



West Cities Police Communications Center

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REQUEST FOR QUALIFICATIONS

The West Cities Police Communications Center (West-Comm), comprised of the Cities of Cypress, Los Alamitos and Seal Beach, is seeking consulting services for the purchase and implementation of a multi-jurisdictional Computer Aided Dispatch/Records Management System. The cities have previously evaluated a number of CAD/RMS vendors and have a preferred vendor. The selected consultant will be required to assist with the steps outlined under scope of services.

Demographics, Staffing and Workload

West Cities Police Communications is a Joint Powers Authority providing 911 public safety answering point and police dispatch services to the cities of Cypress, Los Alamitos and Seal Beach. These communities have almost 85,000 in population, each served by their own police department with a total of approximately 110 officers. Additionally, West-Comm provides contract dispatch services for the Orange County Park Rangers.

Current System

All agencies currently subscribe to the West Covina Service Group CAD/RMS.

Scope of Services

West-Comm and the cities are seeking professional services of an experienced Information Technology consultant with experience in both local and cloud-based computer hardware systems, CAD/RMS software systems and connectivity solutions. The contract for services will be for approximately one year and will conclude with final testing and acceptance. Attachment One is a standard contract that will govern the conditions for this agreement. Attachment Two lists special conditions required for this agreement. The consultant will perform, at a minimum, the following:

- Work with staff and established committees to understand the existing landscape and the preferred software vendor
- Assist staff in contract negotiations and final statement of work development
- Work with software vendor and staff on software configuration
- Work with staff and the preferred vendor to determine optimum hardware solution
- Assist as needed with system training
- Assist in "Go Live" process, Testing and Final Evaluation
- Attend all meetings related to the project unless excused

Response Requirements

- Brief description of qualifications, including similar projects
- Three to five references for work completed in the last 36 months
- Proposed fees

Proposals are due by Friday, February 26, 2016 by 5:00 PM.

Please email your response to:

Steve Ditmars, Interim Dispatch Administrator
West Cities Police Communications
SDitmars@West-Comm.org

Question may be directed to Mr. Ditmars via email.

Attachment One: Sample Standard Contract

Attachment Two: Special Requirements

Attachment One

WEST CITIES POLICE COMMUNICATIONS CENTER CONTRACT SERVICES AGREEMENT

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement"), is made and entered into this _____ day of _____, 20____, by and between the WEST CITIES POLICE COMMUNICATIONS CENTER, a Joint Powers Authority, (herein "West-Comm") and _____, a _____ Corporation (herein "Consultant"). (The term Consultant includes professionals performing in a consulting capacity.) The parties hereto agree as follows:

1.0 SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to West-Comm entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and services and Consultant is experienced in performing the work and services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials shall be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

Consultant hereby agrees to a background check by the designated member city's Police Department if Consultant shall work with persons of eighteen (18) years of age or under. (See Exhibit "E")

1.2 Consultant's Proposal. The Scope of Service may include the Consultant's proposal which, if included, is incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of West Cities Police Communications and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Each and every provision required by law to be included in this Agreement shall be deemed to be included, and this Agreement shall be read and enforced as though they were included.

1.4 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the

Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless West Cities Police Communications against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against West Cities Police Communications hereunder.

1.5 Familiarity with Work. By executing this Contract, Consultant warrants that Consultant (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which shall or will materially affect the performance of the services hereunder, Consultant shall immediately inform West-Comm of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Contract Officer.

1.6 Care of Work. The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by West-Comm, except such losses or damages as may be caused by West-Comm's own negligence.

1.7 Further Responsibilities of Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.8 Additional Services. West-Comm shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Contract Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the West-Comm Board of Directors and/or member cities' City Councils. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

1.9 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference.

In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

2.0 COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, the Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference, but not exceeding the maximum contract amount of _____ (\$ _____) (herein "Contract Sum"), except as provided in Section 1.8. The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation. Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expense, transportation expense approved by the Contract Officer in advance, and no other expenses and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings, West Cities Police Communications Board of Directors meetings, its member cities' City Council meetings reasonably deemed necessary by West-Comm and its member cities; Consultant shall not be entitled to any additional compensation for attending said meetings.

2.2 Method of Payment. Unless some other method of payment is specified in the Schedule of Compensation, in any month in which Consultant wishes to receive payment, no later than the first (1st) working day of such month, Consultant shall submit to West-Comm in the form approved by the Director of Finance of the member city of the City of Cypress, an invoice for services rendered prior to the date of the invoice. Except as provided in Section 7.3, West-Comm shall pay Consultant for all expenses stated thereon which are approved by West-Comm pursuant to this Agreement no later than the last working day of the month, subject to such extensions as may be necessary to obtain any required approvals for payment from the West Cities Police Communications Board of Directors and/its member cities' City Council.

3.0 PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D", if any, and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be

extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including West-Comm and its member cities, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against West-Comm or its member cities for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term. Unless earlier terminated in accordance with Section 7.8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance.

4.0 COORDINATION OF WORK

4.1 Representative of Consultant. The following principals of Consultant are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for West-Comm to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of West-Comm.

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the Interim Director of West-Comm, West-Comm Board of Directors, or designated City Manager from a member city. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by West-Comm to the Contract Officer. Unless otherwise specified herein, any approval of West-Comm required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the West-Comm required hereunder to carry out the terms of this Agreement.

4.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for West-Comm to enter into this Agreement. Therefore,

Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of West-Comm. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of West-Comm. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of West-Comm.

4.4 Independent Contractor. Neither West-Comm nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. West-Comm shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of West-Comm and shall remain at all times as to West-Comm a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of West-Comm or its member cities. West-Comm and its member cities shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venture or a member of any joint enterprise with Consultant.

5.0 INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance. Without limiting Consultant's indemnification obligations as set forth in this Agreement, the Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to West-Comm, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

a. Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis. If the Contract Sum is \$25,000 or less, the policy of insurance shall be written in an amount not less than \$500,000 single limit, per occurrence. If the Contract Sum is greater than \$25,000 but less than \$1,000,000, the policy of insurance shall be in an amount not less than \$1,000,000 single limit, per occurrence. If the Contract Sum is greater than \$1,000,000 but less than \$2,000,000, the policy of insurance shall be in an amount not less than \$2,000,000, single limit, per occurrence. If the Contract Sum is greater than \$2,000,000, the policy of insurance shall be in an amount not less than \$5,000,000 single limit, per occurrence.

b. Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as shall fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Consultant and West-Comm and its member cities against any loss, claim or damage arising from any injuries or occupational diseases occurring to any

worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

c. Automotive/Vehicle Insurance. A policy of comprehensive automobile/vehicle liability (including owned, non-owned, leased, and hired autos/vehicles) insurance written on a per occurrence basis in an amount not less than \$500,000 single limit, per occurrence, for bodily injury and property damage.

d. Additional Insurance. Policies of such other insurance, including professional liability insurance, as may be required in the Special Requirements.

All of the above policies of insurance shall be primary insurance and shall name West-Comm and its member cities of Cypress, Los Alamitos, Seal Beach, and the Orange County Park Rangers, their officers, employees and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against West-Comm and its member cities, their officers, officials, employees, agents, representatives, and volunteers, and their respective insurers. All of said policies of insurance shall be endorsed to:

- (1) provide that said insurance may not be amended or cancelled without providing thirty (30) days prior written notice by certified or registered mail to West-Comm;
- (2) provide that the insurer shall waive all rights of subrogation and contribution it may have against West-Comm and its member cities, their officers, officials, employees, agents, representatives, and volunteers, and their respective insurers; and
- (3) name West-Comm, its member cities, and all the Council appointed groups, committees, boards, and any other Council appointed bodies, and West-Comm and its member cities respective City Councils, elected or appointed officers, and their officials, employees, agents, representatives, and volunteers (hereinafter "West-Comm and Member Cities Personnel") as additional insureds.

All of Consultant's insurance (i) shall contain no special limitations on the scope of protection afforded to West-Comm and Member Cities Personnel; (ii) shall be primary insurance and any insurance or self-insurance maintained by West-Comm or Member City Personnel shall be in excess of the Consultant's insurance and shall not contribute with it; (iii) shall be "occurrence" rather than "claims made" insurance; (iv) 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; and (v) shall be written by insurers in compliance with Section 5.4.

No work or services under this Agreement shall commence until the Consultant has provided the West-Comm with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverage's and said Certificates of Insurance or binders

are approved by the West-Comm. In the event any of said policies of insurance are materially modified or cancelled for any reason, the Consultant shall, prior to the cancellation date, submit new evidence of insurance, in conformance with this Section 5.1, to the Contract Officer. The Contract Officer, with the prior approval of the designated authority, shall have authority to consent to a modification of the foregoing insurance requirements, which consent may be given or withheld in the Contract Officer's and designated authority's respective sole and absolute and arbitrary discretion.

The Consultant agrees that the provisions of this Section 5.1 shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible.

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.3 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to this Section 5.1.

5.2 Indemnification. Consultant agrees to indemnify West-Comm, its member cities, officers, agents and employees against, and shall hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities of Consultant, its agents, employees, sub-contractors, or invitees, provided for herein, or arising from the negligent acts or omissions of Contractor hereunder, or arising from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence on the part of West-Comm, its member cities, their officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the West-Comm, their member cities, its officers, agents or employees, who are directly responsible to West-Comm, and in connection therewith:

(a) Contractor shall defend any action or actions filed in connection with any of said claims or liabilities and shall pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor shall promptly pay any judgment rendered against West-Comm, its member cities, their officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event West-Comm, its member cities, their officers, agents or employees are made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to West-Comm, their officers, agents or employees, any and all costs and expenses

incurred by the West-Comm, its member cities, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

5.3 Performance Bond. Concurrently with execution of this Agreement, Contractor shall deliver to West-Comm a performance bond in the sum of the amount of this Agreement, in the form provided by the designated authority which secures the faithful performance of this Agreement, unless such requirement is waived by the Contract Officer. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.4 Sufficiency of Insurer or Surety. Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of West-Comm due to unique circumstances. In the event the Risk Manager of West-Comm ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the West-Comm and its member cities, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by this Section 5 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the Board of Directors of West-Comm within 10 days of receipt of notice from the Risk Manager.

5.5 Payment Bond for contracts over \$25,000. Concurrently with the execution of their Agreement, if the contract sum specified in Section 2.1 of this Agreement is in excess of twenty-five thousand dollars (\$25,000), Contractor shall deliver to West-Comm a payment bond in the sum specified below, which secures payments to subcontractors and suppliers in the event of default by Contractor. The payment bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The payment bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor completely and faithfully pays all subcontractors and suppliers that have been approved in writing pursuant to Section 4.3 of this Agreement to perform in whole or part the services required herein.

The payment bond shall be in a sum not less than that prescribed by law under California Civil Code § 3248, such that the bond shall be in the sum of:

- (a) One hundred percent (100%) of the total amount payable by the terms of this Agreement if the total amount payable does not equal or exceed five million dollars (\$5,000,000); or
- (b) Fifty percent (50%) of the total amount payable by the terms of this Agreement if the total amount payable is not less than five million dollars (\$5,000,000) and does not exceed ten million dollars (\$10,000,000); or
- (c) Twenty five percent (25%) of the total amount payable by the terms of this Agreement if the Agreement exceeds ten million dollars (\$10,000,000); and

- (d) If Consultant is the provider of architectural, engineering, and land surveying services pursuant to an existing contract with West-Comm for a public work, Consultant shall not be required to post or deliver a payment bond. Further, if the sum of the payment bond as required under California Civil Code § 3248 is different than the sum required under this Agreement, the sum specified in California Civil Code § 3248 is controlling; and.
- (e) If no subcontracts or outside suppliers are contemplated by this agreement, Consultant may delay securing of a payment bond until such time as a request pursuant to Section 4.3 of this Agreement is made and approved

5.6 Sufficiency of Insurer or Surety for Payment Bond. If Consultant must deliver a payment bond pursuant to Section 5.5 of this Agreement, Consultant shall deliver, concurrently with the execution of this Agreement and delivery of said payment bond, to West-Comm the following documents:

- (a) A certified copy of the Certificate of Authority of the Insurer or Surety issued by the Insurance Commissioner, which authorizes the Insurer or Surety to transact insurance in the State of California;
- (b) A certificate from the Clerk of the County of Orange that the Certificate of Authority of the Insurer or Surety has not been surrendered, revoked, canceled, annulled, or suspended; or, in the event the Certificate of Authority of the Insurer or Surety has been suspended, that renewed authority has been granted; and
- (c) True and correct copies of the Insurer's or Surety's most recent annual statement and quarterly statement filed with the Department of Insurance.

Failure of Consultant to deliver these documents at the time of approval of a request subject to Section 4.3 of this Agreement shall require West-Comm to refrain from utilizing a subcontractor.

6.0 RECORDS AND REPORTS

6.1 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that West-Comm is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or shall materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, and the cost of the project being designed changes, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

6.2 Records. Consultant shall keep, and require subcontractors to keep, such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of West-Comm, including the right to inspect, copy, audit

and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and West-Comm shall have access to such records in the event any audit is required.

6.3 Ownership of Documents. All drawings, specifications, reports, records, documents and other materials prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of West-Comm and shall be delivered to West-Comm upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by West-Comm of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant shall be at West-Comm's sole risk and without liability to Consultant, and West-Comm shall indemnify the Consultant for all damages resulting therefrom. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to West-Comm of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify West-Comm for all damages resulting therefrom.

6.4 Release of Documents. The drawings, specifications, reports, records, documents and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

7.0 ENFORCEMENT OF AGREEMENT

7.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. Service of process on West-Comm shall be made in the manner required by law for service on a public entity. Service of process on Consultant shall be made in any manner permitted by law and shall be effective whether served inside or outside of California.

7.2 Disputes. Subject to the provisions of Section 7.7, in the event of a dispute arising under this Agreement, Consultant shall comply with the provisions of this Section, and West-Comm may, in its sole discretion, comply with the provisions of this Section. The injured party shall notify the injuring party in writing of its contentions. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within sixty (60) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause by Consultant and to any legal action commenced by Consultant, and such compliance shall not be a waiver of Consultant's right to take legal action in the event that the dispute is not cured. Nothing herein shall

limit West-Comm's right to terminate this Agreement with or without cause pursuant to Section 7.7.

7.3 Retention of Funds. Consultant hereby authorizes West-Comm to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate West-Comm for any losses, costs, liabilities, or damages suffered by West-Comm, and (ii) all amounts for which West-Comm may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, West-Comm may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of West-Comm to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect West-Comm as elsewhere provided herein.

7.4 Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Termination Prior to Expiration Of Term. This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. West-Comm reserves the right to terminate this Agreement at any time, with or without cause, upon written notice to Consultant. Consultant may terminate this Agreement only for cause and with not less than thirty (30) days prior written notice and only after following the procedures of Section 7.2 to enable West-Comm to effect a cure of a default. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the lesser of

(i) the amount due for work completed under the Schedule of Compensation or (ii) the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, West-Comm need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.8 Termination for Default of Consultant. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, West-Comm may take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that West-Comm shall use reasonable efforts to mitigate such damages), and West-Comm may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed West-Comm as previously stated.

7.9 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to its expert witness fees and reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

8.0 CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of West-Comm and Member Cities Officers and Employees. No officer, official, employee, agent, representative, or volunteer of West-Comm or its member cities shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by West-Comm or its member cities or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. No officer, official, employee, agent, representative, or volunteer of West-Comm or its member cities shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and shall not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

9.0 MISCELLANEOUS PROVISIONS

9.1 Notice. Unless otherwise provided herein, all notices required to be delivered under this Agreement or under applicable law shall be (i) personally delivered, or (ii) delivered by United States mail, prepaid, certified, return receipt requested, or (iii) delivered by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 3:00 p.m. on the second calendar day following dispatch. Notices shall be delivered to the West-Comm at the following address: West Police Communications Center, 911 Seal Beach Blvd., Seal Beach, CA 90740, Attn: Interim Administrator. **Notices shall be delivered to Consultant at the following address:** _____

Either party may change the address for receipt of notices to that party by written notice delivered in compliance with this Section.

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

9.4 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.5 Authority to Execute. The person (s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[end - signature page and exhibits follow]

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

CITY:
WEST CITIES POLICE COMMUNICATIONS CENTER,
a Joint Powers Authority

Board of Directors, Chair

ATTEST:

APPROVED AS TO FORM:

West-Comm Attorney

CONSULTANT:

By: _____
[signature to be notarized]

Name: _____

Title: _____

By: _____
[signature to be notarized]

Name: _____

Title: _____

Address: _____

(Agreement cannot be accepted from corporations
without signatures from (2) corporate officers)

Attachment Two

SPECIAL REQUIREMENTS

Without limiting Consultant's indemnification obligations set forth in this Agreement, Consultant shall procure and maintain in full force and effect, at its sole cost and expense, in a form and content satisfactory to West-Comm, during the entire term of this Agreement, including any extension thereof, and for a period of three (3) consecutive years thereafter, the following policies of insurance.

- A. A policy of professional liability insurance written in an amount not less than \$1,000,000 and on a claims made basis, which policy of insurance shall be maintained in full force and effect for the entire term of this Agreement.
- B. A policy of Sexual Abuse/Molestation Liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Coverage may be provided as part of Commercial General Liability coverage, Professional Liability coverage, or as a separate policy.