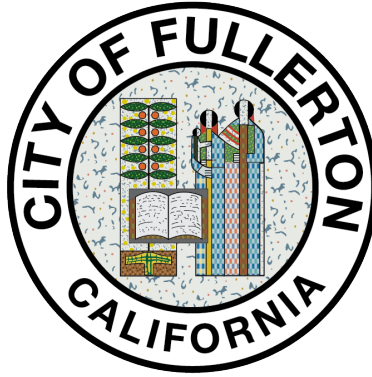


**CITY OF FULLERTON**  
**REQUEST FOR QUALIFICATIONS**



**RFQ #4355 INVESTMENT GRADE AUDIT AND  
ENERGY INFRASTRUCTURE MODERNIZATION  
(ENERGY PERFORMANCE CONTRACTING SERVICES)**

**SUBMIT YOUR  
PROPOSAL BY 5:00 P.M. PST  
ON OCTOBER 5, 2020**

City of Fullerton – Department  
Attn: Jimmy Armenta, Buyer  
303 W. Commonwealth Avenue  
Fullerton CA, 92832-1775

**RFQ Posted: Wednesday, August 26, 2020**

**Proposals must be received by: Monday, October 5, 2020 at 5:00 p.m. PST**

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**NOTICE OF REQUEST FOR PROPOSALS**  
**Investment Grade Audit and Energy Infrastructure Modernization**  
**(Energy Performance Contracting Services)**

**NOTICE IS HEREBY GIVEN** the City of Fullerton (City) is accepting qualifications from experienced and qualified firms for an audit of energy efficiency opportunities and implementation of efficiency improvement projects including but not limited to renewable energy, electric vehicle charging infrastructure, and storage opportunities.

Proposals will be evaluated on the basis of the qualifications of the Proposers to the City based on past municipal experience, quality, service, price and any other criteria set out herein including but not limited to, to the Proposer's ability to meet the requirements, qualifications and competencies set out herein. The City will utilize a quality based selection process in accordance with the evaluation criteria set out herein.

The City, at its sole discretion, may select the awarded respondent for any component of the project or all of the project including subsequent phases of the work. The City, at its sole discretion, also reserves the right to reject any or all bidders.

**BACKGROUND**

In May 2018, the City released a Request for Proposal (RFP) for Energy Contracting Services. The Scope of Work included an audit of the City's equipment and utility usage, and development of recommendations for energy efficiency projects that could be paid for entirely by guaranteed energy savings. The City received five proposals but ultimately the City decided to cancel the RFP and start over with a more holistic design-build performance contracting approach.

The City intends to implement a design-build program consistent with the provisions of California Government Code sections 4217.10-4217.18 that will provide sustained efficiencies and energy cost savings.

Infrastructure, as it relates to this RFQ, includes:

1. Approximately 7,200 streetlights, 6,000 of which are City-owned (LS-2 and LS-3) and maintained. The remaining lights are owned by Southern California Edison, which supplies electrical service to the area. Given the City's age and development pattern, there is a wide variety of streetlight lamps and circuits. Approximately, 4,400 metered streetlights were converted to LED. The remaining 2,200 are high-voltage series incandescent (mercury vapor) lights.
2. The City owns the water utility and its associated infrastructure, including 12 pump stations, and 36 booster pumps. There are approximately 32,000 water customers.
3. The City owns and operates 33 occupied buildings, including; a police station, six fire stations, a large community/senior center, two swim complexes, a library/conference center, a four-story City Hall, and a multi-building maintenance facility. Building age ranges from the late 1930s to 2013. Most of the older buildings have been renovated and

their major systems (e.g. HVAC and some lighting) upgraded with the most efficient equipment at the time.

4. Park lighting

To date, the City has completed the following energy related projects:

1. In the late 1990s, lighting and HVAC systems were upgraded at City Hall, including a remote sensing program to control the temperature.
2. The newer 42,000 square foot Community Center is LEED Platinum certified; the 56,000 square foot Fullerton Public Library is LEED Gold certified with solar.
3. SCE rate plan for water utility pumps
4. The City installed upgraded lighting in City Hall as part of a seismic upgrade in 2000
5. The City completed a major expansion of the Police Department in the early 2000s, which included upgraded lighting and HVAC.
6. In 2014, a rate review firm examined the City's SCE bills and suggested several rate modifications, resulting in significant savings.
7. The City installed four energy storage systems. Fullerton Community Center 260 KVA @ 480 v, Fullerton Public Library 260 KVA @ 480 V, City Hall 36 kW, and Independence Park 36 kW.
8. The City owns and operates 10 electric vehicle charging stations
9. The City installed a hydropneumatic tank at the Laguna Booster Pump Station
10. Solar installation at the SOCO Parking Structure

The City's ultimate goal is to utilize financial savings realized from more efficient facilities towards other upgrades and programs that enhance the working environment and promote healthy environments/livability. Respondents shall support the City's goal by developing, implementing, and monitoring an infrastructure modernization and utility savings program that accomplishes the following:

- Achieves long-term cost savings through reduced energy, gas, and water usage
- Upgrades antiquated and inefficient equipment
- Provides a comfortable and safe working environment
- Maintains building functionality and compatibility with existing equipment
- Improves utilization of technology to achieve optimum performance and savings
- Minimizes financial and technical risk to the City of Fullerton
- Provides training to employees on maintenance and repair of equipment and controls
- Provides comprehensive funding solutions

## **MANDATORY PRE-PROPOSAL MEETING**

A pre-proposal meeting has been scheduled for Wednesday, September 16, 2020 from 3:00 p.m. to 5:00 p.m. via webex. Any questions will be answered at this time. Proposers will have the opportunity to ask questions about the City's existing infrastructure.

**SUBMITTAL DEADLINE**

**TO BE CONSIDERED, PROPOSALS MUST BE SUBMITTED NO LATER THAN MONDAY, OCTOBER 5, 2020 AT 5:00 P.M. PST** The City expects to award this contract no later than January 1, 2021.

## SCOPE OF SERVICES/SCOPE OF WORK

The selected firm shall identify and analyze comprehensive energy system improvements, smart building, and water infrastructure and operational efficiency programs.

Upon award, the selected respondent will be required to perform site assessments at each of the City's facilities to evaluate infrastructure improvements in order to develop a scope of work tailored to its needs. Specifically, the awarded respondent will evaluate and propose applicable conservation measures including but not limited to:

- Heating Ventilation & Air Conditioning (HVAC) system optimization, retrofit, upgrade, or replacement at all City facilities including the Hunt Library branch.
- Sewer and Storm System improvements including lift station pumps, control, and pipe system monitoring technology
- LED lighting systems for all buildings, parks, security lighting, and streetlights
- Building Automation System (BAS) installation, upgrade, or expansion
- Building envelope upgrades
- HVAC, sport and street lighting, irrigation with leak detection technology, water meter
- Water Well modernization and security
- Solar and other renewable technology at all City facilities
- Advanced Meter Reading – Water Meter Upgrades – Citywide
- Other related infrastructure improvements that reduce energy and/or reduce operating costs
- Other training, remote monitoring services, and on-going support services that will ensure objectives of program are met over the term of the agreement

The selected respondent will then implement an agreed upon and Council-approved scope of work. All proposed infrastructure improvements must be provided on a turn-key basis including all necessary permits, engineering, delivery, installation, commissioning, training, warranty service, and compliance with any applicable funding programs. After the scope of work has been fully implemented the selected respondent will be required to provide Measurement and Verification services to monitor post-retrofit utility usage and track energy savings.

### **A. INVESTMENT GRADE AUDIT (IGA) AND PROJECT DEVELOPMENT**

The IGA will identify potential cost-saving measures, determine the cost and savings of each measure, and present a measurement and verification plan to validate future savings of each measure. Audits shall be performed according to American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE). At a minimum, the following systems shall be addressed:

1. Heat ventilation and air conditioning (HVAC) systems
2. Energy Management Systems
3. Transformers
4. Roadway and Street LED lighting solutions
5. Interior and Exterior LED lighting solutions

6. Energy generation including but not limited to Solar Photovoltaic. This should be a comprehensive feasibility analysis of distributed generation opportunities for City facilities.
7. Energy storage (electrical and thermal)
8. Water Infrastructure
9. Healthy Buildings Initiatives (if applicable) to promote better indoor air quality
10. Feasibility of Resiliency Efforts
11. Smart City applications on City Owned vertical infrastructure

A Comprehensive Energy Analysis and Recommended Plan shall be prepared clearly outlining the results of the audit. The report shall include, but it is not limited to, energy conservation measures and services in relation to optimization, modernization, installation, retrofit, upgrade, adjustment, and/or replacement of the types of services that will generate services in excess of their implementation costs in compliance with California Government Code section 4217.10 *et seq.* The report shall be presented to City staff and may include a Study Session presentation to City Council.

The selected Respondent will work with the City team to develop the overall project delivery approach and design the project(s). The Respondent shall be responsible for the following:

1. Coordinating with the City's representative and any other City departments with ownership or functional authority over various facilities involved;
2. Comply with the Public Contracts Code, all applicable City codes, regulations, specifications, and design standards;
3. If applicable, manage the selection of sub-contractors;
4. If applicable, manage and administer all sub-contractor work;
5. Provide on-site construction management;
6. Obtain all permits and apply for, manage and otherwise secure all available grants, rebates, incentives with applicable utility companies/granting entities;
7. Annual measurement and verification of actualized energy savings as applicable.

The City will be responsible for providing:

1. A comprehensive list of City buildings and facilities, including building location, square footage, etc;
2. Historic energy usage at each facility;
3. An overview of recently completed or in-progress projects related to energy efficiency;
4. Existing storage performance;
5. Existing electric vehicle charging system locations and to the extent available usage and electricity usage;

6. A prioritized list of critical facilities for consideration of microgrids (or other resiliency measures) or stand-alone battery storage;
7. A prioritized list of needed infrastructure repair and replacement projects;
8. Contact information to the person in charge of the facility;
9. Timely access to the facilities.

The City shall have no payment obligations under this contract if ESCO and the City execute an Energy Savings Performance Contract within 120 days after issuance of the Notice of Acceptance of the final Investment Grade Audit and Project Proposal Contract.

The City shall have no payment obligations under this Contract, if investment Grade Audit and Project Proposal Contract do not contain a package of energy and water saving measures which, if implemented and meeting the requested and negotiated Scope of Work will provide the City with the cash savings sufficient to fund the City's payment of all costs and fees associated with the Energy Savings Performance Contract, including the 1) Independent Third Party Consultant (selected by the City); 2) the fee associated with the Investment Grade Audit; 3) all monthly payments on a lease purchase agreement to finance the measures (if applicable); 4) any annual fees for monitoring and maintenance incurred by the ESCO.

Should the ESCO determine at any time during the Investment Grade Audit that savings cannot be attained to meet these terms, the Investment Grade Audit will be terminated by written notice to the ESCO by the City. In that event, this Contract shall be cancelled and the City shall have no obligation to pay, in whole or in part.

**B. BUILDINGS AND FACILITIES**

A list of potential buildings and sites that the City wishes Respondents to consider in responding to this Request are listed below. The City reserves the right to add or remove facilities from the audit through an amendment process.

## **INSTRUCTIONS TO PROPOSERS**

**A. EXAMINATION OF PROPOSAL DOCUMENTS**

By submitting a proposal, Proposer represents that it has thoroughly examined and become familiar with the work required under this RFQ and that it is capable of performing quality work to achieve the City's objectives.



**B. ADDENDA**

Any changes to the requirements will be made by written addendum to this RFQ. Any written addenda issued pertaining to this RFQ shall be incorporated into the terms and conditions of any resulting Agreement. City will not be bound to any modifications to or deviations from the requirements set forth in this RFQ as the result of oral instructions. Proposers shall acknowledge receipt of addenda in their proposals.

**C. CITY CONTACT FOR QUESTIONS**

All written questions and/or contacts with City staff/representative regarding this RFQ are to be directed to the following:

**City of Fullerton – Purchasing  
Attn: Jimmy Armenta, Buyer  
303 W. Commonwealth Avenue  
Fullerton CA, 92832-1775**

**Any contact outside of the City staff/representative shall be cause for disqualification**

**D. CLARIFICATIONS**

**1. Examination of Documents**

Should a Proposer require clarifications of this RFQ, the Proposer shall notify the City in writing in accordance with Section E.2 below. Should it be found that the point in question is not clearly and fully set forth; the City will issue a written addendum clarifying the matter which will be posted on the City's website [https://www.cityoffullerton.com/biz/bids n rfps.asp](https://www.cityoffullerton.com/biz/bids_n_rfps.asp) and eProcurement Portal [www.publicpurchase.com](http://www.publicpurchase.com).

## 2. Submitting Requests

- a. All questions must be put in writing and must be received by the City no later than 5:00 p.m. PST, September 19, 2020 via email to the City's Buyer.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions – RFQ# 4355 Energy Infrastructure Modernization and Utility Savings Program"
- c. City is not responsible for failure to respond to a request that has not been labeled as such.
- d. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:
  - (1) U.S. Mail or Personal Courier:  
Jimmy Armenta, Buyer  
Purchasing Department  
303 W. Commonwealth Avenue, Fullerton, CA 92832.
  - (2) E-Mail:  
Jimmy Armenta, Buyer  
jarmenta@cityoffullerton.com

- **City Responses**

Responses from the City will be posted on the City's website [https://www.cityoffullerton.com/biz/bids\\_n\\_rfqs.asp](https://www.cityoffullerton.com/biz/bids_n_rfqs.asp) and on the City's eProcurement Portal [www.publicpurchase.com](http://www.publicpurchase.com).

## E. SUBMISSION OF PROPOSALS

### 1. Date and Time

**Proposals must be submitted at or before 5:00 p.m. PST on October 5, 2020.**

Proposals received after the above specified date and time will not be accepted by the City and will be returned to the Proposer unopened.

### 2. Address

Proposals delivered in person (2nd floor), using the U.S. Postal Service or other means shall be submitted to the following:

**City of Fullerton – Purchasing Department**  
**Attn: Jimmy Armenta, Buyer**  
**303 W. Commonwealth Avenue**  
**Fullerton CA, 92832-1775**  
**Phone: 714-738-6533**  
**Email: [jarmenta@cityoffullerton.com](mailto:jarmenta@cityoffullerton.com)**

Proposer shall ensure that proposals are received by the City on or before the specified date and time. Failure to adhere to the deadline will result in disqualification.

**3. Identification of Proposals**

Proposer shall submit original and two (2) copies of its proposal in a sealed package, addressed as shown above, bearing the Proposer’s name and address and clearly marked as follows:

**“[RFQ# 4355 + Investment Grade Audit and Energy Infrastructure Modernization]”**

**4. Acceptance of Proposals**

- a. City reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
- b. City reserves the right to withdraw or cancel this RFQ at any time without prior notice, and the City makes no representations that any contract will be awarded to any Proposer responding to this RFQ.
- c. City reserves the right to postpone proposal openings for its own convenience.
- d. Proposals received by the City are public information and must be made available to any person upon request.
- e. Submitted proposals are not to be copyrighted.

**F. PRE-CONTRACTUAL EXPENSES**

City shall not, in any event, be liable for any pre-contractual expenses incurred by Proposer in the preparation of its proposal. Proposer shall not include any such expenses as part of its proposal.

Pre-contractual expenses are defined as expenses incurred by Proposer in:

- 1. Preparing its proposal in response to this RFQ;
- 2. Submitting that proposal to the City;
- 3. Negotiating with the City any matter related to this proposal; or any other expenses

incurred by Proposer prior to date of award, if any, of the Agreement.

**G. JOINT OFFERS**

Where two or more Proposers desire to submit a single proposal in response to this RFQ, they should do so on a prime-subcontractor basis rather than as a joint venture. City intends to contract with a single firm and not with multiple firms doing business as a joint venture.

**H. FEE PROPOSAL**

Where a prior RFQ issued by the City required cost and pricing information the City will negotiate any costs.

The City may choose to accept audit costs, markups, margins and fees proposed by the ESCO for individual projects without further negotiation.

**I. PREVAILING WAGES**

Certain labor categories under this contract are subject to prevailing wages as identified in the State of California Labor Code Sections 1720-1815. Consultant and its sub-contractors shall conform to applicable wage rates. It is required that all mechanics and laborers employed or working at the site be paid not less than the basic hourly rates of pay and fringe benefits as shown in the current minimum applicable wage schedules. Proposers and their sub-contractors must use the current wage schedules applicable at the time the work is in progress.

**J. INSURANCE REQUIREMENTS**

The consultant shall procure and maintain throughout the duration of this Agreement, 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, his agents, representatives, employees or subcontractors. Consultant shall provide current evidence of the required insurance in a form acceptable to the City and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way, the Indemnification and Hold Harmless clause contained herein in Section J or the extent to which consultant may be held responsible for payments of damages to persons or property.

**1. Minimum Scope and Limits of Insurance.**

- a. **Commercial General Liability Insurance.** Consultant shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form #CG 00 01, with a limit of not less than \$2,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required

occurrence limit.

- b. **Business Automobile Liability Insurance.** Consultant shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form # CA 00 01, with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- c. **Workers' Compensation and Employers' Liability Insurance.** Consultant shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than \$1,000,000 each accident.
- d. **Professional Liability Insurance.** Consultant shall maintain professional liability insurance appropriate to consultant's profession with a limit of not less than \$5,000,000. Architects' and engineers' coverage shall be endorsed to include contractual liability. If policy is written as a "claims made" policy, the retro date of the policy shall be prior to the start of the contract work.

Deductibles and Self-Insured Retentions, or Similar Forms of Coverage Limitations or Modifications must be declared to and approved by the City.

## 2. Other Insurance Provisions

The required insurance policies shall contain or be endorsed to contain the following provisions:

- a. **Commercial General Liability.** The City, its elected or appointed officials, officers, employees and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of consultant, including materials, parts or equipment furnished in connection with such work or operations. Such coverage as an additional insured shall not be limited to the period of time during which the Consultant is conducting ongoing operations for the City but rather, shall continue after the completion of such operations. The coverage shall contain no special limitations on the scope of its protection afforded to the City, its officers, employees and volunteers.
- b. **Commercial General Liability.** This insurance shall be the primary insurance as respects the City, its officers, employees and volunteers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by the City, its officers, employees and volunteers shall be excess of this insurance and shall not contribute with it.
- c. **Professional Liability.** If the Professional Liability policy is written on a "claims made"

form, consultant shall maintain similar coverage for three consecutive years following completion of the project and shall thereafter, submit annual evidence of coverage. Additionally, consultant shall provide certified copies of the claims reporting requirements contained within the policies.

- d. **Workers' Compensation and Employers' Liability Insurance.** Insurer shall waive their right of subrogation against City, its officers, employees and volunteers for work done on behalf of the City.
- e. **All Coverages.** Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

If the consultant maintains higher limits or has broader coverage than the minimums shown above, the City requires and shall be entitled to all coverage, and to the higher limits maintained by the consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

- f. **Subconsultants.** Consultant shall require and verify that all subconsultants maintain insurance meeting all the requirements stated herein and consultant shall ensure that City is an additional insured on insurance required from subcontractors.
- g. **Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

### 3. Acceptability of Insurers

All required insurance shall be placed with insurers acceptable to the City with current BEST'S ratings of no less than A, Class VII. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of the City, insurance provided by non-admitted or surplus carriers with a minimum BEST'S rating of no less than A- Class X may be accepted if Consultant evidences the requisite need to the sole satisfaction of the City.

### 4. Verification of Coverage

Consultant shall furnish the City with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, Consultant shall furnish copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by City before work commences. The City reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

**SECTION II**  
**PROPOSAL CONTENT**

## SECTION II - PROPOSAL CONTENT

### **A. PROPOSAL FORMAT AND CONTENT**

Although no specific format is required by the City, this section is intended to provide guidelines to the consultant regarding features which the City will look for and expect to be included in the proposal.

#### **1. Presentation**

Proposals shall be typed, no more than twenty pages, with 12 point font, single spaced and submitted on 8 1/2 x 11" size paper, using a single method of fastening. Charts and schedules may be included in 11" x 17" format. No more than twenty pages in length. The Offers should not include any unnecessarily elaborate or promotional material. Lengthy narrative is discouraged, and presentations should be brief and concise.

#### **2. Letter of Transmittal**

The Letter of Transmittal shall be addressed to Project Lead/Manager, at a minimum, contain the following:

- a.** Identification of Proposer that will have contractual responsibility with the City. Identification shall include legal name of company, corporate address, telephone and fax number. Include name, title, address, email and telephone number of the contact person identified during period of proposal evaluation.
- b.** Identification of all proposed subcontractors (if known) including legal name of company, contact person's name and address, phone number and fax number. Relationship between Proposer and subcontractors, if applicable.
- c.** Acknowledgment of receipt of all RFQ addenda, if any.
- d.** A statement to the effect that the proposal shall remain valid for a period of not less than 90 days from the date of submittal.
- e.** Signature of a person authorized to bind Proposer to the terms of the proposal.
- f.** Signed statement attesting that all information submitted with the proposal is true and correct.



### **3. Technical Proposal**

#### **a. Qualifications, Related Experience, and References of Proposer**

This section of the proposal should establish the ability of Proposer to satisfactorily perform the required work by reasons of: experience in performing work of the same or similar nature; demonstrated experience working with local agencies and cities; strength and stability of the Proposer; staffing capability; work load; record of meeting schedules on similar contracts; and supportive client references. Equal weighting will be given to firms for past experience performing work of a similar nature whether with the City or elsewhere. Most recent references preferred.

Proposer to:

- (1) Must be accredited by the National Association of Energy Services Companies (NAESCO) as an Energy Services Provider (ESP).
- (2) Must be listed on the Department of Energy list of Qualified Energy Services Companies.
- (3) Have no pending or recent litigation associated with the savings performance and/or measurement and verification (M&V) of a guaranteed energy savings project.
- (4) Must be an established ESCO in the State of California for at least five years operating as the current legal ESCO business entity.
- (5) Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; number of employees.
- (6) Provide a general description of the firm's financial condition, identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Proposer's ability to complete the contract. City does not have a policy for debarring or disqualifying.
- (7) Describe the firm's experience in performing work of a similar nature to that solicited in this RFQ, and highlight the participation in such work by the key personnel proposed for assignment to this contract.
- (8) Describe experience in working with the various government agencies that may have jurisdiction over the approval of the work specified in this RFQ. Please include specialized experience and professional competence in areas directly related to this RFQ.
- (9) Provide a list of past joint work by the Proposer and each subcontractor, if applicable. The list should clearly identify the contract and provide a summary of the roles and responsibilities of each party.
- (10) References - The intent of the references section is to judge the breadth of expertise and successful outcomes of the responding firm. Provide one (1) recent

representative reference for the following services. Project or services must have been provided in the last five years. Provide references where the project was approved and completed under current ESCO legal entity. For each type of project include the following:

- Name and location of project
- Project price and savings, if applicable
- Project approval and completion dates
- The energy conservation measures implemented or deliverable to the customer
- Customer name, title, and contact information

**Types of projects references should be included for:**

1. Energy Service Performance Contract
2. Power Purchase Agreement
3. Asset Management
4. Smart Cities Project and/or Healthy Buildings Initiatives
5. Financing Strategies

**b. Proposed Staffing and Organization**

This section of the proposal should establish the method that will be used by the Proposer to manage the contract as well as identify key personnel assigned. Proposed Staffing and Organization are to be presented by Proposer identified in the Scope of Services.

Proposer to:

- (1) Provide education, experience and applicable professional credentials of Contract staff. Include applicable professional credentials of "key" Contract staff.
- (2) Furnish brief resumes (not more than one page each) for key personnel.
- (3) Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, and proposed position for this project, current assignment, and level of commitment to that assignment, availability for this assignment and how long each person has been with the firm.
- (4) Include an organization chart that clearly delineates communication/reporting relationships among the staff, including sub consultants.
- (5) Include a statement that key personnel will be available to the extent proposed for the duration of the project, acknowledging that no person designated as "key" to the Contract shall be removed or replaced without the prior written concurrence of the City.

**c. Detailed Work Plan**

Proposer shall provide a narrative that addresses the Scope of Services and shows Proposer's understanding of City's needs and requirements.

The Proposer shall:

- (1) Describe the proposed approach and work plan for completing the services specified in the Scope of Services. The description of the proposed approach shall discuss the services in sufficient detail to demonstrate the Proposer's ability to accomplish the City's objectives.
- (2) Describe the timeline for work plan for completing the services specified in Scope of Services. Considering time is of the essence for the City to realize savings.
- (3) Describe approach to managing resources, including a description of the role(s) of any sub-consultants, if applicable, their specific responsibilities, and how their work will be supervised. Identify methods that Proposer will use to ensure quality, budget, and schedule control.

**d. Exceptions/Deviations**

State any exceptions to or deviations from the requirements of this RFQ, segregating "technical" exceptions from "contractual" exceptions. Where Proposer wishes to propose alternative approaches to meeting the City's technical or contractual requirements, these should be thoroughly explained. If no contractual exceptions are noted, Proposer will be deemed to have accepted the contract requirements of the Proposed Professional Services Agreement as set forth in Section IV.

**4. Cost and Pricing**

The City proposed to issue a contract for a period of three (3) years with the City having the option to extend under the same terms and conditions for a maximum of three (3), one (1) year options.

IGA Development

*Cost Markups*

Proposer must include company markup. Markups represent a percentage added to the base cost for the project (excluding the cost of the audit). Clearly describe how self-performed work will be charged (billed hourly, billed as a markup of equipment, labor costs, etc.). If self-performed work will be billed hourly, include markups proposed to be applied to the hourly rate.

This project shall have the following percentage mark-up applied to all project costs: overhead - 15% and profit – 10%, this markup applies to subcontractors, design/engineering, equipment, materials and incurred labor and costs.

Fees for engineering and project management are not a percentage markup, but the actual labor hours incurred to-date and projected for the duration of construction. These fees are unique to each ESCO project and will be shared with the City during the IGA.

*Audit Fee*

Proposer should submit a fee to develop the Investment Grade Audit and Project Development Proposal

*Other Fees*

Proposer shall list other fees as applicable.

*Contingency*

Describe your company's typical level of contingency budget for lighting, electrical, mechanical, controls projects, and other projects and how it proposes to apply contingency to cover changes in work scope and subcontractor change orders.

The City has designed this procurement process to adhere to the intent and processes of Public Resource Code 25008 and California Government Code 4217. The agreement will be awarded to

the firm who meets all of the RFQ requirements, offers the most advantageous combination of low price and high ranking for various components contained herein, and whose proposal best serves the interest of the City as determined by City Council.

**5. Appendices**

Information considered by Proposer to be pertinent to this Contract and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Please note that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief.

**B. STATUS OF PAST AND PRESENT CONTRACTS FORM**

Proposer is required to complete and sign the form entitled "Status of Past and Present Contracts" provided in this RFQ and submit as part of the proposal. Proposer shall list the status of past and present contracts where either the firm has provided services as a prime contractor or a subcontractor during the past 5 years and the contract has ended or will end in termination, settlement or litigation. A separate form shall be completed for each contract. If the contract was terminated, list the reason for termination. Proposer must also identify and state the status of any litigation, claims or settlement agreements related to any of the identified contracts. Each form must be signed by the Proposer confirming that the information provided is true and accurate. Proposer is required to submit only one copy of the completed form(s) as part of the proposal and it should be included in only the original proposal.

**SECTION III**  
**EVALUATION AND AWARD**

## SECTION III - EVALUATION AND AWARD

### **A. EVALUATION CRITERIA**

City will evaluate the offers received based on the following criteria outlined below. Respondents who are not actively engaged in providing services of the nature proposed in their response to this request and/or who cannot clearly demonstrate to the satisfaction of the City their ability to satisfactorily perform the work in accordance with the requirements set forth in this Request will not be considered. The City shall be the sole judge of the qualifications and services and its decision shall be final. Discussions may be conducted with respondents who submit qualifications determined to be reasonably acceptable of being selected for award. Any changes to the RFQ requirements will be made by addendum. All addenda shall be signed by proposers and attached to the proposal. Failure to attach any addenda may render the proposal non-responsive and cause it to be eliminated from consideration.

**1. Qualifications of the Firm** - technical experience in performing work of a similar nature; experience working with public agencies; strength and stability of the firm; and assessment by client references. This includes firm neutrality.

Describe your firm and include the following:

- Brief history of the firm
- Location of offices within a 45-mile radius of the City of Fullerton
- Key differentiating factors and areas of expertise
- Prior experience performing similar services, particularly for municipal governments.
- Listing of firm's resources and financial capacity to perform Scope of Work and meet all requirements of this RFQ.
- List of personnel to be used on this project and description of their qualifications and experience with projects of similar size and scope.
- Copy of active general contractor's license in California for a minimum of 24-months.
- Proof of accreditation by NAESCO and inclusion on the USDOE's Qualified List of Energy Services Companies.
- Describe your firm neutrality.

**2. Project Management Approach** - qualifications of proposed key personnel; amount of work to be self-performed, logic of organization; and adequacy of labor commitment and resources to satisfactorily perform the requested services and meet the City's needs.

**3. Detailed Work Plan** - thorough understanding of the City's requirements and objectives; logic, clarity, specificity, financial feasibility, energy and water savings, and overall quality of work plan.

**4. Project References** – the intent of the references section is to judge the breadth of expertise and successful outcomes of the responding firm. Provide one (1) recent representative reference for the following services. Project or services must have been provided in the last five years. Provide references where the project was approved and completed under current ESCO legal entity. For each type of project include the following:

- Name and location of project
- Project price and savings, if applicable
- Project approval and completion dates
- The energy conservation measures implemented or deliverable to the customer
- Customer name, title, and contact information

**Types of projects references should be included for:**

- Energy Service Performance Contract
- Power Purchase Agreement
- Asset Management
- Smart Cities Project and/or Healthy Buildings Initiatives

**5. Additional Benefits and Value-Added Elements** –Please describe any additional benefits that may result from energy conservation measure implementation including, but not limited to, the potential greenhouse gas emission reductions and the number of jobs created. Discuss the firm’s added value elements in implementing this energy program including managing the application process and other associated requirements.

Savings and Measurement and Verification (M&V) Methodologies

- a. Describe the firm’s approach to projecting and proving energy savings
- b. Describe the methodology, formulas, and report, and reporting of the savings and the associated formula used to quantify savings
- c. Provide a description of monitoring services after installation to ensure continued savings

**6. Sample Contracts and Pricing Proposal** – Provide a sample of all applicable contract terms and conditions. This shall include a pricing proposal and M&V agreements.

**7. Fee Proposal** - reasonableness of proposed fees.

**B. EVALUATION PROCEDURE**

An Evaluation Committee will be appointed to review all proposals. The committee will be comprised of City staff and may include outside reviewers. The committee members will review and evaluate the proposals. The City of Fullerton reserves the right to request clarification of additional information from any firm at any time. The committee will recommend to the City Manager the firm(s) whose proposal is most advantageous to the City of Fullerton. The City Manager will then forward its recommendation to the City Council for final action.

**C. AWARD**

The City of Fullerton may negotiate contract terms with the selected Proposer(s) prior to award, and expressly reserves the right to negotiate with several Proposers simultaneously. However, since the selection and award may be made without discussion with any Proposer, the proposal



submitted should contain Proposer's most favorable terms and conditions.

City Manager or City Council action will be requested by City staff to award contract to the selected Proposer(s).

**D. NOTIFICATION OF AWARD**

Proposers who submit a proposal in response to this RFQ shall be notified regarding the Proposer(s) awarded a contract. Such notification shall be made within seven (7) days of the date the contract is awarded.

**Proposed Schedule**

<b>Release of RFQ</b>	<b>August 26, 2020</b>
<b>Mandatory Pre-Proposal Meeting</b>	<b>September 16, 2020 at 3:00 p.m. PST</b>
<b>Question Submittal Deadline</b>	<b>September 19, 2020 at 5:00 p.m. PST</b>
<b>Response to Questions Posted</b>	<b>September 23, 2020</b>
<b>RFQ Submittal Deadline</b>	<b>October 5, 2020 at 5:00 p.m. PST</b>
<b>Consultant Interviews</b>	<b>October 2020</b>
<b>Contract and Scope Negotiations</b>	<b>November 2020</b>
<b>Contract Award</b>	<b>December 2020/January 2021</b>



**SECTION IV**  
**PROFESSIONAL SERVICES AGREEMENT**  
**SAMPLE ONLY**

**CITY OF FULLERTON  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
[VENDOR/CONSULTANT BUSINESS NAME]**

THIS AGREEMENT is made and entered into this \_\_\_ day of [MONTH, YEAR] (“Effective Date”), by and between the CITY OF FULLERTON, a California municipal corporation (“City”), and [VENDOR/CONSULTANT BUSINESS NAME], a [California corporation] (“Consultant”).

**W I T N E S S E T H :**

A. City proposes to utilize the services of Consultant as an independent contractor to provide certain [INSERT BRIEF DESCRIPTION OF SCOPE OF SERVICE] services, as more fully described herein.

B. Consultant represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated.

C. City and Consultant desire to contract for the specific services described herein, and desire to set forth their rights, duties and liabilities in connection with the services to be performed.

D. No official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the [Services & Fees Schedule attached hereto as Exhibit “A”] and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the reasonable satisfaction of the City, in accordance with the applicable professional standard of care and City specifications and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable and non conflicting Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

## 2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the [fee schedule set forth in Exhibit A].

2.2. Additional Services. Consultant may perform the [additional services described in Exhibit "B"] attached hereto and incorporated herein by this reference if specifically engaged to do so by City. Consultant shall not receive compensation for any services provided outside the scope of services specified in [Exhibit A] unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date of this Agreement until three (3) years after the termination date.

2.5. W-9. Consultant must provide City with a current W-9 form, to be attached hereto as Exhibit "D." It is the Consultant's responsibility to provide to the City any revised or updated W-9 form.

### **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue through **[INSERT TERMINATION DATE (i.e. December 31, 2020)]**, unless terminated as provided herein.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

### **5.0. INSURANCE**

5.1. Insurance Required. Consultant shall procure and maintain throughout the duration of this

Agreement, 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 Consultant, its agents, representatives, employees or subcontractors. Consultant shall provide current evidence of the required insurance in a form acceptable to City and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration, or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way, the Indemnification and Hold Harmless clause contained herein in Section 6.8 or the extent to which Consultant may be held responsible for payments of damages to persons or property.

5.2. Minimum Scope and Limits of Insurance.

A. Commercial General Liability Insurance. Consultant shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form #CG 00 01, with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit.

B. Business Automobile Liability Insurance. Consultant shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form # CA 00 01, with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.

C. Workers' Compensation and Employers' Liability Insurance. Consultant shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than \$1,000,000 each accident.

D. Professional Liability Insurance. Consultant shall maintain professional liability insurance appropriate to Consultant's profession with a limit of not less than \$2,000,000. Architects' and engineers' coverage shall be endorsed to include contractual liability. If policy is written as a "claims made" policy, the retro date of the policy shall be prior to the start of the contract work.

E. Cyber Liability Insurance. Consultant shall maintain cyber liability insurance coverage with a limit of not less than \$2,000,000 per claim and \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Agreement and shall include but not be limited to claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines, penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

5.3. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by City.

5.4. Other Insurance Provisions. The required insurance policies shall contain or be endorsed to contain the following provisions:

A. Commercial General Liability. City, its elected or appointed officials, officers, employees and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Consultant, including materials, parts or equipment furnished in connection with such work or operations. Such coverage as an additional insured shall not be limited to the period of time during which Consultant is conducting ongoing operations for City but rather, shall continue after the completion of such operations. The coverage shall contain no special limitations on the scope of its protection

afforded to City, its officers, employees and volunteers.

B. Commercial General Liability. This insurance shall be primary insurance as respects City, its officers, employees and volunteers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by City, its officers, employees and volunteers shall be excess of this insurance and shall not contribute with it.

C. Professional Liability. If the Professional Liability policy is written on a "claims made" form, Consultant shall maintain similar coverage for three consecutive years following completion of the project and shall thereafter, submit annual evidence of coverage. Additionally, Consultant shall provide certified copies of the claims reporting requirements contained within the policies.

D. Workers' Compensation and Employers' Liability Insurance. Insurer shall waive their right of subrogation against City, its officers, employees and volunteers for work done on behalf of City.

E. All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

If Consultant maintains higher limits or has broader coverage than the minimums shown above, City requires and shall be entitled to all coverage, and to the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

F. Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

5.5 Acceptability of Insurers. All required insurance shall be placed with insurers acceptable to City with current BEST'S ratings of no less than A, Class VII. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of City, insurance provided by non-admitted or surplus carriers with a minimum BEST'S rating of no less than A- Class X may be accepted if Consultant evidences the requisite need to the sole satisfaction of City.

5.6 Verification of Coverage. Consultant shall furnish City with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, Consultant shall furnish copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by City before work commences. City reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

## **6.0. GENERAL PROVISIONS**

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his designee shall be the representative of City for



purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

**[VENDOR/CONSULTANT NAME]**  
**[MAILING ADDRESS]**  
Attn: **[NAME AND TITLE]**

IF TO CITY:

City of Fullerton  
303 W. Commonwealth Ave.  
Fullerton, CA 92832  
Attn: **[NAME AND TITLE]**

6.5. 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.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. To the fullest extent of the law, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents, and employees, at Consultant's sole expense, from and against claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents, and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the professional services undertaken pursuant to this

Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents, and employees based upon the work performed by Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints, or suits arising out of the sole or active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

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

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

6.11. Cooperation. 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.

6.12. Ownership of Documents. All findings, reports, CAD drawings, documents, information and data, including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole

property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files, audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.13. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.15. Responsibility for Errors. Consultant shall be responsible for its work 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, without prejudice to any other remedy to which City may be entitled to at law or equity, 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. In addition, Consultant shall reimburse City for any and all costs, expenses and/or damages, if any, that the City has incurred due to the aforementioned error or omission.

6.16. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.18. 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.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. 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.

6.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.23. 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.

6.24. 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.

6.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF FULLERTON

\_\_\_\_\_  
Kenneth A. Domer, City Manager

Date: \_\_\_\_\_

CONSULTANT

\_\_\_\_\_  
**[NAME AND TITLE]**

Date: \_\_\_\_\_

\_\_\_\_\_  
Social Security or Taxpayer ID Number

APPROVED AS TO FORM:

\_\_\_\_\_  
Richard D. Jones, City Attorney

**SECTION VI**  
**STATUS OF PAST AND PRESENT CONTRACT FORM**

## Status of Past and Present Contracts Form

On the form provided below, Proposer shall list the status of past and present contracts where the firm has either provided services as a prime contractor or a subcontractor during the past five (5) years in which the contract has ended or will end in a termination, settlement or in legal action. A separate form must be completed for each contract. Proposer shall provide an accurate contact name and telephone number for each contract and indicate the term of the contract and the original contract value.

If the contract was terminated, list the reason for termination. Proposer must also identify and state the status of any litigation, claims or settlement agreements related to any of the identified contracts. Each form must be signed by an officer of the Proposer confirming that the information provided is true and accurate.

<b>Project city/agency/other:</b>	
<b>Contact name:</b>	<b>Phone:</b>
<b>Project award date:</b>	<b>Original Contract Value:</b>
<b>Term of Contract:</b>	
<b>1) Status of contract:</b>	
<b>2) Identify claims/litigation or settlements associated with the contract:</b>	

By signing this Form entitled "Status of Past and Present Contracts," I am affirming that all of the information provided is true and accurate.

Signature \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_





**SECTION VII**  
**PRICING PROPOSAL**

**Pricing Proposal for RFQ**

Firm: \_\_\_\_\_

**Investment Grade Audit (IGA)**

The City is requesting a price-per foot for the Audit phase of this project.

Please indicate by checking one (1) of the lines below if your firm will require the CITY to enter into a separate audit agreement to deliver final price and savings numbers:

No, a detailed audit or IGA is not required to provide final pricing and savings.

Yes, a detailed audit or IGA will be required to provide final pricing and savings

*If marked yes, please complete this section:*

The above firm requires a detailed audit or IGA before price and savings numbers can be finalized. The following rates and charges are hereby proposed for this separate audit agreement:

\$ \_\_\_\_\_ per square foot

Please enclose a sample IGA Agreement with proposal

**ESCO Markup Fees**

The City is requesting Open Book Pricing for the implementation phase of this project

If selected to implement Energy Conservation Measures (ECMs) eligible for funding and/or any additional ECMs, the above firm will assess the following overhead and profit markup percentages:

Overhead % \_\_\_\_\_

Profit % \_\_\_\_\_