



Community Services Department

CITY OF UPLAND

Released on September 29, 2015

Proposal Submittal Deadline: October 29, 2015 by 4:00 p.m.

City Clerk's Office, 460 N. Euclid Avenue, Upland, CA 91786





CITY OF UPLAND

ANIMAL CONTROL AND SHELTERING SERVICES

REQUEST FOR PROPOSALS

The City of Upland (“City”) is soliciting proposals from qualified organizations to provide animal control services and operate an animal sheltering facility. The term is expected to be for three (3) years with two (2) one-year options to renew.

In April of 2015, a similar RFP for Animal Control and Sheltering Services was distributed. While some proposals were received, the overall concern was that services were being bid on by organizations that did not have a history of providing all services requested. Therefore, the City of Upland is looking for creative solutions to the cost of providing animal control and sheltering services. The City will consider proposals for only animal control services, only animal shelter services, or both services together. An organization may submit separate bids or may submit one bid for all services. For the purposes of this proposal process, it will be assumed that animal control services are limited to field animal control services and that animal sheltering services will include all intake, coordination of veterinary care, adoption, and licensing.

SECTION 1 BACKGROUND

Incorporated in 1906, the City of Upland is a full-service city with a population of approximately 75,147 covering 15.3 square miles. Known as the “City of Gracious Living”, Upland is situated on the western border of San Bernardino County, nestled at the base of the San Gabriel Mountains. It is bordered by the cities of Claremont, Montclair, Ontario and Rancho Cucamonga.

Upland is a general law city with a Council-Manager form of government. The City provides a full range of municipal services including operating its own police and fire departments. The City also maintains three public enterprise services; a water utility, a solid waste utility and a sewer utility. The City employs approximately 250 full-time employees.

The adopted operating budget for FY 2015/16 is \$122,709,286 with a General Fund budget of \$42,891,550.

SECTION 2 SCHEDULE

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|--------------------------------|--------------------|
| RFP Release Date: | September 29, 2015 |
| Shelter Visit (10 a.m.) | October 7, 2015 |
| Deadline for Written Questions | October 21, 2015 |

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| Responses for Questions Posted on Web | October 26, 2015 |
| Proposal Submission Deadline: | October 29, 2015 |
| Proposers Notified | November 5, 2015 |
| Approval of Contract | November 9, 2015 |
| Proposed Animal Control/Shelter Management Transition | January 1, 2016 |

All dates are subject to change at the discretion of the City

SECTION 3 OBJECTIVE

The objective of the RFP is to examine all available options for providing animal control and shelter services in the most cost effective manner possible while maintaining the highest level of service. As stated above, the City will entertain creative solutions for each operational area – animal control and animal sheltering services – or one proposal for all services.

The City of Upland is soliciting proposals from groups to provide daily operations as detailed in Sections 4 of this RFP. The successful proposer(s) will continue to conduct operations out of the shelter located at 1325 San Bernardino Road and be responsible for its upkeep and maintenance. Built in 2010, the shelter is a 19,000 square foot facility with 70 indoor/outdoor dog kennels, 40 cat kennels and 2 quarantine areas.

It is estimated that 2,550 animals will be impounded from the City of Upland on an annual basis. Proposed services to the public are animal care for impounded animals, shelter administration, veterinary wellness care, redemptions, adoptions, dead animal disposal, animal foster care, rabies control, euthanasia services, emergency response, as well as other services found within an animal control shelter. This shelter will continue to be identified as the Upland Animal Shelter, and signage will include the City of Upland logo.

The City’s guiding principle has been that we will try to find a home for every adoptable pet. Euthanasia should only occur as a last resort after adoption and veterinary care have been exhausted. The mission of the Upland Animal Shelter is to provide quality services necessary to promote the safety and welfare of people and animals in our community. We strive to be a comprehensive program continually improving the quality of responsible pet ownership and the humane treatment of domestic animals while maintaining positive relationships with adoption partners, local governments and volunteers to collaboratively save animal lives.

SECTION 4 SCOPE OF SERVICES

Services will be provided at or above the current minimum level of service offered by the CITY. Policies and procedures for shelter services shall be based on standards and/or guidelines commonly employed in public animal control shelter operations and approved by the CITY. All activities will be compliant with relevant provisions of CITY ordinances as well as State and Federal laws. Clinical operations must comply with all Drug Enforcement Agency (DEA) regulations regarding storage, recordkeeping, inventory, use, and disposal of all controlled substances.

Hours of Operation-Minimum hours open to public:

Shelter Services: Monday, Tuesday, Friday- 12:00 p.m. to 5:30 p.m.
Wednesday and Thursday-12:00 p.m. to 7:00 p.m.
Saturday and Sunday-10:00 a.m. to 3:00p.m.

Public Phone Services: Monday, Tuesday, Friday-7:00 a.m. to 5:30 p.m.
Wednesday and Thursday-7a.m. to 7:00 p.m.
Saturday and Sunday-7:00 a.m. to 3:00 p.m.
(The City shall be provided a phone number for off hours contact).

City holidays are as follows: New Year's Day (January 1), Memorial Day (last Monday of May), Independence Day (July 4), Labor Day (first Monday of September), Thanksgiving Day (fourth Thursday of November), Christmas Eve (December 24, close at 12 p.m.) and Christmas Day (December 25). In the event that a holiday falls on a Friday or Saturday then it will be observed on the previous Thursday. If the holiday falls on a Sunday then it will be observed on the subsequent Monday.

It is expected that the shelter will be staffed daily (7 days a week, 365 days a year) to provide adequate care and treatment for shelter animals.

Fees / Deposits / Donations:

Any and all fees charged by the successful respondent will be consistent with the CITY fee resolution. Higher fees may not be charged. Fees will be reviewed by Contractor and CITY annually.

Any and all license fees or administrative citation fines/fees collected are transferable to CITY and are to be deposited to CITY on a daily basis. During contract negotiations an agreed upon baseline amount for license revenue will be established. Any amount above the baseline will be rebated back to the Consultant to encourage license canvassing, further promoting responsible pet ownership.

Successful respondent shall deposit all such fees and charges collected in a CITY bank account designated by CITY by no later than the close of the next business day. When payments are tendered by check, money order or other non-cash remittance, such payment shall be made payable to "City of Upland." The successful respondent shall be responsible for clearance and payment of all checks or other non-cash remittances so deposited. Collection charges on CITY residents shall be paid for solely by successful respondent. The successful respondent shall provide the CITY a daily accounting of all deposits for each calendar month in such detail as reasonably required by the CITY by no later than the 10th day of the following month. Deposit balances shall be reconciled at the end of each fiscal year ending on June 30th with appropriate adjustments being made on behalf of CITY.

Costs of veterinary care for impounded animals are included in the shelter operating budget. All fees and charges levied on behalf of the CITY for impound, board or adoption of animals shall

be retained by the Consultant. Fees charged shall not exceed the amount set by the City Council. Any funds from unclaimed deposits as described in California Food & Agriculture Code 30503 (Dogs) and 31751.3 (Cats) shall be spent for purposes described therein.

Records

The contractor will maintain and keep records of all expenditures and obligations incurred in the shelter operation as defined by the scope of service and all income and fees received thereby according to generally recognized accounting principles. Such records shall be maintained in accordance with CITY policy and retention schedule. The records and/or Shelter operations shall be open to inspection and audit by the CITY or its authorized representative on an annual basis or as is deemed necessary by the CITY. All records pertaining to animals taken in, medically treated, or impounded must comply with California Food & Agriculture Code § 32003.

Reports

Monthly and year-to-date reports and invoices detailing shelter performance and financial activities will be sent to CITY by the last day of the following month.

Two monthly reports regarding animal intakes and outcomes are required:

- (a) Intake and outcome statistics of all animals in accordance with Asilomar Accord recommended reporting and,
- (b) California State Department of Health Services.

The number of animals transferred to “qualified rescue groups” as defined by California state law.

A monthly revenue report showing all revenues will be forwarded to the CITY by the 10th of the following month. This report should include both month and year to date revenue by revenue type.

Customer Satisfaction Report: a monthly evaluation, using statistics, of customer satisfaction. Respondent is required to include as part of this RFP, as Attachment A, a formal plan to measure customer satisfaction.

Complaint Log: recording any dissatisfaction or problem in the performance of services.

Animals transferred to parent or subsidiary organizations with consent of CITY must be reported on a monthly basis. This will include two reports. One of animals transferred: including animal ID number, age and breed of animal. A Second of previously transferred animals: including initial date of transfer, initial ID number, and ultimate adoption rate.

Any other data or report as requested by CITY.

The selected Contractor must be able to demonstrate operational capacity to fulfill the scope of City services required as written within this RFP and in particular the following services:

SHELTER SERVICES

Administration

The contractor shall perform administrative services to include, but not limited to, tracking all animals impounded, billings, budget monitoring, financial reporting, annual audits, computerized financial system, report preparation, recruit and train staff, and implement volunteers services program. The Plan for volunteer services shall include staffing requirements using volunteers, training for volunteers, and supervision of volunteers, methods to recruit future volunteers, and measurable goals and objectives of the volunteer program. This plan must be submitted as Attachment B to the response to this RFP.

Impoundment of animals

The contractor shall be responsible for the impoundment, care, treatment, custody and feeding of any and all domestic animals and the impoundment of wildlife, as may be delivered and/or received at the Shelter until an appropriate wildlife agency can be contacted and the wildlife then transferred into their custody; and maintaining an up-to-date computerized record of all animals processed through the Shelter. Contractor shall comply with all current state, county and CITY mandates for animal retention and shall hold animals for the period established by law. Written standard operating procedure for the isolation and separation of animals must be provided as Attachment C to the RFP submittal.

Every animal that arrives at the Shelter should receive a cursory examination and vaccinations within one (1) hour by a staff member(s) trained to provide animal assessments to determine any emergent needs, if any. A more comprehensive exam will be performed within twelve (12) hours, except after regular business hours when the examination will be performed within twenty-four (24) hours.

The contractor shall create kennel cards for each animal noting the name, breed, color, gender, age kennel number, animal id #, impound date, review date, intake type, person who did intake, food, any license #, and comments.

Maintenance of a process for local residents to report lost and found animals, identify by any means available (including microchips) the animals with owner identification, and inform the inquiring public. This will include:

- (a) Providing "lost and found animal" forms that may be completed at the Shelter;
- (b) Having Shelter staff process submitted forms within 24 hours, excluding and legal holidays;

The Contractor will provide a computerized shelter management and record keeping system. Computerized shelter management and record keeping system is subject to CITY approval. The CITY currently uses Chameleon software.

Records shall also be maintained for:

- (1) The number of dogs, cats and other animals brought in/surrendered by owners for impoundment;
- (2) The number of dogs, cats and other animals impounded;
- (3) Total animals impounded;

- (4) The number of dogs, cats and other animals adopted or transferred; and
- (5) The number of stray/impounded dogs, cats and other animals returned to owner;
- (6) Total dogs, cats and other animals euthanized and subtype in accordance with Asilomar Accords.

Behavioral Assessments

Contractor shall perform a basic behavioral assessment for dogs and a training evaluation for puppies less than six (6) months of age to assist with the selection process of dogs available for adoption This will also include information on evaluating the temperaments and behaviors of cats within the Shelter. Submit to the CITY as Attachment D to this RFP its behavioral assessment system.

Redemption, adoption, transfer and/or disposal of any and all animals impounded at the shelter

Shelter staff shall notify the owners by telephone or in person with regard to the impoundment of their animal, within 24 hours; and in writing via U.S. Mail of the impoundment of their animal. Documentation of all such notification activity shall be maintained and made available to the CITY upon request. Contractor is required to uphold the provisions of CITY Ordinances and applicable state law for any and all animals redeemed by owners residing in the incorporated area of the City of Upland. This includes all requirements for spay, neuter, and micro-chip, as well as the necessary citations to gain compliance.

The goal is to place 100% of adoptable animals into homes. To offer suitable animals for adoption, and operate and manage adoption activities, which shall include potential pet owner counseling, mandatory spay/neutering of all animals placed for adoption and compliance with all applicable laws. Contractor will host events to encourage adoption of Shelter animals. Successful Contractor will be required to submit its adoption procedures and policies within 30 days of selection.

Community Adoption Partners

Successful Contractor is encouraged to utilize the resources of adoption partners to provide a high live animal release rate. California Food & Agriculture Code, § 31108(b) [dogs] and 31752(b) [cats] state any stray dog/cat “that is impounded pursuant to this division shall, prior to the killing of that animal for any reason other than irremediable suffering, be released to a nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal rescue or adoption organization if requested by the organization prior to the scheduled killing of that animal. In addition to any required spay or neuter deposit, the pound or shelter, at its discretion, may assess a fee, not to exceed the standard adoption fee, for animals released.”

Successful Contractor is restricted from transferring animals to a parent or subsidiary organization without the written consent of the CITY.

Foster Care Placement

A foster care placement program can assist the Shelter by improving animal care, give certain animals a better chance of adoption, and lift the spirits of staff and volunteers. No foster animal shall be euthanized without a written report which details the reasons for the euthanasia. Contractor shall outline the foster care program as Attachment E to this RFP.

Rabies Control Program

The contractor shall establish a Rabies Control program, including vaccination and licensing in compliance with California Code of Regulations, Title 17, 2606.4, ensuring that all dogs, four months and older, released from the Shelter are licensed and, if not licensed, to sell license to the owner or other person taking custody of each such dog.

The contractor shall conduct at least six (6) one-day clinics each year, including at least one (1) at cost rabies vaccination clinic as required by California State law to be held on a Saturday or Sunday at the shelter, for the vaccination of dogs and cats, at times and dates approved by CITY.

Materials and Information

The contractor shall offer complementary educational material and animal care information programs, including the benefits of spay/neutering and humane animal care, to the public at the Shelter and on the website.

The contractor shall establish and maintain a shelter specific website upon effective contract date, and include on this website photographs of all impounded animals within 2 hours of arrival to the shelter, including legal holidays. These photographs must be of a quality as specified by California Food & Agriculture Code § 32001 (d).

Euthanasia Services

Provide euthanasia service as required for any impounded stray animal held at the Shelter for the lawful number of days, if such animal is not reclaimed by said animal's owner and is deemed to be not adoptable. Animals that are irremediably suffering from a serious illness or severe injury shall not be held for owner redemption or adoption.

Only methods of euthanasia and drugs currently approved by the American Veterinary Medical Association shall be used. Euthanasia methodology shall be submitted as Attachment F to this RFP.

Euthanasia training shall be in accordance with Section 2039 of the California Code of Regulations, Title 16, Division 20, Article 4, must be provided to all staff performing this function. Documentation that appropriate Shelter staff has been trained in this regard shall be made available on a reasonable basis to the CITY within 30 days of training.

Records will be kept per CITY policy on each euthanized animal including the following information: breed; sex; color; weight; other distinguishing characteristics; date, time and location where animal was found; method of euthanasia, brand name of euthanasia drug used,

amount of pre-euthanasia drugs, amount of euthanasia drugs used and reason for use of method. Monthly euthanasia reports must be submitted to the CITY.

Proper Disposal of Dead Animals

It shall be prohibited that any animal whether dead or alive, which has been impounded, in custody, or in quarantine at the Shelter be given away, disposed of, traded, sold or in any manner given over to another person, organization or entity for experimentation, regardless of purpose. Successful Contractor shall be responsible for the disposal of animal remains in its custody or control, subject to applicable laws.

Disease Control and Sanitation

The contractor shall maintain the Shelter in a clean and sanitary condition in order to control the growth or presence of bacteria, disease and unpleasant odors. Policies and procedures for disease control and sanitation shall be based on standards and/or guidelines commonly employed in public animal shelter operations. Policies and procedures in this area may include beneficial standards and/or guidelines derived from reputable animal care organizations including, but not limited to, the following: Humane Society of the United States, American Humane Association, San Bernardino County Department of Animal Services and American Veterinary Medical Association. Policies and procedures for disease control and sanitation shall be included in this RFP as Attachment G.

Maintenance of the Shelter

The contractor shall maintain the Shelter and grounds in good, operating condition to include but not limited to:

1. Building interior space areas (restrooms, lobby, corridors, carpet, flooring, employee break rooms/kitchens, office areas, doors, windows, closets, file rooms, copying and storage areas, ceiling). This does not include regular janitorial service.
2. Building systems (refuse, telephone, security, etc.). Contractor will provide phone, computer and other electronic equipment and maintain services. Contractor will provide for building security.
3. Building equipment (computer hardware and software, tables, desks, chairs, file cabinets, book shelves, copier, office furniture, furnishings, etc.).
4. Provide security personnel services as needed.
5. The Contractor shall maintain property cleanliness.
6. Contractor is responsible for all utility charges including electric, gas, water, phones and security monitoring system.

Shelter Furnishing, Fixture, and Equipment (FFE)

CITY will provide certain furnishings, fixtures and equipment (FFE). Prior to Consultant beginning operations, CITY will provide Consultant with an inventory of all furnishings, fixtures and equipment that are to remain the property of the CITY. Said items shall be maintained in accordance with reasonable use. Any of the FFE that are damaged due to Contractor negligence or abuse must be replaced at the Contractor's expense and must be of the same quality as the FFE provided by the CITY.

All furnishings, supplies and equipment, not provided by the CITY are the responsibility of and provided at the expense of the Contractor

FIELD SERVICES

Dispatch

The contractor will have dispatch available to answer phones and dispatch calls Monday – Friday from 7:00 a.m. to 5:00 p.m. and Saturday and Sunday from 6:00 a.m. to 4:00 p.m. , excluding Holidays.

Animal Control Officer Response and prioritized dispatch

The contractor shall prioritize the animal control officer response to field service calls and dispatch in response to calls, as well as the handling of calls while in the field by an animal control officer, including responding to vicious animal complaints, and other requests by the City of Upland Police, Fire, and Code Enforcement for animal control assistance.

Conduct Enforcement and Field Operations

The contractor shall be fully responsible for taking animals into custody, transportation of animals to the City's contracted animal shelter facility, administration and enforcement of animal control regulations, investigation of animal control complaints, as well as imposing penalties in accordance with California state law and the City of Upland Municipal code. Full services are required in the City of Upland including enforcement of the leash-law and animal license law.

A. Enforcement Hours

The contractor shall provide the full range of field operation services from the hours of 7:00 a.m. to 5:00 p.m. Monday-Friday and from 6:00 a.m. to 4:00 p.m. Saturday-Sunday excluding holidays.

B. Emergency Response

The contractor for animal control enforcement shall respond to emergency calls as quickly as possible, not to exceed 15 minutes from the time the call was received. Emergency response shall be for:

1. Vicious animals, animals in traffic, or animals that may reasonably constitute a hazard to persons or other animals or threaten public safety.
2. Injured or very sick animals.
3. Animals in distress, such as those caught in traps
4. Hardship cases or law enforcement assistance matters.

C. Complaints and referrals

The contractor shall investigate and follow up on all animal control complaints referred to it by the public, appropriate officers, health services or other entities where the complaints constitute violations of Upland Municipal Code Title 6.

D. Distressed Animals

Animals in distress, including hardship cases, such as owner arrest or house fires, must be taken to the animal shelter. Vicious animals at large must be impounded

E. Hazard Removal

Dead animals whose owners are unknown and which constitute a traffic hazard on City roadways must be removed immediately.

F. Disposal of Dead Animals

The contractor shall pick up and dispose of small or large dead animals from City streets and upon the request of the property owner pick up stray dead animals from private property within 2 hours of notification.

G. Animal Transport Equipment

The contractor shall maintain such vehicles and related equipment as are required for its operation and shall bear full responsibility for fuel, maintenance, insurance, and registration of the same.

H. Court Appearances

The contractor's personnel may, on occasion, be required to appear in court in support of enforcement actions. The contractor shall provide all necessary investigation, enforcement, testimony, follow-up and administrative hearings as may be required to fulfill the City's legal responsibility regarding animals, violations of law and animal control issues. The contractor shall not receive additional compensation for these appearances. Such appearances would be within the regular duty hours.

I. Quarantine Services

The contractor shall provide quarantine services as required by State law and Public Health. In addition, contractor shall provide any other service necessary to determine if rabies are present.

J. Suspected Rabid Animal

Any suspected rabid animal shall be handled in a manner prescribed by the San Bernardino County Health Officer.

K. Barking/Nuisance Dogs

Barking dogs and nuisance dogs shall be responded to in accordance with the Upland Municipal Code 6.04.140.

L. Wild Animals

As necessary, collect, impound or dispose of wild animals that are within the City in violation of animal control regulations or have been confined by a resident of the city.

M. Issuance of Citations

Contractor shall have officers properly trained and authorized to issue criminal or administrative citations in violation of City and State of California Animal Service laws, and to issue notices as provided by law. Contractor's Animal Service Field Officers shall prepare appropriate reports concerning violations, file such reports with applicable authority when necessary, and stand ready and available to testify in court or administrative hearing when called upon to do so concerning such violations.

N. Contractor Personnel

The contractor shall have at all times during the existence of an agreement a reasonable number of Animal Field Service Officers qualified under California Corporations Code Sections 14502 capable of performing and enforcing animal control laws relating to domestic animals.

- a. The Animal Field Service Officers hired by the contractor shall be duly qualified Animal Field Service Officers. They shall not carry handguns in the performance of their duties but may carry less-than-lethal weapons.
- b. Each Animal Field Service Officer shall have completed a course in training related to the exercise of his/her powers, which course shall meet the minimum standards prescribed by the Commission on Peace Officer Standards and Training, as provided in California Penal Code Sections 832 at the time of hire.

Emergencies

In the event of a declared emergency under City direction the contractor shall maintain responsibility for evacuation of shelter animals in case of emergency. Any City requests for emergency response will be forwarded by telephone and electronic mail directly to successful Contractor's designee. Any shelter emergency will be immediately relayed by telephone and electronic mail to City designee. The successful Contractor shall submit emergency response plan and shelter evacuation plan within 30 days of selection. All emergency responses must be authorized by the City Manager or designee.

Additional Services

Any additional services provided at the shelter shall be done without charge or with agreement of CITY.

Supplementary Attachments required by Respondent as outlined above

The following attachments are required as part of Response to Proposal:

- A. Plan to measure customer satisfaction
- B. Plan for volunteer services
- C. Standard operating procedure for the isolation and separation of animals
- D. Behavioral assessment system
- E. Foster Care Program
- F. Euthanasia Methodology
- G. Policies and Procedures for Disease Control and Sanitation

The following will be required after selection:

1. Adoption policies and procedures will be required by successful Contractor within 30 days of selection.
2. Emergency Response Plan will be required by successful Contractor within 30 days of selection.
3. Shelter Evacuation Plan, will be required by successful Contractor within 30 days of selection.

Additional contract cities or agencies

Contractor will not enter into any other contractual agreements which directly or indirectly involve the Shelter without written approval of the CITY.

SECTION 5 PROPOSAL FORMAT GUIDELINES

Interested entities or contractors are to provide the City of Upland with a thorough proposal using the following guidelines:

Proposal should be typed and should contain no more than 20 typed pages using a 12-point font size, including transmittal letter and resumes of key people, but excluding Index/Table of Contents, tables, charts, financial documents and graphic exhibits. Each proposal will adhere to the order and content of sections outlined below. Proposals should be straightforward, concise and provide “layman” explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. Proposals which appear unrealistic in terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract may be rejected.

Proposals must contain the following sections:

- A. Vendor Application and Cover Letter
- B. Table of Contents
- C. Corporate/Company/Agency Profile
- D. Methodology
- E. Cost Proposal
- F. Qualifications
- G. References
- H. Evidence of Insurability/ Business Licenses
- I. Financial Information
- J. Clarification/Exceptions/Deviations
- K. Disclosure
- L. Supplementary Attachments as required in Section 4

If the proposal submitted is only for a limited scope of the services requested (i.e. either animal control or sheltering services), please identify which elements of the scope of service (listed by the subheadings listed in the Section 4. Scope of Services) are contained in the bid and which are omitted.

- **Vendor Application Form and Cover Letter**

Complete Appendix A, “Request for Proposal-Vendor Application Form” and attach this form to the cover letter. A cover letter, not to exceed three pages in length, should summarize key elements of the proposal. An individual authorized to bind the contractor must sign the letter. The letter must stipulate that the proposal price will be valid for a period of at least 180 days. Indicate the address and telephone number of the contractor’s office.

- **Table of Contents**

This section shall include a comprehensive table of contents that identifies material by Sections A – L (in the order list above) and by sequential page numbers.

- **Corporate/Company/Agency Profile**

This section of the proposal is designed to establish the proposer as an entity with the ability and experience to operate the program as specified in the RFP. The Company Profile should be concise and clear, and include descriptive information regarding service delivery. The following information must be provided as follows:

1. Organization name and legal business status (i.e., partnership, corporation, etc.);
2. Proof of non-profit status, if applicable;
3. Company overview of services or activities performed, include:
 - a. The history of the proposer's firm - includes a brief history of the firm.
 - b. The number of years in business under the present business name, as well as prior business names.
 - c. Number of years experience providing the proposed, equivalent, or related services.
 - d. Company hierarchy (President, Vice President, Company Officers, etc.) and organizational chart. Organizational chart shall clearly identify all positions that are being proposed to be funded under the project.
 - e. Company size - number of staff, proposed number of staff to provide services, and participant base.
 - f. Location of the office from which the work under this contract will be provided and the staff allocation at that office.
4. Whether the proposer holds controlling or financial interests in any other organization, or is owned or controlled by any other person or organization, if none that must be stated.

- **Methodology**

Provide a detailed description of the approach and methodology to be used to accomplish the Scope of Work and Services of this RFP. The Methodology Section should include:

1. An implementation plan that describes in detail (i) the methods, including controls by which your firm or entity manages projects of the type sought by this RFP; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.
2. Detailed description of efforts your firm or entity will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.
3. Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion, including a complete transition plan. Include your plan to deal with fluctuation in service needs and any associated price adjustments.
4. Proposers are encouraged to provide additional innovative and/or creative approaches for providing the service that will maximize efficient, cost-effective operations or increased performance capabilities. In addition, the City will

consider proposals that offer alternative service delivery means and methods for the services desired.

5. Proposers are also requested to identify any City owned property which Proposer would propose to use or lease, purchase, or rent from the City in connection with the services to be performed, including information about the terms of any proposed lease, purchase or use of such equipment, and how this proposed structure affects the overall cost proposal to the City.

- **Cost Proposal**

All Proposers are required to use the Cost Proposal Sheet attached as Appendix B to be submitted with their proposal. Cost proposals should be clearly defined to ensure fees proposed can be compared and evaluated. Proposals shall be valid for a minimum of 180 days following submission. Proposers may also include any other documents as information to explain the proposed costs.

- **Qualifications**

The information requested in this section should describe the qualifications of the key staff and sub-contractors providing service. Information shall include:

Organizational chart identifying all positions that are being proposed to be funded under the project.

Provide a list of individual(s) who will be working on this project and their specific responsibilities with respect to this scope of work. Include a resume for each designated individual detailing relevant education, experience, credentials, certifications, and licenses.

Upon award and during the contract period, if the contractor chooses to assign different personnel to the project, the Contractor must submit their names and qualifications including information listed above to the City for approval before they begin work.

- **References**

All proposer(s) must include present and past performance information with a minimum of three (3) references. References cannot include Upland Elected Officials, Department Directors, or the requesting agency as a reference. However, references can include other CITY agencies that are not partaking in this RFP. Each reference shall include:

1. Dates and scope of work performed.
2. Current contact person, company, address, and email and telephone number for each reference identified.
3. Describe recent similar projects that are equivalent to the City. These experiences must show the qualifications of the proposer's capabilities to complete the City's requirements. Provide a summary of the scope of services performed for these other projects.

Please verify that all reference information is correct and authorized by the referenced

individual or entity. References must clearly correlate their performance with the requirements of this RFP.

- **Evidence of Insurability/Business Licenses**

All proposer(s) shall submit evidence of all required insurance. An Accord cover page will suffice and if awarded the contract the Proposer has ten (10) calendar days to produce the required insurances including a certified endorsement naming the CITY as additionally insured. The proposer shall certify to the possession of any and all current required licenses or certifications to conduct business within the City of Upland. Do not purchase additional insurance until this bid has been awarded. Provide a copy of current business license or other applicable licenses.

- **Financial Capacity**

Provide pertinent information which may include unaudited financial statements, financial references or other information that would allow the City to reasonably assess the financial capacity of the Proposer to conduct operations as outlined in the scope of services.

The Proposer must submit financial statements for its business and any proposed partners that are dated no more than twelve (12) months prior to the date of the proposal submission and cover a period of at least one (1) year. These statements should clearly identify the financial status and condition of the proposer's entire business entity. Please place in a separate envelope and mark "Confidential" if your firm requires this to be kept confidential. The CITY will protect the confidentiality of the information provided to the extent possible under the California Public Records Act. If the CITY is required to take legal action to protect the confidentiality of the information provided, the successful proposer will reimburse the CITY for all reasonable attorney fees and costs incurred in preventing the public disclosure of all information.

Describe any administrative proceedings, claims, lawsuits, or other exposures pending against the Proposer.

- **Clarifications, Exceptions or Deviations**

All bidder(s) shall describe any exception or deviation from the requirements of the RFP. Each clarification, exception or deviation must be clearly identified. If your firm has no clarification, exception or deviation, a statement to that effect shall be included in this section. The following contractual terms are non-negotiable:

1. Indemnification
2. All insurance terms
3. Termination
4. Ownership/Use of Contract Materials and Products(If applicable)
5. Disputes
6. Governing Law
7. Venue

The firm selected by the City will be required to execute an Agreement for Services

(Agreement) with the City. The form of the Agreement is enclosed as Appendix D, **but may be modified to suit the specific services and needs of the City. If a Proposer has any exceptions or conditions to the Agreement, these must be submitted for consideration with the proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement.** The scope of services outlined in the RFP and proposer's response will be incorporated into the final agreement as an exhibit.

- **Disclosure**

Please disclose any and all past or current business and personal relationships with any current Upland elected official, appointed official, City employee, or family member of any current Upland elected official, appointed official, or City employee. ***Any past or current business relationship may not disqualify the firm from consideration.***

Proposers and Proposers' representatives should not communicate with the City Council members about this RFP. In addition, Proposers and Proposers' representatives should not communicate outside the procedures set forth in this RFP with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFP Facilitator, regarding this RFP until after Contract Award.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Proposer's proposal, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf. Proposers shall include the Ex Parte Communications form (Appendix C) with their proposals certifying that they have not had or directed prohibited communications as described in this section.

- **Supplemental Attachments**

Provide information for all items listed in Section 4 of the Scope of Services.

SECTION 6 SUBMITTAL REQUIREMENTS

Complete written proposals must be submitted in sealed envelopes marked and received no later than 4:00 p.m. (P.S.T) on October 29, 2015 to the address below. Proposals will not be accepted after this deadline. Faxed or e-mailed proposals will not be accepted.

Organizations interested in submitting a proposal must provide 7 hard copies and one disk copy to:

City Clerk's Office
City of Upland
460 N. Euclid Avenue
Upland, CA 91786

The City reserves the right to accept or reject any or all proposals, to request additional information concerning any proposals for purpose of clarification, to accept or negotiate any modification to any proposal following the deadline for receipt of all proposals, and to waive

any irregularities or informalities in the proposal process, if such would serve the best interests of the City, as determined by the City. This solicitation does not obligate the City to enter into an agreement with any proposer. The City reserves the right to cancel this Request for Proposals (RFP) at any time, at its discretion. The City is not liable for any costs or expense incurred in the preparation of a response to this (RFP) and may modify or cancel this solicitation at any time.

The City will be the sole and exclusive judge of quality and compliance with the proposal specifications in any of the matters set forth herein. The City reserves the right to award an agreement in any manner it deems to be in the best interest of the City and make the selection based on its sole discretion.

Inquires

Any questions, interpretations, or clarifications, either administrative or technical, from prospective proposers regarding this RFP must be submitted to Jeannette Vagnozzi at jvagnozzi@ci.upland.ca.us.

Solicitation Interpretations and Addenda

Any change to or interpretation of this solicitation by the City will be sent to each party to which the Request for Proposals has been sent and any such changes or interpretations shall become part of the solicitation for incorporation into any agreement awarded pursuant to this RFP.

SECTION 7 EVALUATION AND SELECTION PROCESS

Evaluation of Proposal Packages

The City Manager shall designate an evaluation committee to review submitted proposals. In reviewing the proposals, the evaluation committee will carefully weigh the criteria listed below, to include but not limited to:

1. Overall responsiveness and general understanding of the RFQ requirements,
2. Proposer's experience and ability.
3. Overall cost to the CITY.
4. References with demonstrated success with similar work to the Scope of Service.
5. Financial status.
6. Clarification, Exceptions or Deviations.
7. Credential/Resumes/Licenses/Certifications.

Selection Process

Initial Review-All proposals will be given thorough review. Any incomplete proposal or proposal that fails to meet the basic criteria for the scope of work can be eliminated.

Evaluation Process-An evaluation panel composed of City staff and outside consultants will review the remaining proposals. The evaluation panel reserves the right to request additional information and may elect to examine and/or visit similar operations and/or facilities that are referenced.

Interviews (optional)- The top finalists may be interviewed by the evaluation panel at a date and time to be determined.

Selection-the evaluation panel will make a recommendation to the City Manager. The City Manager may ask the City Council to approve the selection. Once the contractor has been approved, the City manager will enter into negotiations for the agreement.

All evaluation material will be considered confidential and not released by the CITY. The CITY reserves the right to split or make the award that is most advantageous to the CITY and/or in the best interests of the CITY.

SECTION 8 CONTRACT

The successful Contractor will be required to enter into a Professional Services Agreement (Appendix D) with the CITY, which will include the requirements of this RFP, as well as other requirements to be determined. The City reserves the right to negotiate the price, terms, and scope of services with the proposer, prior to entering into an Agreement.

The agreement will contain provisions requiring the selected company to indemnify the City and provide that the company is an independent contractor serving at the will of the City Council. Provisions will also be included in the contract allowing the City Council to terminate the agreement, at its sole and entire discretion, upon the provision of notice.

The terms of the agreement, including insurance requirements have been mandated by the City and can be modified only if extraordinary circumstances exist. Submittal of a proposal shall be deemed acceptance of all the terms set forth in this RFP and the sample Agreement for Services unless the Proposer includes with its proposal, in writing, any conditions or exceptions requested by the Proposer to the proposed Agreement. In accordance with the Municipal Code, the City may consider the scope and number of conditions in evaluating proposals and determining the lowest responsible proposer.

APPENDIX A

VENDOR APPLICATION FORM



REQUEST FOR PROPOSAL-ANIMAL SHELTER AND CONTROL SERVICES

VENDOR APPLICATION FORM

TYPE OF APPLICANT: FOR PROFIT CORPORATION NON PROFIT CORPORATION

LEGAL CONTRACTURAL NAME OF CORPORATION:

CONTACT PERSON FOR AGREEMENT:

TITLE:

CORPORATE MAILING ADDRESS:

CITY, STATE AND ZIP CODE:

E-MAIL ADDRESS:

PHONE:

CONTACT PERSON FOR PROPOSAL:

TITLE:

E-MAIL ADDRESS:

BUSINESS PHONE:

BUSINESS FAX:

NAMES, TITLES AND PHONE NUMBERS OF PERSONS AUTHORIZED TO SIGN CONTRACTS

FEDERAL TAX IDENTIFICATION NUMBER:

CITY OF UPLAND BUSINESS LICENSE NUMBER:

(MUST OBTAIN UPON AWARD OF CONTRACT)

CITY OF UPLAND BUSINESS LICENSE NUMBER EXPRIRATION DATE:

APPENDIX B

COST PROPOSAL

COST PROPOSAL

Proposals shall provide a cost breakdown of the monthly and annual operating costs projected over the next year. Include any other cost and price information that would be contained in a potential agreement with the City. Amounts paid to the Contractor shall be based on a full twelve months of operation; however payments will be on a monthly basis. Payments made on operation of less than one month shall be pro-rated accordingly.

Consultant proposes the all inclusive fee structure covering the Scope of Services Required as noted in this RFP, Section 5, to provide animal sheltering and control services and for the operation and maintenance of the facility located at 1325 San Bernardino Road payable by the CITY at the rate of:

Monthly Fee \$ _____

Annual Fee \$ _____

(Please attach an additional sheet (s) if needed to provide detailed summary of all itemized costs and services that will be provided by the Contractor as a result of this service contract.)

APPENDIX C

EX PARTE COMMUNICATIONS

EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. Only sign one statement.

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning the Animal Services RFP at any time after September 30, 2015.

OR

I certify that Proposer or Proposer's representatives have communicated after September 30, 2015, with a City Councilmember concerning the Animal Shelter Services RFP. A copy of all such communications is attached to this form for public distribution.

APPENDIX D

SAMPLE AGREEMENT

**AGREEMENT
FOR PROFESSIONAL SERVICES
ANIMAL SHELTERING AND CONTROL SERVICES
PROJECT NUMBER**

THIS AGREEMENT is made and effective as of XX/XX/ 2015, 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 xx/xx, 2015 and shall remain and continue in effect until xx/ xx, 2018, unless sooner terminated pursuant to the provisions of this Agreement.

The City may, upon mutual agreement, extend the contract for two (2) - (one (1) year additional terms. If contract is extended beyond the original term, contract price shall be adjusted at the beginning of each calendar year in accordance with the changes in the Consumer Price Index for all Urban Consumers in the Los Angeles-Anaheim-Riverside Area published monthly by the United States Bureau of Labor Statistics (CPI).

2. **SERVICES.** Consultant shall perform the services and tasks described and set forth in the Request for Proposal (RFP), attached hereto as Exhibit "A" and incorporated herein as though set forth in full, and Consultant's Response to City's RFP (the Response) attached hereto as Exhibit "B".

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

4. **PAYMENT.**

a. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the Schedule of Payment as set forth in Exhibit "C", attached hereto and made a part of 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 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 forty-five (45) 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 a invoice of any disputed fees set forth on the invoice.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

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 effecting the coverage required by these specifications.

10. 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.

Upland, California 91785
460 North Euclid Avenue
Upland, California 91785
Attention: City Manager

To Consultant:

***Place Company Name, Address, And
Contact Person Info Here***

15. **ASSIGNMENT.** The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

16. **LICENSES.** At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

17. **GOVERNING LAW.** The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Upland. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

18. **PROHIBITED INTEREST.** No officer, or employee of the City of Upland shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-contractors for this project, during his/her tenure or for one year thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Upland has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's sub-contractors on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

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

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

Ray Musser, Mayor

Attest:

Jeannette Vagnozzi, City Clerk

Approved As to Form:

Richard L. Adams, II, Interim City Attorney

CONSULTANT

(Insert the Company, Name, Address, Contact Name, phone and fax number here)

By: _____
Name: _____
Title: _____

—

By: _____
Name: _____

Title: _____

(Two Signatures of Corporate Officers Required For Corporations)

EXHIBIT A

REQUEST FOR PROPOSAL:

SCOPE OF SERVICE

EXHIBIT B

RESPONSE TO REQUEST FOR PROPOSAL:
CONSULTANT'S PROPOSAL

EXHIBIT C
PAYMENT SCHEDULE