



CITY OF FULLERTON  
COMMUNITY AND ECONOMIC DEVELOPMENT  
DEPARTMENT

INVITES QUALIFIED VENDORS TO RESPOND TO THIS

***REQUEST FOR PROPOSALS FOR  
HOMELESS ENCAMPMENT AND SITE  
CLEAN-UP  
RFP #4358***

Responses are due by Monday, October 12, 2020 at 3:30 PM

City of Fullerton  
Community & Economic Development Department  
303 W. Commonwealth Ave.  
Fullerton, CA 92832  
(714) 738-2803  
[www.CityofFullerton.com](http://www.CityofFullerton.com)

Note: Do not make any changes to this document other than completing designated fields requiring a response. Any response found to be otherwise altered will be rejected.

## **Section I: Project Description, Contact Information and Submittal Requirements**

### **I-A. Project Description**

The City of Fullerton (City) is requesting proposals from environmental or waste removal professionals (firms), who have a minimum of one year of experience working with a public agency, to provide; labor, equipment, supplies, methods, and expertise necessary for removal or relocation services of property found at homeless encampments, cleaning encampments, and cleaning individual locations (sites) as needed. The selected firm will enter an “As Needed Agreement” with the City for (2) years with an optional (3) one-year renewals and is anticipated to perform such services at least once-a-week on a regular basis until December 30, 2020 as well as additional services per requests.

### **I-B. Contact Information**

Questions or comments should be emailed to:

Lori Karaguezian, Administrative Analyst  
Community and Economic Development  
303 W. Commonwealth Ave.  
Fullerton, CA 92832  
Lori.Karaguezian@cityoffullerton.com

### **I-C. Terminology**

For the purposes of the RFP, the words “contractor”, “vendor”, “proposer” or “respondent” shall be understood to mean a company responding or potentially responding to this Request For Proposals. The terms “RFP” or “proposal” shall be understood to mean this Request For Proposals. The terms “City”, “City staff” or “City of Fullerton”, “City representative” or “City contract manager” unless otherwise noted, shall be understood to mean the City of Fullerton Community and Economic Development Director or his designees.

### **I-D. Obtaining Proposal Package**

To obtain a proposal package, please follow one of the options below.

1. Visit the City’s website: [www.cityoffullerton.com](http://www.cityoffullerton.com) then navigate to:
  - Government
  - Departments
  - Administrative Services
  - Purchasing
  - Current Bids & RFPs [https://www.cityoffullerton.com/biz/bids\\_n\\_rfps.asp](https://www.cityoffullerton.com/biz/bids_n_rfps.asp)

2. Visit the Planwell website: [www.crplanwell.com](http://www.crplanwell.com)
  - Contact a Planwell Administrator at 714/424-8525 for help accessing or ordering.
3. Visit the Public Purchase website: <http://www.publicpurchase.com/>
  - a. To download the RFP, you must first register as a vendor.
  - b. To register, please click on the separate Public Purchase link on the City's Purchasing page, then follow the instructions. Registration is NOT mandatory for this RFP.

#### **I-E. Proposal Inclusions**

To be eligible for consideration, each proposal response must include:

1. Full and complete responses to the items in Section IV: Scope of Work  
Acknowledgement and acceptance of the items in Sections II and III
2. The items listed below must be returned with your proposal:
  - A. Proof of Insurance Certificates (see Attachment A for insurance requirements).
  - B. Bid Form (Attachment B).
  - C. Vendor Qualifications and Background (Attachment C)
  - D. Sub-Contractor List (Attachment D)
  - E. Reference List (Attachment E)
  - F. Non-Collusion Affidavit (Attachment F)
  - G. Exception Form (Attachment G)

#### **You do not have to return;**

Attachment A: Insurance requirements (but submit proof of insurance per Item 2-A above)

Attachment H: the sample Professional Service Agreement, is provided for reference only and does not have to be returned with the proposal.

3. Proposals must be organized in the order described in Item I-E.2 above. Proposals submitted out of the required order or those containing extraneous information will be rejected.

## Section II: General Provisions

### II-A. Exceptions to Requirements

Exceptions taken in response to this RFP must be explicitly stated in writing on the Exceptions Request form (Attachment G). The exception request must reference the specific section to which the exception is requested, the reason for the exception and the proposed alternative to the requirement in the specifications.

Any exceptions taken will be considered and weighed based on relative importance by the City. Allowance of exceptions will be determined by the City, whose findings shall be final.

The absence of any exceptions will be taken to mean the proposal is in complete conformance to the City's RFP. Any exceptions or deviations promulgated after the proposal submittal date will be the proposer's responsibility; the City will not approve any additional costs nor approve delays for project completion.

### II-B. Proprietary Information

The master copy of each proposal shall be retained for official files and will be subject to disclosure under the California Public Records Act. Proposers must clearly designate any confidential, trade secret, or proprietary information as such.

### II-C. Receipt of Proposals

Sealed proposals must be received at City Hall 303 W. Commonwealth Ave. Fullerton, California, 92832 by **Monday, October 12, 2020 at 3:30 PM**. There will not be a public bid opening for this RFP.

One original and three copies of the proposal shall be submitted in a sealed envelope plainly marked on the outside with the words "Homeless Encampment Clean-up *RFP# 4358 Response*". The original must include original "wet" signatures on all appropriate forms. Proposals will be valid for a period of ninety (90) days from the due date. Also, please submit one complete copy in electronic format (PDF or MS Word) via email to [Lori.Karaguezian@cityoffullerton.com](mailto:Lori.Karaguezian@cityoffullerton.com). Late proposals will not be accepted and will be returned to Proposer unopened.

### II-D. Cost:

Proposers will use the Bid Sheet (Attachment B) to show the total proposed cost for 1) services per site and 2) a "as needed" per-day rate. The cost shown on the form will include the entire cost of labor, materials, supplies, travel, and all other incidentals needed by the proposer to meet the requirements of this RFP.

The proposer represents its response is its last, best, and final offer. The City does not intend to enter into any type of cost negotiations. The only negotiations to be considered will be for such issues as implementation timing and/or extra services requested by the City.

Change orders will be considered only for extra services requested by the City, or by circumstances outside the vendor's control. The vendor must submit a written change order request, detailing the extra services required, including a specific dollar amount for each change. All change order requests will be subject to approval by the City's contract manager; the vendor is to perform no extra work nor provide extra services until it receives written approval, in the form of an updated change order.

**II-E. Proposer's Responsibility**

The City will attempt to provide all available relevant information. It is the responsibility of each proposer to review and evaluate the information and, where necessary, request clarification before submitting a proposal. Questions should be submitted via email no later than Wednesday, October 7, 2020 and be addressed to the staff contacts noted in Section I-B. All responses from the City will be sent to all proposers by Friday, October 9, 2020.

**II-F. City's Responsibility**

The City will provide all potential proposers with the following:

- Access to City facilities for inspection as needed
- Contract administration contact information;
- Communicate changes, modifications, or updates to all potential proposers during the proposal preparation and review period.

**II-G. Proposal Evaluation**

Proposals will be screened for compliance with the proposal format described in Section I-E.2. Proposals passing the initial screening will be evaluated by a team of City staff. The evaluation team will consider the following factors:

Weight Value	Rating Factor
35%	Cost as described in the Proposal Pricing Form (Attachment B).
30%	Completeness: vendor's ability to meet the contract requirements based on its proposal responses
20%	Conformance to the RFP's response requirements
15%	Relevancy of Past Experience and Reference comments

After an initial screening, preferred proposers may be invited to one or more interviews to discuss specific provisions of the contract and help City staff identify the most qualified proposer.

Award of the contract is contingent on City Council approval depending on the final contract cost.

**II-H. Agreement:**

The successful proposer will be required to enter into a written agreement with the City. A sample agreement is attached (Attachment H). An individual who is authorized to bind the proposer must sign the proposal and final agreement.

The selected contractor will be required to obtain a City of Fullerton business license.

**II-I. Term:**

The term of this agreement shall be for (2) years with an option to renew for (3) additional one year options. Proposers will submit their proposed cost escalation factors on Form B.

**II-J. Affirmative Action**

The City of Fullerton hereby notifies all proposers that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit proposals in response to this request and will not be discriminated against on the grounds of sex, race, color or national origin in consideration for an award.

**II-K. Insurance Requirements**

The proposal must include proof of insurance as required in Attachment A: *Standard Insurance Requirements for Contractors*.

**II-L. Rights of City**

All costs incurred in the preparation of the proposal, the submission of additional information, attendance at the mandatory pre-proposal meeting and any follow-up meetings or demonstrations described herein, negotiations with City, and/or any other aspect of a proposal prior to contract award will be borne by the proposer.

The City reserves the right to accept or reject the combined or separate components of the proposal in part or in its entirety or to waive any informality or technical defect in the proposal. The City may, in its sole discretion, reject all proposals without providing a reason.

**II-M. Disqualification of Proposer**

If there is reason to believe collusion exists among the proposers, the City may refuse to consider proposals from participants in such collusion. No person, firm, or corporation under the same or different name, shall make, file, or be interested in more than one proposal for the same work unless alternate proposals are called for. A person, firm, or corporation who has submitted a sub-proposal to a proposer, or who has quoted prices on materials to a proposer, is not disqualified from submitting a sub-proposal or quoting process to other proposer.

All proposers will execute the Non-Collusion Affidavit, Attachment F, and return it with their proposals. Proposals submitted without a properly executed affidavit will be considered non-responsive.

Any contact with Fullerton's City Council members during the RFP process and consideration of responding firms without approval of the Community and Economic Development Department Director will be grounds for immediate disqualification of the firm.

## **II-N. Prevailing Wage and DIR Registration**

While the work which will be the subject of the contract is not a public works project as that term is defined in Section 22002 of the Public Contract Code of the State of California, Section 1771 of the California Labor Code expressly includes maintenance within its definition of a public work and provides that contracts for maintenance are subject to prevailing wage laws. To the extent that the proposer's employees will perform any work that falls within any of the classifications for which the Department of Labor Relations of the State of California promulgates prevailing wage determinations, the proposer will be required together with any subcontractor under it to pay not less than the specified prevailing wages to all such employees. The general prevailing wage determinations for crafts can be located on the web site of the <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>

By Resolution No. 6173, the City Council adopted the general prevailing rate of per diem wages as determined and published by the State Director of the Department of Industrial Relations (DIR), pursuant to Sections 1770, 1773, and 1773.1 of the California Labor Code. Copies of these rates, the Federal Wage Rates, and the latest revisions thereto are on file in the office of the City Engineer and are available for review upon request. The contractor shall also comply with Sections 1771, 1774, 1775, 1776, 177.5, 1813, and 1815 as required by the California Labor Code.

Accordingly, the proposer selected by the City for the work and any subcontractor under it shall pay not less than the specified prevailing rates of wages to all positions it employs.

No contractor or subcontractor may be listed on a bid proposal for public works projects unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code 1725.5 Senate Bill 854. Any sub-contractor performing one-half (.5) percent or more of the work described in the Scope must be listed on Form D.

## **II-O. Employee Information and Qualifications**

All persons employed by the selected contractor must be eligible to work in the United States. In addition, the contractor shall not employ a registered sex offender to perform work under the City's contract. The selected vendor will be required to submit the following for each employee it intends to assign to work in the City:

1. Records sufficient to establish that it has complied with the Immigration Reform and Control Act of 1986. The selected vendor shall retain such records for the duration of its employees' employment. The records maintained shall be immediately made available to the City for inspection and audit upon written notice to the contractor by the City's contract manager, and

2. The contractor is required to have all personnel assigned to work under this contract pass a basic Livescan background check, at the contractor's expense. The Contractor may have its personnel obtain Livescan services from any office providing such services. The contractor will have a sufficient number of employees who have passed the Livescan process so as to ensure coverage in cases of vacation, sickness, or employee termination, and
3. A color photocopy of a current California Driver's License for each employee assigned to perform work.
4. The contractor and its employees shall conduct themselves in a proper and efficient manner at all times and shall cause the least possible inconvenience to the public. The City may require the contractor to remove from the work site any employee it deems careless, incompetent, or otherwise objectionable.

Unauthorized Personnel: Employees of the contractor shall not be assisted nor accompanied by any individual who is not an employee of the contractor, while performing duties related to the contract. This includes friends, children and/or other relatives.

5. Prohibited Items: The contractor's employees shall be prohibited in the use or possession of the following items while working on City premises: knives, (other than those required for work-related tasks), guns, other weapons, alcohol and/or controlled substances. Any employee violating this policy shall be removed immediately from City facilities and replaced with acceptable personnel.

## **II-P. Subcontracting**

1. If the respondent proposes to subcontract any portion of the scope of work to any other entity or individual, the respondent must clearly disclose the portions of the proposal to be subcontracted and to whom. Sub-contractors are subject to City approval. Each sub-contractor must be listed in the submittal document on Attachment D.
2. Any and all sub-contractors used for this work shall be under the direct supervision and control of the contractor and shall be considered as its employees. Should any sub-contractor fail to perform in compliance with contract specifications, the City will determine if such non-compliance is subject to correction or if an immediate termination is required. The contractor will be notified in writing of the City's direction regarding the sub-contractor's status. No contractual relationship shall exist between the City and any sub-contractor.
3. After the award of the contract, the contractor shall not assign or subcontract any work without the written consent of the City. Any attempt to assign or subcontract any part of this contract without the expressed written consent of the City shall be invalid and constitute a breach of this contract.



**II-Q. Performance History/References**

1. The City reserves the right to determine relevancy and suitability of service from references, reputation, interviews, and/or any other means available (see Section II-I, Proposal Evaluation), when determining the successful proposer. The City shall be the sole determiner of suitability of past performance.
2. Proposers must submit a minimum of three (3) references (see Attachment E). Each reference must include the name of the firm/agency, address, contact person(s), and telephone number(s). References shall not be within the proposer's own organization or subsidiaries. Failure to provide this information shall be sufficient reason to declare the proposal non-responsive.
3. If a proposer has been prevented from proposing, and/or removed from a service contract for cause in the last ten years, the proposer must so state in its cover letter and provide a detailed written explanation of each instance in its response package.

**II-R. No Smoking**

No employee of the contractor shall smoke or use any tobacco product within any public park or any portion thereof or any building thereon or in an outdoor area within 20 feet of a public park within the City of Fullerton.

## **Section III: Performance Requirements**

The Contractor shall comply with the following Performance Requirements:

### **III-A. Areas of Work**

Work will be performed on City property, including but not limited to: the public right-of-way (e.g. streets, alleys, parkways, etc.), parks, (including restrooms), drainage facilities (catch basins, culverts, etc.), buildings and grounds, and parking lots/structures.

### **III-B. Working Hours**

Normal working hours shall be between the hours of 7:00 am and 4:00 pm Monday through Friday. No Saturday, Sunday or Holiday work is to be scheduled without permission from the City or in emergency situations as directed by the City's contract administrator.

### **III-C. Supervisory, Lead, and Field Personnel**

The contractor shall provide sufficient supervisory, lead, and field personnel to perform all work in accordance with the specifications set forth herein. The contractor's employees shall be capable of promptly accomplishing, on-schedule, and to the satisfaction of the City, all work required under this contract. These employees will be capable of communicating effectively in written and oral English and clearly understand the contract's requirements. Supervisors and leads must be able to demonstrate to the satisfaction of the City they possess adequate technical knowledge and experience in the Scope of Work's requirements. Any order or communication given by the City's contract manager to the contractor's on-site supervisor shall be deemed as delivered to the contractor from the City.

### **III-D. Additional Personnel and Equipment**

The City reserves the right to require the contractor to provide additional personnel and equipment at no additional cost to the City in the event the contractor fails to provide the services specified in the Performance Requirements, and Scope of Work.

### **III-E. Reporting Safety Hazards, Damage, or Malfunctions**

If during the course of normal work performance, any general maintenance deficiencies are noted, they shall be reported either to Public Works' Maintenance Services Division at (714) 738-6897, through the myFullerton App, or through the Public Works' management system app (should the City decide to require the contractor to use the app to schedule, complete, and confirm work). A full description and location of the work will be included in the report.

### **III-F. Cooperation/Coordination with City and/or Other Contractors**

During the course of the contract, the City may conduct other activities and operations within the contracted park areas, including work by other contractors. The contractor may be required to modify or curtail certain operations and shall promptly comply with any request by the City to cooperate.

### **III-G. Schedules**

This is an “on-call/as-needed” contract with a minimum of one 8-hour work day per week from October 22, 2020 through December 30, 2020 with potential for additional days to be scheduled with a 72-hour notice through the end of the contract term. The contractor will complete work according to the Scope of Work and each work order approved by the City’s contract manager. Failure to notify City of a change or failure to perform an item or work on a scheduled day may result in deduction of payment for that date or week.

### **III-H. Contract Payment**

1. The contractor will be paid monthly for satisfactory work performed under this contract. On the first business day of each month, the contractor shall submit a detailed invoice and all required reports for work performed the previous month. This invoice shall be subject to review and approval by the City’s contract manager.
2. All submitted invoices shall be paid within 30 days of the City’s contract manager’s approval.
3. Any charges in the invoice not approved by the City’s contract manager shall not be paid by the City.

### **IV-I. Payments Withheld**

The City may withhold entire or partial payment for the following reasons:

1. Work required by the specifications that is defective, incomplete, or not performed (see III-J below).
2. Failure of the contractor to make payments properly to subcontractors or other vendors for materials and/or labor
3. If the contractor fails to execute the specified work or fails to maintain the work schedule, the City shall notify the contractor both verbally and in writing, demanding compliance with the Contract. The contractor will have one hour to respond to said issue and begin correction. If the contractor does not perform the work in question within the time specified in its notice or fails to continue to comply, the City may then complete the work using City forces, by contracting the unfinished work to another contractor, or by a combination of such methods. In any event, the cost of completing the work shall be charged to the contractor and may be deducted from any money due from the City.
4. A reasonable doubt that the contractor will not complete its required performance for the remainder of the contract’s term
5. Incomplete or missing reports, records, or written documentation required of the contractor to be delivered to the City contract manager.

### **III-J. Deficiency Correction/Penalties**

1. Penalties in the form of a five percent (5%) deduction of the billed amount per work order, until the deficiency is corrected, will occur as a result of the following events:
  - a. A task is found deficient (either not performed or found unsatisfactory) by the City and not corrected within four (4) hours of notification (either by phone or email), to the satisfaction of the City, either by the contractor or an alternate source. Tasks found incomplete or unsatisfactory on any scale (minor or major) shall be considered deficient.
  - b. Repeated (two or more) occurrences of complaints/deficiencies within the same month.
  - c. Failure to submit complete and accurate schedules and/or any requested reports within the required time frame set by the Contract Administrator.
  - d. Failure of the contractor to appear on any scheduled workday without the advance approval of the City.
2. If the contractor fails to correct the deficient work within the four (4) hour time period, the City reserves the right to have the work performed by an alternate source at contractor expense.
3. The City shall give the contractor notification of a deduction via email or phone for unresolved deficiencies or repeated complaints and/or deficiencies.
4. The City may choose to issue a final warning before a deduction is issued.
5. Repeated instances of non-performance by the contractor will be grounds for termination of the contract.

### **III-K. Parking and Traffic Control**

The contractor shall park its vehicles and equipment within designated parking areas or in such locations as allows normal vehicular and bicycle traffic. The contractor's vehicles and equipment shall not be parked in such a manner that they block pedestrian access or vehicular right-of-way except as required to comply with OSHA or CAL-OSHA standards. The contractor will practice all applicable W.A.T.C.H. manual traffic controls when necessary.

### **III-L. Signs**

The contractor shall not post signs or advertising matter upon the areas under maintenance unless prior written approval is obtained from the City's contact manager.

### **III-M. Locks and Keys**

Where City locks and keys are required as part of this contract the contractor shall not duplicate any key furnished by the City.

1. Surrender all keys furnished by the City promptly at the end of the contract period or at any time deemed necessary to prevent loss to the City.
2. Protect the security of City property by keeping controller cabinets and enclosure doors locked at all times.

### **III-N. Storage Facilities**

The City of Fullerton will provide the contractor with a storage facility location. Contractor shall photograph, collect, label, and transport all personal property removed from encampment sites to the storage facility site(s) designated by the City.

### **III-O. National Pollutant Discharge Elimination System (NPDES) Requirements**

1. The contractor shall comply with Local, State, and Federal National Pollutant Discharge Elimination System (NPDES) regulations including the County Drainage Area Management Plan (DAMP), and the City Local Implementation Plan (LIP) at all times while providing cleaning services for the City.
2. The contractor shall apply Best Management Practices (BMPs) for all pollution prevention of the discharge of human waste and other biohazards, cleaning agents, waste, trash, debris, and other pollutants to the storm drain and receiving waters.

### **III-P. Safety/Environmental**

1. All material, parts, equipment, and chemicals used or furnished pursuant to the specifications of this contract shall be in compliance with the laws and regulations of the City of Fullerton, the State of California, and OSHA. The contractor shall provide to the City all Material Safety Data Sheets and certifications and evidence of such compliance. Use of all chemicals and other supplies shall be approved by the City prior to their use.
2. The contractor agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of its employees and the public during the performance and execution of this contract.
3. Where applicable, the contractor will comply with all federal, state, regional, and local environmental regulations in force during the period of this contract.
4. Any violation of these rules and requirements, unless promptly corrected as directed by the City, shall be grounds for termination of this contract.

### **III-Q. Performance during Inclement Weather**

During periods when inclement weather hinders normal operations, the contractor shall adjust its work force in order to accomplish those activities unaffected by weather. The contractor shall immediately notify the City when the work force has been removed from

the job site due to inclement weather or other reasons, and the City will not be billed for the missed work.

### **III-R. Protection of City Assets**

The contractor will be responsible for all damages to the City's facilities, their contents, or other City-owned improvements, caused by the contractor, its staff, or its sub-contractors during the performance of their duties. The contractor shall protect all furnishings and improvements from damage by its operations. All damage shall be repaired or replaced, at the option of the City, at the contractor's expense within a reasonable time after notification of such damage. Repairs and/or replacements shall be equal to original in all aspects.

### **III-S. Sound Control Requirements**

The contractor shall comply with all local sound control and noise level rules, regulations, and ordinances applicable to work performed pursuant to the contract.

Each internal combustion engine used on the job or related to the job shall be equipped with a muffler of a type recommended by the equipment's manufacturer. No internal combustion engine shall be operated on the project without a properly functioning muffler.

A noise level limit of 85 dBA at a distance of 50 feet shall apply to all equipment on or related to the job. The use of excessively loud warning signals shall be avoided except in those cases required for the protection of personnel. No maintenance functions that generate excess noise that would cause annoyance to residents near any work site shall begin before 8:00 am.

### **III-T. Emergency Numbers and Response**

1. The contractor will provide the City with names and telephone numbers of qualified persons the City can call when emergency conditions occur. During normal working hours the contractor shall have the ability to contact its field crews and mobilize them to the work site within one hour of notification by the City.
2. The contractor shall be available 24 hours a day, seven days per week to respond to emergencies within four hours of notification. If the contractor cannot be notified or does not respond in a timely manner, the City will respond and its costs will be deducted from the billing. The contractor shall notify the City within one hour when any emergency work has been completed.

## Section IV: Scope of Work

The contractor will provide all labor and expertise for conducting survey, documentation, clean-up, removal and disposal services involving City homeless encampment abatement projects/actions on City property under an "As Needed Agreement," which will entail:

### IV-A. General Specifications:

1. **Overview:** As directed by the City, provide cleanup services for two distinct types of need:
  - a) Cleaning homeless encampment sites where one or more homeless persons have established a campsite. It is anticipated these sites will be cleaned once a week from October 22, 2020 through December 30, 2020 with possible additional days scheduled within 72 hours of notice from the City through the end of the contract term.
  - b) Cleaning other sites where homeless or other persons have left behind biohazards or other wastes with no encampment. It is anticipated these sites will be remediated within four business hours of notice from the City.
  - c) For both types of cleaning, contractor will provide a safe and clean site by removing biohazardous material and other waste material.
2. **Site Conditions:** Sites are assumed to contain a variety of materials that may include hazardous materials, biohazardous materials, garbage, general debris, human waste, constructed temporary shelters, and other items associated with homeless occupancy.
3. **Biohazard Handling:** The contractor's site supervisor and workers must be trained and certified in handling and disposal of hazardous materials. Provide copies of any applicable training records, certifications, and licenses required to perform this work.
4. **Structure Demolition:** Some work may require the removal of wood frame or concrete block structures. It is assumed such structures will be of relatively simple construction using "cast off" materials. The contractor will consult with the City's contract manager if more complex building types are involved, or if potential health threats such as asbestos may be present.
5. **Occupants:** The contractor will notify the City's contract manager if encampments are not vacated at the time work is to begin. The contractor should notify the Fullerton Police Department of potentially dangerous situations.

6. **Payment:** The contractor will provide documentation of employee hours, sub-consultant costs, equipment and material costs, and disposal costs to the City.
7. **Prevailing Wages:** Prevailing wages are required on this project. The contractor will submit Certified Payroll documentation to the City after completing each work order performed under this agreement.

**IV-B. Duties and Responsibilities:**

8. Cleanup duties shall include surveying sites, collecting debris, dismantling temporary structures, trash removal, human waste and other biohazard removal, and State-approved handling and removal of all material. Disposal shall be at a site permitted to accept such materials.
9. Supply all labor, material, tools, protective clothing and gear, and equipment that is required or needed to perform the work to handle, remove, transport, and dispose of the waste materials and leave a clean site.
10. For encampment clean-up, coordinate with the City's contract manager on a site-by-site basis to determine the work order for each encampment cleanup. The work order will establish the site start date, estimated timeframe of the work, staging areas, traffic control, if required, and the name of the onsite representative. The contractor will not begin work until the City's contract manager has approved the proposed work order.
11. For individual site clean-up with no encampment, provide a crew sufficient to properly clear and clean the site based on the City's contract manager's description and/or photographs.
12. The contractor will provide a project manager for supervision and management of its crews and subcontractors, and ensure all necessary safety procedures are followed. This individual will serve as the contractor's primary contact for the City.
13. Photograph the encampment/clean-up site before and after cleaning and provide an electronic copy of each photograph to the City.
14. Notify the City when the work is complete and provide a cleanup report for each site, including total weight of debris removed.
15. Notify the City's contract manager if an adjacent homeless encampment is discovered in the general area during the course of a project to obtain authorization prior to proceeding with any additional work that was not identified in the original work order.
16. Follow best practices work procedures to safely manage any hazardous materials found on the jobsite, including urine, feces, solid



personal hygiene items, syringes, and other materials which could pose a health threat to the contractors' employees, City staff, and/or the general public. .

17. Trim shrubs and vegetation, as required by the City, as a deterrent measure for future encampments.
18. Immediately contact the Fullerton Police Department through 911 if work crews discover weapons or other evidence of criminal activity.
19. Perform work in a timely and efficient manner and in a courteous and business-like manner at all times.
20. Properly handle and dispose of solid waste and hazardous waste in accordance with all applicable laws.

**IV-C. City Responsibilities:**

21. The City's contract manager will issue an encampment clean-up work order with a minimum of a 72-hour notification to start time of a cleanup project.
22. The City's contract manager will issue a request to clean up individual sites to the contractor. The request will include the location, estimated size of clean-up area, and photographs if possible.
23. Posting of "Notice to Vacate".
24. Provide security during cleanup as requested.

**IV-D. Detail of Bid Items (Attachment B – Fee Schedule):**

**For bidding purposes, the following definitions apply to the bid form (Attachment B):**

25. **Site Cleanup Mobilization:** Single mobilization for each site, with only one payment per site regardless of how many days a single cleanup may require, to include all pre-site work setup up time, to and from site travel times, planning, and other tasks to prepare the site for cleanup.
26. **Site Cleanup Labor and Equipment:** Includes prevailing wage labor and equipment necessary to perform all site cleanup operations.
27. **Biohazard Technician:** Includes prevailing wage labor, containment of biohazardous waste, transient debris or any litter that poses health and safety risk, removal of contaminated contents, personal protective equipment, consumable supplies, administrative fees, and photo documentation.

28. **Biohazard Material Disposal:** Containment, transportation, and disposal of biohazard material per 40 gallon containment unit.
29. **Non-biohazard Material Disposal:** Containment, transportation, and disposal of non-biohazard material off-site based on weight.
30. **Structure Demolition:** The scope of work and cost will be subject to City approval.

## ATTACHMENT A



### CITY OF FULLERTON

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*Administrative Services Department*

Administration (714) 738-6521

Fiscal Services (714) 738-6523

Information Technology (714) 738-6538

Purchasing (714) 738-6533

### **INSURANCE REQUIREMENTS**

CONTRACTOR 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 products, materials or services supplied to the CITY. CONTRACTOR 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 within the purchase order agreement or the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property.

#### I. Minimum Scope and Limits of Insurance

- A. Commercial General Liability Insurance. CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR 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.

#### II. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the CITY.

### III. 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 products, materials, or services of the CONTRACTOR. Such coverage as an additional insured shall not be limited to the period of time during which the CONTRACTOR 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.

#### Commercial General Liability

This insurance shall be 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.

#### B. 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.

#### C. 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 contractor 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 CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

#### D. Subcontractors

CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein and CONTRACTOR shall ensure that CITY is an additional insured on insurance required from subcontractors.

#### E. Specials 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.

#### IV. 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 CONTRACTOR evidences the requisite need to the sole satisfaction of the CITY.

#### V. Verification of Coverage

CONTRACTOR 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, CONTRACTOR shall furnish copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by CITY before work commences or products and materials are delivered. The CITY reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

#### **Attach Insurance Certificates with Proposal**



**ATTACHMENT A - ADDENDUM # 1**

**CITY OF FULLERTON**

Administrative Services Department

Administration (714) 738-6521  
Fiscal Services (714) 738-6523  
Information Technology (714) 738-6538  
Purchasing (714) 738-6533

**INDEMNIFICATION CLAUSE**

\_\_\_\_\_ (hereinafter "VENDOR") hereby acknowledges and agrees that he/she/they are performing as an independent contractor in the delivery of goods or performance of services for the City of Fullerton (hereinafter "CITY") and as such, VENDOR and its employees, interns, and volunteers are not employees or volunteers of the CITY and are entitled to none of the rights or benefits of employment by the CITY.

VENDOR agrees to indemnify, defend and hold harmless CITY, its elected officials, officers, agents, and employees from all loss, cost, and expense, including attorneys fees and expenses, arising out of any liability, or claim of liability, for personal injury, bodily injury, contractual liability or damage to property sustained, or claimed to have been sustained, by anyone, including employees, interns or volunteers of VENDOR, in connection with delivery of goods or the performance of services for the CITY whether or not such act giving rise to the liability or claim of liability is authorized by any agreements, verbal or written, with the CITY.

VENDOR shall pay for any and all damage to the property of CITY, or loss or theft of such property caused by the negligent acts of VENDOR. CITY assumes no responsibility whatsoever for any property placed on the premises of CITY. The provisions of this Addendum do not apply to any damage or loss caused by the sole negligence of CITY or any of its officers, agents, or employees.

VENDOR shall maintain, at its own cost and expense, insurance acceptable to CITY in full force and effect throughout the term of any and all agreements with the CITY.

Should a claim for damages against the CITY arise out of the direct or indirect operation of VENDOR, and VENDOR breaches their agreement to defend and indemnify CITY as defined above, VENDOR agrees CITY may withhold payments from any current contract to the extent necessary to protect CITY's interests.

ACKNOWLEDGED AND AGREED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_ IN  
\_\_\_\_\_, CALIFORNIA.  
year city date month

\_\_\_\_\_  
**Signature of Owner or Legal Agent of VENDOR**

**Instructions:**

*Fill in all blanks with correct information, sign, date, and return completed form to:*

**CITY OF FULLERTON – RISK MANAGEMENT**

**ATTACHMENT B**

**CITY OF FULLERTON  
REQUEST FOR PROPOSALS  
HOMELESS ENCAMPMENT AND SITE CLEAN-UP RFP #4358**

**PROPOSAL PRICING FORM**

<b>Proposer:</b>	
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The City may, at its discretion, select to implement only one or more bid items and a single quantity or more throughout the term of the agreement. Some bid items may never be implemented during the term of the agreement. The estimated quantities shown below are for the purpose of evaluating each bid for determination of the lowest responsive bidder.

**Section A: Mobilization & Labor for Encampment Clean-up**  
Please enter the costs using the descriptions provided on Section IV-D

<b>BID ITEM NO.</b>	<b>BID ITEM DESCRIPTION</b>	<b>UOM / QTY</b>	<b>PRICE</b>
1.	Site Cleanup Mobilization	Per Site	\$
2.	Site Cleanup Mobilization	Per Day	\$
3.	Site Cleanup Labor and Equipment	Each Hour	\$
3.	Site Cleanup Labor and Equipment	Per Site	
4.	Biohazard Technician	Each Hour	\$
4.	Biohazard Material Disposal	40 Gallon Container	\$
5.	Non-Biohazard Material Disposal	Per Ton	\$
6.	Demolition of Structures	Time and Material*	N/A

\* Structure demolition will be quoted as needed on each work order.

**Section B: Equipment**

Please enter the type of equipment typically required to perform the work described in Section IV: Scope, and each type's hourly and daily rates.

NO.	EQUIPMENT DESCRIPTION	PRICE PER HOUR
1.		\$
2.		\$
3.		\$
4.		\$
5.		\$
6.		\$

**Section C: Individual Site Clean-up (72-hour response)**

Please enter the individual site cleaning costs below

NO.	EQUIPMENT DESCRIPTION	PRICE PER HOUR
1.	Site Cleanup Mobilization	\$
2.	Site Cleanup Labor and Equipment	\$
3.	Biohazard Technician	\$

**Section D: Emergency Response**

Please briefly describe your notification method when the City requests a site clean-up (e.g. phone number, website, email, etc.)

Please enter the costs for after-hours emergency response as described in Section III-T

NO.	EQUIPMENT DESCRIPTION	PRICE PER HOUR	PRICE PER DAY
1.	Site Cleanup Mobilization	\$	\$
2.	Site Cleanup Labor and Equipment	\$	\$
3.	Biohazard Technician	\$	\$



Please briefly describe your notification method for after-hours response

The costs quoted above will be effective for the initial term of the agreement, per Section II-K. Please briefly describe your proposed method of calculating costs increases should the City choose to renew the contract:

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Does the proposer offer any early payment discounts, (e.g. 2% net 10 days)? If so, please describe below:

--

### **CERTIFICATION**

Submission of the proposal indicates agreement to performance of the RFP at full level of service and payment.

The undersigned proposer agrees that if awarded the contract, the company he or she represents will complete all work as described in this Request for Proposals for a period of twenty-four (24) months after receiving the Notice to Proceed from the City of Fullerton, and that work will commence within thirty (30) days after receiving the Notice to Proceed. The undersigned further attests the representations made in this document are true and accurate to the best of his or her knowledge, under penalty of perjury.

<b>Company:</b>		<b>Name of Representative</b>	
<b>Address:</b>		<b>Authorized Signature</b>	
<b>City/State/ Zip:</b>		<b>Title:</b>	
<b>Date:</b>		<b>Phone:</b>	
<b>Company website:</b>		<b>Fax:</b>	

		<b>Representative's e-mail:</b>	
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## ATTACHMENT C

### REQUEST FOR PROPOSALS HOMELESS ENCAMPMENT AND SITE CLEAN-UP RFP #4358 VENDOR QUALIFICATIONS AND BACKGROUND

**A. How many years has the company engaged in the services described in the Scope of Work for public agencies?**

**B. Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion – Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
  - d. Have not within a 5-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## ATTACHMENT D

### HOMELESS ENCAMPMENT AND SITE CLEAN-UP RFP #4358 LIST OF SUBCONTRACTORS

As required under Section 4100, et.seq., of the Public Contract Code, the Bidder shall list below the names and business address of each subcontractor who will perform Work under this Bid in excess of one-half of one percent of the Contractor's Total Bid Price, and shall also list the portion of the Work which will be done by such subcontractor. After the opening of bids, no changes or substitutions will be allowed except as otherwise provided by law. The listing of more than one subcontractor for each item of Work to be performed with the words "and/or" will not be permitted. No sub-contractor may be listed on bid proposal unless registered with Department of Industrial Relations (DIR) pursuant to Labor Code Section 1725.5 and Senate Bill 854. Failure to comply with this requirement will render the Bid as non-responsive and may cause its rejection.

<b>Work to be Performed</b>	<b>Percent of Total Contract</b>	<b>Subcontractor's Name, Address, Contractor's License Number, Contractor's DIR Registration Number and email address</b>

*\*This page may be duplicated, if needed*

## ATTACHMENT E

### HOMELESS ENCAMPMENT CLEAN-UP RFP #4358 VENDOR REFERENCES

**References: Please enter at least three public agency contacts for which you have provided homeless encampment clean-up or similar services within the last three years:**

Agency:					
Address:					
City:		State:		Zip Code:	
Contact Name:				Title:	
Phone:			Email:		
Services provided (include quantities such as acreage where applicable):					
Contract Start Date:		Contract term:		Annual Contract Amount:	

Agency:					
Address:					
City:		State:		Zip Code:	
Contact Name:				Title:	
Phone:			Email:		
Services provided (include quantities such as acreage where applicable):					
Contract Start Date:		Contract term:		Annual Contract Amount:	

Agency:					
Address:					
City:		State:		Zip Code:	
Contact Name:				Title:	
Phone:			Email:		
Services provided (include quantities such as acreage where applicable:					
Contract Start Date:		Contract term:		Annual Contract Amount:	

Agency:					
Address:					
City:		State:		Zip Code:	
Contact Name:				Title:	
Phone:			Email:		
Services provided (include quantities such as acreage where applicable:					
Contract Start Date:		Contract term:		Annual Contract Amount:	

(ATTACHMENT F)

**REQUEST FOR PROPOSALS  
HOMELESS ENCAMPMENT CLEAN-UP RFP #4358  
NON-COLLUSION AFFIDAVIT)**

STATE OF CALIFORNIA    ))

ss.

COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being first duly sworn, deposes  
and says that he or she is \_\_\_\_\_ of

\_\_\_\_\_

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

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

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

Signed: \_\_\_\_\_

**ATTACHMENT G**

**CITY OF FULLERTON**

**REQUEST FOR PROPOSALS  
HOMELESS ENCAMPMENT CLEAN-UP RFP #4358  
EXCEPTIONS**

1. If you provided additional information regarding your company, policies, practices, procedures, pricing or your proposed products' capabilities, performance, capacities or pricing, does any of this information serve to qualify your response or alter any portion of these specifications? Yes/No. If so, please list sections and page numbers:

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2. Does your proposal fully comply with the conditions and specifications in this package? Yes/No

If you answered "No", explain each exception.

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**All exceptions or deviations must be listed here in accordance with specifications.** (Use the following page if necessary).

Signature: \_\_\_\_\_

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



**ATTACHMENT H**  
**REQUEST FOR PROPOSALS**  
**HOMELESS ENCAMPMENT CLEAN-UP RFP #4358**

**SAMPLE AGREEMENT**  
**SAMPLE ONLY—NOT TO BE SIGNED OR RETURNED WITH PROPOSAL**

**CITY OF FULLERTON**  
**PROFESSIONAL SERVICES AGREEMENT**  
**WITH**  
\_\_\_\_\_  
**FOR**  
\_\_\_\_\_

THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ (“Effective Date”), by and between the CITY OF FULLERTON, a municipal corporation (“City”), and \_\_\_\_\_, a [the state where incorporation occurred [type of corporation] (“Contractor”).

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Contractor as an independent contractor to City, as more fully described herein; and

B. WHEREAS, Contractor 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, except that if Contractor is required to but does not yet hold a City business license, it will promptly obtain a business license and will not provide services to the City until it has done so; and

C. WHEREAS, City and Contractor desire to contract for the specific services described in Exhibit “A” and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, 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 CONTRACTOR**

1.1. Scope of Services. Contractor shall provide the professional services described in the Scope of Services attached hereto as Exhibit “A,” incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Contractor 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 Contractors in similar fields and circumstances in accordance with sound professional practices. Contractor 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 Contractor's performance of this Agreement. Contractor shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such laws and regulations. City Officers and employees shall not be liable at law or in equity for any claims or damages occurring as a result of failure of the Contractor to comply with this section.

1.3. Performance to Satisfaction of City. Contractor agrees to perform all the work to the reasonable satisfaction of the City. Evaluations of the work will be conducted by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Contractor to review the quality of the work and resolve the matters of concern;
- (b) Require Contractor 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. Contractor warrants that it shall perform the services required by this Agreement in compliance with all applicable 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; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Contractor 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 or intellectual disability, medical condition, genetic information, pregnancy, marital status, sex, gender, gender identity, gender expression, or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Contractor acknowledges that City may enter into agreements with other Contractors 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. Confidentiality. Employees of Contractor in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Contractor covenants that all data, documents, discussion, or other information developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Contractor 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. Contractor's covenant under this Section shall survive the termination of this Agreement.

1.8 Public Records Act Disclosure. Contractor 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 Contractor, 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 Contractor 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.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Contractor shall be paid in accordance with the fee schedule set forth in Exhibit "B," attached hereto and made a part of this Agreement (the "Fee Schedule"). Contractor's total compensation shall not exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_.00).

2.2. Additional Services. Contractor shall not receive compensation for any services provided outside the scope of services specified in the Contractor's Proposal unless the City, prior to Contractor 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. Should the City request in writing additional services that increase the hereinabove described "SCOPE OF SERVICES", an additional fee based upon the Contractor's standard hourly rates shall be paid to the Contractor for such additional services. Such increase in additional fees shall be limited to 25% of the total contract sum or to the maximum total contract amount of \$25,000, whichever is greater. The Department Head or City Manager is authorized to approve a Change Order for such additional services.

2.3. Method of Billing. Contractor may submit invoices to the City for approval on a progress basis, but no more often than once a month. Said invoice shall be based on the total of all Contractor's services which have been completed to City's sole satisfaction. City shall pay Contractor'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 Contractor's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

## **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. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit "C," attached hereto and incorporated herein by this

reference. The Project Schedule may be amended by mutual agreement of the parties. 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. If a delay beyond the control of the Contractor is encountered, a time extension may be mutually agreed upon in writing by the City and the Contractor. The Contractor shall present documentation satisfactory to the City to substantiate any request for a time extension.

#### 4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of \_\_\_\_\_ months, ending on \_\_\_\_\_, 20\_\_\_\_, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. **[Optional language if extensions permitted:** Thereafter, this AGREEMENT may be renewed for a maximum of successive one (1) year terms not to exceed \_\_\_\_\_ ( ) years. Such renewal will be evidenced by a written Amendment upon written notice of City given to Contractor at any time prior to the expiration date of the AGREEMENT.]

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 at least fifteen (15) days prior written notice to Contractor. In the event of such termination, Contractor shall immediately stop rendering services under this Agreement unless directed otherwise by the City. If the City suspends, terminates or abandons a portion of this Agreement such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

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

The City also shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled to at law, in equity, or under this Agreement, immediately upon service of written notice of termination on the Contractor, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;

- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

4.3. Compensation. In the event of termination, City shall pay Contractor for reasonable costs incurred and professional services satisfactorily performed up to and including the effective date of the City's written notice of termination, within forty-five (45) days after the effective date of the notice of termination or the final invoice of the Contractor, whichever occurs last. 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.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Contractor 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 the effective date of the notice of termination, at no cost to City.

## **5.0. INSURANCE**

5.1. Minimum Scope and Limits of Insurance. Contractor shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Broad-form commercial general liability, in a form at least as broad as ISO from #CG 00 01 11 88, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Contractor agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers for losses arising from work performed by Contractor for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

By execution of this Agreement, the Contractor certifies as follows:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The Contractor shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the City before execution of this Agreement by the City. The City, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the Contractor to comply with this section.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retroactivity date shall be prior to the start of the contract work. Contractor shall obtain and maintain said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

If the contractor 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 contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Fullerton and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Contractor pursuant to its contract with the City; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The Contractor's insurance coverage shall be primary insurance as respects the City of Fullerton, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Fullerton shall be excess and not contributing with the insurance provided by this policy."

- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Fullerton, its officers, officials, agents, employees, and volunteers.
- (e) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City.

5.4. Certificates of Insurance. Contractor shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way the indemnification provision contained in this Agreement.

## **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.

6.2. Representatives. The City Manager or his or her 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.

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

6.3. Key Personnel. It is the intent of both parties to this Agreement that Contractor shall make available the professional services of \_\_\_\_\_, who shall coordinate directly with City. Any substitution of key personnel must be approved in advance by City's Representative and the Agreement shall be amended to reflect the changes.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile, Email or by U.S. mail. If by U.S. mail, it shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. 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 or by Email; and c) 72 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 CONTRACTOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Attn: \_\_\_\_\_

IF TO CITY:

City of Fullerton  
303 Commonwealth Ave.  
Fullerton, CA 92832  
Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Attn: \_\_\_\_\_

6.5 Attorneys' Fees. If litigation is brought by any party in connection with this Agreement, each party shall be responsible for its own costs and expenses, including attorney fees.

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 Los Angeles County, California.

6.7 Assignment. Contractor shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Contractor'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 Contractor of Contractor's obligation to perform all other obligations to be performed by Contractor hereunder for the term of this Agreement.

6.8 Indemnification and Hold Harmless. Contractor agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Contractor's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees arising out of the performance of the Contractor, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Contractor, 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 the Contractor, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the work performed by the Contractor, its employees, and/or authorized subcontractors under this Agreement, whether or not the Contractor, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Contractor shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole 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 Contractor's Proposal, which shall be of no force and effect.



6.9. Independent Contractor. Contractor is and shall be acting at all times as an independent contractor and not as an employee of City. Contractor 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 Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor 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. Contractor 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 Contractor and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Contractor 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. Contractor further agrees to indemnify and hold City harmless from any failure of Contractor to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Contractor or any employee, agent, or subcontractor of Contractor 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, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor 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, Contractor 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 Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance and cooperation which City might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Contractor or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Contractor 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 Contractor. City shall indemnify and hold harmless Contractor 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 Contractor. Contractor 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. Contractor or Contractor's agents shall execute such documents as may be necessary from time to time to confirm City's ownership of the copyright in such documents.

6.13. Electronic Safeguards. Contractor shall identify reasonably foreseeable internal and external risks to the privacy and security of personal information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of the information. Contractor shall regularly assess the sufficiency of any safeguards and information security awareness training in place to control reasonably foreseeable internal and external risks, and evaluate and adjust those safeguards in light of the assessment.

6.14. Economic Interest Statement. Contractor hereby acknowledges that pursuant to Government Code Section 87300 and the Conflict of Interest Code adopted by City hereunder, Contractor is designated in said Conflict of Interest Code and is therefore required to file an Economic Interest Statement (Form 700) with the City Clerk, for each employee providing advise under this Agreement, prior to the commencement of work, unless waived by the City Manager.

6.15. Conflict of Interest. Contractor and its officers, employees, associates and sub-contractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Contractor's services under this agreement, including, but not limited to, the Political Reform Act of 1974 (Government Code Section 81000, *et seq.*) and Government Code Sections 1090-1092. Contractor covenants that none of Contractor's officers or principals have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of the services hereunder, including in any manner in violation of the Political Reform Act. Contractor further covenants that in the performance of this Agreement, no person having such interest shall be used by Contractor as an officer, employee, agent, or sub-contractor. Contractor further covenants that Contractor has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City and further covenants and agrees that Contractor and/or its sub-contractors shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City prior to the completion of the work under this Agreement.

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

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

6.23. 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.

6.24. Counterparts and Electronic Signatures. 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. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

6.25. 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.

6.26 Taxpayer Identification Number. Contractor shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W9, as issued by the Internal Revenue Service.

**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,  
A municipal corporation

\_\_\_\_\_  
[Mayor or City Manager]

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

CONTRACTOR

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name and Title

ATTEST:

\_\_\_\_\_  
City Clerk of the  
City of Fullerton

APPROVED AS TO FORM:

\_\_\_\_\_  
, City Attorney

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

APPROVED AS TO INSURANCE:

\_\_\_\_\_  
Risk Management

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

**EXHIBIT A**  
**SCOPE OF SERVICES**

SAMPLE

**EXHIBIT B**  
**FEE SCHEDULE**

SAMPLE

**EXHIBIT C**  
**PROJECT SCHEDULE**

SAMPLE

