated after the consultant is selected. The consultant shall enter into a formal agreement with the City based upon the contents of the RFP and the Consultant's proposal. The City's standard form of agreement is enclosed for your review.

The Consultant shall carefully review the agreement, especially in regard to indemnity and insurance provisions, and include with the proposal a description of any exceptions requested to the standard agreement. If there are no exceptions, a statement to that effect shall be included in the proposal.

AWARD

The contract will be awarded to the proposer who, in the opinion of the City Manager or the City Consultant Selection Committee, offers the best combination of price and performance and meets all requirements of the specifications. If there are discrepancies between services, the City reserves the right to clarify pricing. A failure on the proposer's part to list all cost components detailed to the service will not be accepted; if this information is not included the City has an acceptable justification to reject the proposal.

The City reserves the right to retain all proposals for a period of sixty (60) days for examination and comparison. The City also reserves the right to waive non-substantial irregularities in any proposal, to reject any or all proposals, to reject or delete one part of a proposal and accept the other, except to the extent that proposals are qualified by specific limitations.

Proposals which require payment in less than thirty (30) days after receipt of invoice or delivery of services, whichever is later, may be rejected.

DISCLAIMER

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

The City of Upland may reject any proposal not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any and all proposals upon the City finding it is in the public interest to do so. The City also reserves the right to waive any informality in any proposal and to delete certain items listed in the proposal as set forth herein. The City reserves the right to accept other than the lowest priced offer.

Proposals received after the time established for receiving proposals will not be considered.

Facsimile and E-mail proposals are not acceptable.

The City of Upland programs, services, and activities are open to all persons without regard to race, sex, age, handicap, religion, ethnic background, or national origin. For further information about this policy, please contact the Administrative Services Department of the City of Upland, (909) 931-4120.

The Consultant shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City.

The Agreement shall be terminated by the City upon giving a written "Notice of Termination" to consultant at least fifteen (15) days prior to the date of termination specified in said Notice. In the event the agreement is terminated, consultant shall be compensated on a pro-rate basis with respect to the percentage of the project completed as of the date of termination. In no event, however, shall the consultant receive more than the maximum specified in agreement. Consultant shall provide to the City any and all documents and photographs whether in draft or final form, prepared by the Consultant as of the date of termination. Consultant may not terminate agreement except for cause.

SUBMITTAL OF PROPOSALS

Four (4) copies of the proposal shall be submitted in two separate sealed envelopes:

- 1) Envelope "A" shall contain the technical proposal with responses relating to the proposed scope of services, qualifications, relevant experience, and similar projects.
- 2) Envelope "B" shall contain the fee to provide services for the work and the terms thereof as described in Envelope "A", including maximum limits not to be exceeded.

CONTRACT PERFORMANCE

Audit: City shall have the option of inspecting and/or auditing all records and other materials used by the Consultant in preparing its invoices to City as a condition precedent to any payment to Consultant.

Interests of Consultant: Consultant covenants that it presently has no interest, and shall not acquire and interest-direct, indirect, or otherwise, that would conflict in any matter or degree with the performance of the work hereunder. Consultant further covenants that, in the performance of this work, no subcontractor or person having such an interest shall be employed. Consultant certifies that no one has or will have any financial interest in performing this work, nor are they an officer or employee of the City. It is hereby expressly agreed that in the

performance of the work hereunder, the Consultant shall at all times be deemed an independent consultant and not an agent or employee of the City.

Proposals shall be submitted to:

**City Clerk
City of Upland
460 N. Euclid Ave
Upland, CA 91786
Attn: Stacey Guzman**

**Mailing Address:
City of Upland
460 N. Euclid Avenue
Upland, CA 91786
Attn: Stacey Guzman**

PROPOSAL RESULTS

All proposers will be notified via mail regarding the results of the proposal process. Proposers may request tabulation of awarded proposals.

Proposal shall be submitted no later than 10:00 a.m. on Tuesday, September 15, 2020. Postmarks and late proposals will not be accepted.

Enclosures:

- Sample Production Schedule (Appendix A)
- City Standard Agreement (Appendix B)
- Non-Collusion Agreement (Appendix C)

APPENDIX A

SAMPLE PRODUCTION SCHEDULE

UPLAND TODAY ANNUAL TIME SCHEDULE

	Summer 2020	Fall 2020	Winter 2020	Spring 2021
Story Conference with City	2/18	6/10	8/26	11/12
Story Info/Drafts to Geographics	2/27	6/17	9/3	11/16
Recreation and Library Information to Geographics	3/16	6/25	9/16	12/2
Geographics contacts departments for article detail	2/27 - 3/16	6/17-6/25	9/3-9/16	11/16-12/2
Geographics prepares first mockup	3/17 - 3/23	6/25-7/6	9/16-9/23	12/2-12/10
City Review - draft #1	3/23-3/27	7/6-7/13	9/23-10/1	12/10-12/18
Revisions by Geographics	3/30-4/1	7/14-7/17	10/2-10/7	12/21-1/5/2021
City Review - draft #2	4/2-4/10	7/20-7/27	10/8-10/16	1/5-1/13/2021
Revisions by Geographics	4/13-4/15	7/27-7/30	10/19-10/22	1/13-1/18/2021
City Review - draft #3	4/16-4/20	7/31 - 8/4	10/23 - 10/27	1/19 -1/26/2021
Revisions by Geographics	4/20	8/4	10/27	1/26
Final sign off by City	4/21	8/5	10/28	1/27
Final Art to Printer	4/22	8/6	10/29	1/28
Printing	4/24-4/30	8/7-8/12	10/30-11/4	1/29-2/3
To Mailhouse	5/1	8/13	11/5	2/4
Deliver to Post Office	5/5	8/17	11/10	2/8
Mailed to Residents	5/7	8/19	11/13	2/10
Registration Starts	6/1	9/2	12/2	3/2

APPENDIX B

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

CITY NEWSLETTER PROJECT NUMBER

THIS AGREEMENT is made and effective as of _____, between the City of Upland, a municipal corporation ("City") and _____ ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM.** This Agreement shall commence on October 12, 2020 and shall remain and continue in effect for three (3) years with two (2) one-year options to renew.

2. **SERVICES.** Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE.** Consultant represents that it has that degree of knowledge and experience and holds all necessary licenses to practice and perform the services herein contemplated and shall at all times faithfully, competently and to the complete satisfaction of the City, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **PREVAILING WAGES.** Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. Copies may be obtained from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov>. Consultant shall provide a copy of prevailing wage rates to any staff or sub-contractor hired, and shall pay the adopted prevailing wage rates as a minimum. Consultant shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Consultant shall forfeit to the City, as a penalty, the sum of \$25.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any subcontractor under him, in violation of the provisions of the Contract.

5. **PAYMENT.**

a. The City agrees to pay Consultant quarterly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full,

based upon actual time spent on the above tasks. This amount shall not exceed _____ (*insert dollar amount here*) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

b. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

The City Manager may approve additional work up to ten percent (10%) of the amount of the Agreement or fifty thousand dollars (\$50,000.00). Any additional work in excess of this amount shall be approved by the City Council.

c. Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of consultant's fees it shall give written notice to Consultant within 30 days of receipt of an invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least ten (10) days' prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 4.

7. DEFAULT OF CONSULTANT.

a. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

b. If the City Manager or his delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the

Consultant with written notice of the default. The Consultant shall have (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS.

a. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

c. With respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit A without the written consent of the Consultant.

9. INDEMNIFICATION.

a. The Consultant agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City.

b. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

10. INSURANCE REQUIREMENTS. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

a. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- (1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.
- (2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.
- (3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.
- (4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

b. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

- (1) General Liability: One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (2) Automobile Liability: One million dollars (\$1,000,000) per accident for bodily injury and property damage.
- (3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.
- (4) Professional Liability coverage: Two million (\$2,000,000) per claim and in aggregate.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (1) The City, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, or volunteers.
- (2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
- (4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- (6) Additional Insured – All policies, except for Worker's Compensation and Professional Liability policies, shall contain endorsements naming the City of Upland and their officers, employees, agents, and volunteers as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. The additional insured endorsements shall also be primary and non-contributory.

(7) Waiver of Subrogation Rights - CONSULTANT shall require the carriers of Commercial General Liability, Automobile Liability and Worker's Compensation to waive all rights of subrogation against the City of Upland, and its officers, employees, agents, and volunteers. Such insurance coverage provided shall not prohibit CONSULTANT's employees or agents from waiving the right of subrogation prior to a loss or claim. CONSULTANT hereby waives all rights of subrogation against the City of Upland.

e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VIII, and admitted and licensed to do business in the State of California, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

f. Verification of Coverage. Consultant shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

11. INDEPENDENT CONTRACTOR.

a. Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

c. PERS Eligibility Indemnification: In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

12. LEGAL RESPONSIBILITIES. The Consultant shall keep itself informed of all local, State and Federal ordinances, laws, and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant is responsible for compliance with the Patient Protection and Affordable Care Act (2010), and City shall not be obligated to provide any health care coverage to Consultant. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

13. RELEASE OF INFORMATION.

a. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subcontractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

b. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall

effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

20. AUTHORITY TO EXECUTE THIS AGREEMENT. The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

21. SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

22. WAIVER. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

23. CONSTRUCTION. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

24. COSTS. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

25. RESPONSIBILITY FOR ERRORS. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

26. ATTORNEYS' FEES. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

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

CITY OF UPLAND

Rosemary Hoerning, City Manager

Attest:

Keri Johnson, City Clerk

Approved as to Form:

Steven Fowler, Interim City Attorney

CONSULTANT

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

APPENDIX C

NON-COLLUSION AFFIDAVIT

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

_____, being first duly sworn, deposes and says
(Name of Affiant)

That he is _____ of _____
(Title) (Name of Proposer)

the party making the foregoing proposal; that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit or cost element of the proposal price, or of that of any other proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and further, that the proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

The provisions of this Affidavit shall not be held as disqualifying a person, firm, or corporation who has submitted a sub-proposal to one proposer from submitting separate sub-proposals or quoting prices for material or work to other proposers.

(Signature) (Title)

(Type or Print Name)

California All-Purpose Acknowledgment

State of California
County of _____)

On _____ (date), before me, _____

(Insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Signature _____