

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



**RFQ #4359 FISCAL SUSTAINABILITY PLAN**

**SUBMIT YOUR  
PROPOSAL BY 2:00 P.M. PST  
ON DECEMBER 4, 2020**

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

**RFQ Posted: Friday, November 6, 2020**

**Proposals must be received by: Friday, December 4, 2020 at 2:00 P.M. PST**

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**SECTION I**  
**NOTICE OF REQUEST FOR QUALIFICATIONS**

## NOTICE OF REQUEST FOR QUALIFICATIONS Fiscal Sustainability Plan

**NOTICE IS HEREBY GIVEN that** the City of Fullerton is requesting statements of qualifications from professional consulting firms to provide a Fiscal Sustainability Plan that will review the City's operating and capital improvement expenses, revenues, and multi-year projections, with a focus on the General Fund. The consultant is expected to provide an easy to use and sustainable Financial Model that provides a short (5 year), medium (10 year), and long-term (20 year) financial forecast of the City's financial trajectory both with and without the implementation of the recommended Fiscal Sustainability Plan. The developed plan should consider current and future finances and the impact of a potential slowing of revenue growth in the future of City services, infrastructure, and capital project needs, especially from the General Fund.

The City Council will consider the fiscal analysis and budget strategies developed by the selected firm to continue to deliver the City's services, capital projects, and goals during a process that includes internal stakeholder outreach and concludes with a presentation to the City Council.

The City's goal is to have the selected firm present its report by spring 2021 so that the short, medium, and long-term fiscal analysis and budget strategies can be presented and discussed by the City Council during the next budgetary cycle. The Fiscal Sustainability Plan is anticipated to be a valuable tool to ensure that the City's finances are allocated properly and provide resources to achieve the operational services and capital improvements desired by the community, given the financial challenges and constrained revenue available to the City.

This Request for Qualifications (RFQ) provides information on the City of Fullerton, the City budget, future major capital and infrastructure initiatives (and their proposed funding mechanisms), and future budget challenges. The RFQ describes the Fiscal Sustainability Plan project, the required scope of services, the consultant selection process, and the minimum information that must be included in the RFQ response.

Proposals will be evaluated based on the qualifications of the proposers, including but not limited to; past municipal experience, quality, service, price, ability to meet requirements, and any other criteria set out herein. The City will utilize a qualification-based selection process by following the evaluation criteria set out herein.

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

## BACKGROUND

The City of Fullerton is located approximately 22 miles southeast of metropolitan Los Angeles, in the center of North Orange County. Fullerton is a full-service city renowned for its unique mix of residential, commercial, industrial, educational, and cultural environments. Fullerton has 52 city parks, a museum, a cultural center, a public library, a golf course, and 29 miles of recreational trails. The City of Fullerton provides an outstanding quality of life for both residents and businesses. At 22.4 square miles, Fullerton is also one of the largest cities in Orange County by area and is the sixth most populous.

At the September 15, 2020, City Council meeting, a historical overview of the City's finances was presented to the City Council. The update included the current fiscal condition of the City with an emphasis on assessing the City's long-term financial sustainability based on current revenue and expenditure projections with and without a new revenue source. The City has identified that its ability to continue to provide an expected level of public services and improve critical infrastructure; including street improvements and maintenance, is severely challenged by a long-standing financial imbalance in revenues and expenditures. The recent short-term financial impact of the COVID-19 pandemic underscores the City's unsustainable fiscal condition. The City has been forced to resort to holding numerous positions vacant, instituting pay cuts, separating non-regular (part-time) positions, issuing notices of layoffs to seven full-time employees, reducing service levels across all departments, and identifying the use of limited contingency reserves to deal with the health crisis' fiscal impact.

Historically, the City has seen cycles of surpluses and deficits in its General Fund. Since the realignment of property taxes enacted by Proposition 13, approved by voters in 1978, the City has utilized various budget-balancing actions. The origin of the structural budget issue dates back to the development of the City decades ago, primarily as a residential community serving established aerospace and manufacturing firms, as well as hosting institutes of higher education. After the property tax reform of the late 1970s, the City was limited in its ability to generate revenue due to its smaller percentage of commercial land use and retail opportunities. Sales tax in the late 1970's exceeded the collection of property tax for the General Fund (the Library Fund and Park Fund had their own property tax proceeds); however, collectively property tax collection exceeded sales-tax collection by over 20%. Even though Fullerton had a well-defined downtown and commercial center area at Orangethorpe and Harbor, along with other nodes of commercial centers at major intersections and adjacent to Cal State Fullerton, sales-tax generation was not sufficient for growth. Currently, Fullerton has a lower sales-tax generating capacity than neighboring cities. Fullerton's sales tax at approximately \$144 per capita, significantly lags behind others in the County. The City of Brea has a per capita amount of \$488; Garden Grove - \$235; Orange - \$301, and Placentia at \$223. The City's per capita for property tax revenue is about 21st out of the 34 cities. (data from [www.californiacityfinance.com](http://www.californiacityfinance.com))

The most recent infrastructure review, by the Infrastructure and Natural Resources Advisory Committee (INRAC), recommended a new revenue source, a special-use sales-tax, just for infrastructure. Based on polling conducted in November 2019, a special-use tax would not garner

a 2/3rds support from voters to pass. Thus, on July 7, 2020, the City Council, on a 4-1 vote, approved the placement of a general sales-tax measure of 1.25% for the November ballot (Measure S). This measure failed to gain voter approval.

The City of Fullerton has not gone through a full strategic planning process. Therefore, this Fiscal Sustainability Plan will enable the City Council to have a fresh start in terms of setting priorities. The City is also in the process of selecting a consulting firm to conduct a full strategic planning process for the City Council to develop strategic priorities. A strategic planning process beginning in February 2021 will start with an outreach survey to solicit feedback from the community on prioritizing city goals. As the budget process progresses, these two efforts will be combined into a Study Session in April 2021, during which the City Council can set priorities and align available resources appropriately and review an updated 5, 10, and 20 year financial forecast.

Since the sales-tax measure failed, the City needs to take immediate action to create a fiscally sustainable operations plan. Two pressing items will require attention, the first being the expiration of employee labor agreements on June 30, 2021. This will require negotiations to begin around January/February 2021. The second item is the creation of the new Infrastructure Fund per Ordinance 3284 as adopted on July 21, 2020. The new Infrastructure Fund requires the transfer of a sales tax revenue and secured property taxes, above a designated baseline, into a restricted Infrastructure Fund for infrastructure-related improvements.

A strategic planning session will be held to identify and prioritize City services and programs to be retained, reduced, or eliminated, to discuss methods in improving infrastructure, and to evaluate options to increase contingency reserves up to the 17% target. Given the importance of making infrastructure improvements, alternative methods are to be explored and pursued because not investing in our streets is not an option nor acceptable. Alternative methods include, but are not limited to:

- Re-prioritizing funding from current services/programs/personnel to reallocate funding to infrastructure
- Individual assessment districts for street/alley improvements
- Landscape maintenance districts for specified area landscaped medians/parkways and parks
- Lighting assessment districts for street light improvements (high series circuits) and operations
- Potential community services or community facilities district elections to support services for current or future residential development
- The creation of Development Impact Fees related to libraries, fire and police services, and review of current Impact Fees for parks (Park Dwelling Fund).

The City's continued annual budget reduction measures do not provide for a structurally balanced budget. Short-term budget-balancing actions do not enhance City services and prolong the degradation of services to the public. The continuation of cutting as a means to balance does

not provide additional funding for roads to improve nor does it stop their deterioration. The City will need to identify an additional \$6 million (minimum) from our current budget to reallocate for infrastructure (streets) improvements. With no new or increased sustainable revenue sources, the City will need to evaluate long-term cuts to both labor and operating costs at an anticipated minimum of \$5 million a year. To also establish funding for roads and other priorities established by the City Council, the City will need to further reallocate funds through program reductions and personnel reductions by an additional \$6 million a year.

With the scenario that the City can sustain budget reduction efforts of \$5 million a year, projections indicate that reserves will run out in Fiscal Year 24-25 with a fund deficit of over \$2.65 million that is projected to increase annually thereafter. These projections are estimates, and the City recognizes that many factors will dictate actual revenue and expenditure levels in the future. Once the City has utilized all of its contingency reserves, it is necessary to match all expenditures with available revenue sources so that the City has a zero fund balance at the end of each Fiscal Year.

A Fiscal Sustainability Plan, with a corresponding Financial Forecast Model, will be a significant tool in the strategic planning process that will serve as an independent assessment of budgeting practices, service requirements, and best practices. The plan will help the City of Fullerton identify and prioritize expenditures. The City's CalPERS pension obligations and other post-employment benefits are components of its overall expenditures outpacing its revenue capacity and must also be addressed. The selected respondent should hold no punches concerning the City's past budgetary practices, priorities, and staffing levels. Charges for fees in comparison to service levels need to be addressed, as well as, identifying eligible costs for pass-through, such as credit card fees and more. The City has also begun a cost allocation plan to identify appropriate levels of allocation to internal service funds, such as equipment reserve, liability fund, etc., these are to be reviewed and opined on. The contracting of all public services is on the table and the selected firm is expected to identify and review the practicality of outsourcing all city services. Employee compensation, benefits provisions, and retirement options should also be included in the review.

## **SUBMITTAL DEADLINE**

**TO BE CONSIDERED, PROPOSALS MUST BE SUBMITTED NO LATER THAN FRIDAY, DECEMBER 4, 2020 AT 2:00 P.M. PST.** The City expects to award this contract at a City Council meeting to be held on December 15, 2020.

**SECTION II**  
**SCOPE OF SERVICES/SCOPE OF WORK**

## SCOPE OF SERVICES/SCOPE OF WORK

Subject to further discussion with the selected firm, the City of Fullerton anticipates that the scope of work on this assignment may include some or all of the following services:

- Historical review of budgeting policies, fund allocations, and financial practices in order to understand the City's current fiscal situation.
- Review City services and service levels, City finances and forecasts, operating budget (focusing on the General Fund), upcoming major capital improvement initiatives, ongoing CIP projects, and infrastructure needs.
- Review prior department level organizational assessments.
- Meet with each department, review programs, annual expenditures, and assist with establishing a ranking of department programs based on basic level of public service.
- Develop an outreach process with employees and bargaining groups to share the initial menu of budget strategies and solicit feedback on the proposed Fiscal Sustainability Plan.
- Develop an outreach and community input process with residents, business groups, and community partners to share the initial menu of budget strategies and to solicit feedback on the proposed Fiscal Sustainability Plan.
- Develop a comprehensive set of Fiscal Sustainability strategies to address the financial challenges that the City may face in the future with focus on both the short-term (5 years) and medium-range (10 years) and long-range (20 years). This would include ways to fund services and projects over a multi-year horizon. It may include options including new revenues, expenditure reductions, and reprioritization of resources. The Fiscal Sustainability strategies would include a definition of each strategy, the fiscal benefit of each strategy, and an outline of the implementation steps, challenges, or ease of implementation.
- Develop an easy to use and maintain Financial Forecast Model demonstrating the City's financial outlook comparing the status quo and the implemented Fiscal Sustainability Plan. Provide training to City staff on utilization of the model.
- Define a process for City Council review, consideration, and acceptance of the Fiscal Sustainability Plan, as well as, the selected firm's final report.
- Provide a project calendar that outlines the steps in the process proposed by the selected firm that meets the City's objective of having the final City Council review of the report and budget strategies by spring 2021.

- Provide tools for ongoing communication, reporting, and transparency of the City's fiscal condition for both online and City Council reporting to inform, educate, and ensure that the Community is engaged with the ongoing financial decisions of the City.

**SECTION III**  
**INSTRUCTIONS TO PROPOSERS**

## INSTRUCTIONS TO PROPOSERS

### **A. EXAMINATION OF PROPOSAL DOCUMENTS**

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

### **B. ADDENDA**

1. Any changes to the requirements will be made by written addendum to this RFQ. Any written addenda issued pertaining to this RFQ shall be incorporated into the terms and conditions of any resulting Agreement. City will not be bound to any modifications to or deviations from the requirements set forth in this RFQ as the result of oral instructions. Proposers shall acknowledge receipt of addenda in their proposals.
  
2. If a proposer discovers any ambiguity, conflict, discrepancy, omission or other error in the RFQ, the proposer should immediately provide the City written notice of the problem and request that the RFQ be clarified or modified. Without disclosing the source of the request, the City may modify the documents prior to the date fixed for submission of proposals by issuing an addendum.

If prior to the date fixed for submissions, a proposer(s) knows of or should have known of an error in the RFQ but fails to notify the City of the error, the proposer shall submit a proposal at their own risk, and if awarded a contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.

### **C. CALIFORNIA PUBLIC RECORDS ACT (CPRA)**

All proposals submitted in response of this RFQ become the property of the City and under the Public Records Act (Government Code Section 6250 et. Seq.) are public record, and as such, may be subject to public review. However, the proposals shall not be disclosed until negotiations are complete and recommendation for action is made to the City Council.

If a proposer claims a privilege against public disclosure for trade secret or other proprietary information, such information must be clearly identified in the proposal. Note that under California Law, price proposal to a public agency is not a trade secret.

**D. REQUEST FOR INFORMATION**

**1. Submitting Questions**

- a. All questions must be submitted and received by the City no later than 5:00 P.M. PST on Friday, November 20, 2020.
- b. Request for clarifications, questions and comments must be submitted through the City's eProcurement Portal via Public Purchase ([www.publicpurchase.com](http://www.publicpurchase.com)), a third-party website that hosts the City's eProcurements. Registration is free and interested proposers can select to receive automatic bid notifications from the City.

**2. City Responses**

- a. Responses from the City will be posted on the City's bid webpage ([https://www.cityoffullerton.com/biz/bids\\_n\\_rfps.asp](https://www.cityoffullerton.com/biz/bids_n_rfps.asp)) and the City's eProcurement Portal, Public Purchase ([www.publicpurchase.com](http://www.publicpurchase.com)), tentatively scheduled to be posted on November 30, 2020.

**E. CITY CONTACT**

General questions regarding this RFQ are to be directed to the following:

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

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

**F. SUBMISSION OF PROPOSALS**

**1. Date and Time**

**Proposals must be submitted at or before 2:00 P.M. PST, Friday, December 4, 2020.**

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

**2. How to Submit**

Proposals shall be submitted electronically via seven (7) USB Drives and delivered to:

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

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

**3. Acceptance of Proposals**

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

**G. PRE-CONTRACTUAL EXPENSES**

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

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

1. Preparing its proposal in response to this RFQ;

2. Submitting that proposal to the City;
3. Negotiating with the City any matter related to this proposal; or any other expenses incurred by proposer prior to date of award, if any, of the Agreement.

#### H. **JOINT OFFERS**

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

#### I. **EXCEPTIONS / DEVIATION**

The proposer(s) shall enter into an agreement with the City based upon the contents of the RFQ and the firm's proposal. The City's standard form of agreement is included in **Section VI**. The proposer(s) shall carefully review the agreement, especially with regard to the indemnity and insurance provisions, and include with the proposal a description of any exceptions, technical or contractual, requested to the standard contract. **If there are exceptions or are no exceptions, a statement to the effect shall be included in the proposal as well. See the exceptions attachment included in Section VIII that must be included with your proposal.**

#### I. **INSURANCE REQUIREMENTS**

The consultant shall procure and maintain throughout the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the consultant, his agents, representatives, employees or subcontractors. Consultant shall provide current evidence of the required insurance in a form acceptable to the City and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this Agreement.

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

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

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

- b. **Business Automobile Liability Insurance.** Consultant shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form # CA 00 01, with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- c. **Workers' Compensation and Employers' Liability Insurance.** Consultant shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than \$1,000,000 each accident.
- d. **Professional Liability Insurance.** Consultant shall maintain professional liability insurance appropriate to consultant's profession with a limit of not less than \$2,000,000. Architects' and engineers' coverage shall be endorsed to include contractual liability. If policy is written as a "claims made" policy, the retro date of the policy shall be prior to the start of the contract work.

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

## 2. Other Insurance Provisions

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

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

Additionally, consultant shall provide certified copies of the claims reporting requirements contained within the policies.

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

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

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

### 3. Acceptability of Insurers

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

### 4. Verification of Coverage

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

**SECTION IV**  
**PROPOSAL CONTENT**

## PROPOSAL CONTENT

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

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

#### **1. Presentation**

Proposals shall be typed, with 12 point font, single spaced and submitted electronically on (7) separate USB Drives with 1 copy of a fully completed proposal included each of the (7) USB Drives. The electronic proposal will be submitted in a format that will print on 8 ½" x 11" size paper. Charts and schedules may be included in a format that will print on an 8 ½" x 11" size paper. The proposer(s) should not include any unnecessary elaborate or promotional material. Lengthy narrative is discouraged, and presentations should be brief and concise.

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

The Letter of Transmittal shall be addressed to the City of Fullerton and, at a minimum, contain the following:

- a. Identification of proposer that will have contractual responsibility with the City. Identification shall include legal name of company, corporate address, telephone and fax number. Include name, title, address, email and telephone number of the contact person identified during period of proposal evaluation.
- b. Identification of all proposed sub-consultants (if known) including legal name of company, contact person's name and address, phone number and fax number. Relationship between proposer and sub-consultant if applicable.
- c. Acknowledgment of receipt of all RFQ addenda, if any.
- d. A statement to the effect that the proposal shall remain valid for a period of no less than 90 days from the date of submittal.
- e. Signature of a person authorized to bind proposer to the terms of the proposal.
- f. Signed statement attesting that all information submitted with the proposal is true and correct.

### **3. Technical Proposal**

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

This section of the proposal should establish the ability of proposer to satisfactorily perform the required work by reasons of: experience in performing work of the same or similar nature; demonstrated experience working with other public agencies; strength and stability of the proposer; staffing capability; work load; record of meeting schedules on similar contracts; and supportive client references. Most recent references preferred.

Proposer to:

- (1) Provide an overview of the proposal (including the firm's relevant experience), a summary of the proposer's understanding of the requested Scope of Work, and its approach to providing those services.
- (2) A brief description of your firm's background, size, office locations in California, and history as it may be relevant to the services required.
- (3) Describe your experience providing fiscal sustainability plans and financial forecast models for other public agencies and authorities, with an emphasis on California jurisdictions and agencies, any related projects and studies on developing strategies to address budgetary and financial challenges.
- (4) Provide two (2) completed reports that your firm has previously developed for cities, counties, or local government agencies that are comparable to the project outlined in this RFQ.
- (5) References – Please provide at least three (3) client references for whom your firm has performed similar work to that requested in this RFQ during the past five years. For each client, please provide the name, street address, telephone number, and email address.

**b. Proposed Staffing and Organization**

This section of the proposal should establish the method that will be used by the proposer to manage the contract as well as identify key personnel assigned. Proposed staffing and organization are to be presented by proposer identified in the Scope of Work.

Proposer to:

- (1) Provide education, experience and applicable professional credentials of contract staff. Include applicable professional credentials of "key" contract staff.
- (2) Furnish brief resumes (no more than one page each) for key personnel.
- (3) Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, and proposed position for this project, current assignment, and level of commitment to that assignment, availability for this assignment and how long each person has been with the firm.
- (4) Include an organization chart that clearly delineates communication/reporting relationships among the staff, including sub-consultants.
- (5) Include a statement that key personnel will be available to the extent proposed for the duration of the project, acknowledging that no person designated as "key" to the contract shall be removed or replaced without the prior written concurrence of the City.

**c. Detailed Work Plan**

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

The proposer shall:

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

**4. Fee Proposal**

Submit a rate sheet of key personnel who will be assigned to perform the services outlined in the “Scope of Work” of this RFQ. Provide a total, “Not-To-Exceed” amount to complete the services outlined in the scope of work, including; number of hours and estimated costs per task. Describe how customary reimbursable expenses will be charged, including attendance at meetings in the City. Respondents verify the proposed costs are their best offer. The City may seek to enter into cost negotiations over various aspects of the fee proposal with the selected firm(s) based on the needs of the City.

**5. Appendices**

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

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

Proposer is required to complete and sign the form entitled “Status of Past and Present Contracts” provided in this RFQ and submit as part of the proposal. Proposer shall list the status of past and present contracts where either the firm has provided services as a prime contractor or a sub-consultant during the past 5 years and the contract has ended or will end in termination, settlement or litigation. A separate form shall be completed for each contract. If the contract was terminated, list the reason for termination. Proposer must also identify and state the status of any litigation, claims or settlement agreements related to any of the identified contracts. Each form must be signed by the proposer confirming that the information provided is true and accurate. Proposer is required to submit a copy of the completed form(s) as part of the proposal on each of the (7) USB Drives requested.

**SECTION V**  
**EVALUATION AND AWARD**

## EVALUATION AND AWARD

### **A. EVALUATION CRITERIA**

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

City will evaluate the proposals received based on the following criteria:

1. Qualifications of the Firm - technical experience in performing work of a similar nature; experience working with public agencies is mandatory; strength and stability of the firm; and assessment by client references.
2. Project Management Approach - qualifications of proposed key personnel; logic of organization; and adequacy of labor commitment and resources to satisfactorily perform the requested services and meet the City's needs.
3. Detailed Work Plan - thorough understanding of the City's requirements and objectives; logic, clarity, specificity, and overall quality of work plan.
4. Fee Proposal - reasonableness of proposed fees

The City will select a firm based upon the responding firms' qualifications and experience, together with its responses to the requests for information set forth above. It should be noted that none of these factors in and of themselves are determinative, and the City reserves the right to select a firm on any basis that is in the best interests of the City. The City may contact firms in response to questions raised in their proposals and the City reserves the right to cancel this solicitation without selecting any firms.

After the submittals are evaluated. The City, at its sole discretion, may elect to interview all, some, or none of the proposers. The interview will help to clarify each proposal, approach and qualifications for the project. Proposers may be asked to submit additional documentation at or after the interview stage. Based upon the interview and evaluation of the proposals, the top-ranked firm will be recommended to the City Council. In addition, the City reserves the right to select a proposal without conducting interviews or abandon this RFQ. Final selection of a firm and authority awarding the contract to proceed with these services shall be at the sole discretion of the City Council.

**B. EVALUATION PROCEDURE**

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

**C. AWARD**

The City of Fullerton may negotiate contract terms with the selected proposer(s) prior to award, and expressly reserves the right to negotiate with several proposers simultaneously. However, since the selection and award may be made without discussion with any proposer, the proposal submitted should contain proposer's most favorable terms and conditions.

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

**D. NOTIFICATION OF AWARD**

Proposers who submit a proposal in response to this RFQ shall be notified regarding the proposer(s) awarded a contract. Such notification shall be made within seven (7) days of the date the contract is awarded. Notification of Intent to Award will be emailed to firms who submitted a proposal, and will also be available on the City's bid webpage ([https://www.cityoffullerton.com/biz/bids\\_n\\_rfps.asp](https://www.cityoffullerton.com/biz/bids_n_rfps.asp)) and on the City's eProcurement platform ([www.publicpurchase.com](http://www.publicpurchase.com)).

**Tentative Schedule**

<b>Release of RFQ</b>	<b>November 6, 2020</b>
<b>Question Submittal Deadline</b>	<b>November 20, 2020 at 5:00 P.M. PST</b>
<b>Response to Questions Posted</b>	<b>November 30, 2020</b>
<b>RFQ Submittal Deadline</b>	<b>December 4, 2020 at 2:00 P.M. PST</b>
<b>Consultant Interviews</b>	<b>TBD **</b>
<b>Contract and Scope Negotiations</b>	<b>TBD **</b>
<b>Contract Award</b>	<b>December 15, 2020</b>

**\*\* Tentative Schedule may be changed at the City's discretion, Interviews and Negotiations will be scheduled if required \*\***

**SECTION VI**  
**PROFESSIONAL SERVICES AGREEMENT**  
**SAMPLE ONLY**

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

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

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

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

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

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

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

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

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

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

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

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

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

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

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

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

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

## **2.0. COMPENSATION AND BILLING**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **5.0. INSURANCE**

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

Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, employees or subcontractors. Consultant shall provide current evidence of the required insurance in a form acceptable to City and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration, or termination of this Agreement.

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

5.2. Minimum Scope and Limits of Insurance.

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

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

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

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

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

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

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

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

afforded to City, its officers, employees and volunteers.

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

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

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

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

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

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

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

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

## **6.0. GENERAL PROVISIONS**

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

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

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

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

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

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

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

IF TO CONSULTANT:

[VENDOR/CONSULTANT NAME]

[MAILING ADDRESS]

Attn: [NAME AND TITLE]

IF TO CITY:

City of Fullerton

303 W. Commonwealth Ave.

Fullerton, CA 92832

Attn: [NAME AND TITLE]

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

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

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

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

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

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

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

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

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

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

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

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

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

6.15. Responsibility for Errors. Consultant shall be responsible for its work under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, without prejudice to any other remedy to which City may be entitled to at law or equity, Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction. In addition, Consultant shall reimburse City for any and all costs, expenses and/or damages, if any, that the City has incurred due to the aforementioned error or omission.

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

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

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

provided herein.

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

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

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

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

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

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

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

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

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

CITY OF FULLERTON

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

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

CONSULTANT

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

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

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

APPROVED AS TO FORM:

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

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

## Status of Past and Present Contracts Form

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

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

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

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

Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**SECTION VIII**  
**EXCEPTIONS FORM**

**EXCEPTIONS FORM**

If your company is taking exception to any of the specifications, terms or conditions (including insurance, indemnification and/or proposed contract language) stated in this Request for Quote, please indicate below and describe details: (check any that apply).

- No exceptions taken
- Exception taken to the scope of work or specifications
- Exception taken to indemnification and insurance requirements
- Exception to proposed contract language
- Other

Please explain any of the checked items:

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PROPOSING FIRM: \_\_\_\_\_ DATE: \_\_\_\_\_

BUSINESS ADDRESS : \_\_\_\_\_

**SIGNATURE OF REPRESENTATIVE:** \_\_\_\_\_

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_

**INSTRUCTION REGARDING SIGNATURE:** If proposer is an individual, state "Sole Owner" after signature. If proposer is a partnership, signature must be by a general partner, so stated after "Title". Names of all other partners and their business addresses must be shown below. If proposer is a corporation, signature must be by an authorized officer, so stated after "Title", and the names of the President and Secretary and their business addresses must be shown below:

_____	_____
_____	_____
_____	_____
_____	_____