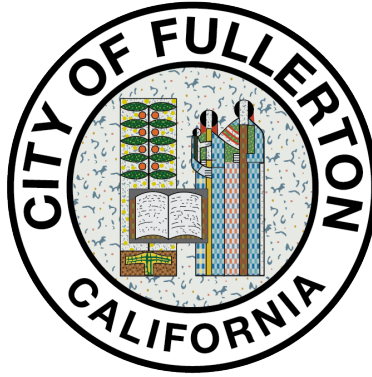


CITY OF FULLERTON
REQUEST FOR PROPOSALS



RFP #4375 WATER MASTER PLAN UPDATE AND ON-CALL SERVICES

**SUBMIT YOUR
PROPOSAL BY 5:00 PM PST
ON JULY 20, 2022 TO:**

**City of Fullerton – Purchasing
303 W. Commonwealth Avenue
Fullerton CA, 92832-1775**

RFP Posted: June 17, 2022

Proposals must be received by: Wednesday, July 20, 2022 at 5:00 pm PST

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1. NOTICE OF REQUEST FOR PROPOSALS Water Master Plan Update

NOTICE IS HEREBY GIVEN the City of Fullerton (City) is accepting proposals from the top three (3) qualified professional civil engineering consulting firms from RFQ# 4371 to update the City's Water Master Plan and Water Rate Study (WMP & WRS, or Project) as well as providing on-call services following the completion of the Project for the Public Works Department, Engineering Division.

Proposals will be evaluated on the basis of the overall best value to the City based on quality, service, verifiable experiences, and any other criteria set out herein including but not limited to the Proposer's ability to meet the requirements, qualifications, and competencies set out herein.

1.1 BACKGROUND

The City of Fullerton ("City") is located 22 miles southeast of metropolitan Los Angeles, in the center of North Orange County. Fullerton is a full-service, general law city that was incorporated in 1904. Fullerton is renowned for its unique mix of residential, commercial, industrial, educational, and cultural environments and is known for being "the education community". Fullerton has 52 City parks, a museum, a cultural center, a public library, a golf course, and 29 miles of recreational trails. Fullerton provides an outstanding quality of life for both residents and businesses. Fullerton is also one of the largest cities in Orange County by area and is the sixth most populous.

The City's water service area covers 22.3 square miles serving a population of nearly 144,000. The City's water system consists of 15 reservoirs with a capacity of 67.5 million gallons (MG), 12 booster pumping stations, 9 groundwater wells, with one additional well under construction, 424 miles of water mains, and approximately 32,000 service connections spread across 4 pressure zones with 12 sub-zones. The water from one of the wells is currently being treated to remove per- and polyfluoroalkyl substances (PFAS) and a new treatment facility will be constructed to treat water from another well. The City has seven imported water connections to Metropolitan Water District of Southern California (MWD) and six emergency interconnections with neighboring utilities.

The City of Fullerton is seeking proposals from proposers who were prequalified from RFQ# 4371 to assist the City with (a) updating its Water Master Plan, (b) expansion of its Asset Management Program, (c) updating its Water Rate Study, and (d) providing on-call services after completion of the Water Master Plan Update. The City will only consider and accept proposals from those proposers that were short listed based on their Statements of Qualifications (SOQs) submitted in response to the City's February 23, 2022, Request for Qualification (RFQ).

1.2 SUBMITTAL DEADLINE

TO BE CONSIDERED, SEALED PROPOSALS MUST BE SUBMITTED NO LATER THAN **Wednesday, July 20, 2022 at 5:00 PM PST** to the Purchasing Division, 303 W. Commonwealth Ave, Fullerton, California,

92832. Failure of, or disturbances in any mail service is not a legitimate reason for proposals submitted after the above due date. The City may extend the deadline at its discretion. Please see instructions in Section 3.4 for details on how to submit.

The RFP will be made available only to the proposers that were short listed based on their Statements of Qualifications (SOQs) submitted in response to the City's February 23, 2022, Request for Qualification (RFQ). Only these short-listed firms may submit a proposal.

2. SCOPE OF SERVICES/SCOPE OF WORK

The City proposes to issue one (1) contract for preparation of the Water Master Plan Update, Water Rate Study (WMP & WRS, or Project) as well as providing on-call services following the completion of the Project. The Scope of Work for the WMP and WRS is provided in **Exhibit A**, Scope of Work for the on-call services is provided in **Exhibit B**, and the list of available reports and data is provided in **Exhibit C**.

3. INSTRUCTIONS TO PROPOSERS

3.1 Examination of Proposal Documents

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

3.2 Addenda

Any changes to the requirements will be made by written addendum to this RFP and will be emailed to the qualified Proposers. Any written addenda issued pertaining to this RFP 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 RFP as the result of oral instructions. Proposers shall acknowledge receipt of addenda in their proposals.

3.2.1 Clarifications

Should a Proposer require clarifications of this RFP, the Proposer shall notify the City in writing in accordance with Section 3.3 below. Should it be found that the point in question is not clearly and fully set forth, the City will issue a written addendum clarifying the matter.

3.2.2 Errors in RFP

If a Proposer discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, the bidder should immediately provide the City written notice of the problem and request that the RFP 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 to all potential bidders.

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

3.3 Request for Information

3.3.1 Submitting Questions

All requests for clarifications and questions must be submitted by email and must be received

by the City no later than 4:00 pm PST, June 24, 2022.

3.3.2 City Responses

Notification of responses to questions and clarifications from the City will be directly emailed to proposing firms on July 1, 2022 .

3.3.3 General Inquiries

General questions on Professional Service RFPs and/or contacts with City staff/representative regarding this RFP are to be directed to the following:

**City of Fullerton – Purchasing
Attn: Karen Chung
303 W. Commonwealth Avenue
Fullerton CA, 92832-1775
Email: karen.chung@cityoffullerton.com**

3.4 Submission of Proposals

3.4.1 Date and Time

Proposals must be submitted at or before 5:00 pm PST on Wednesday, July 20, 2022

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

3.4.2 How to Submit

Proposer shall submit one (1) hard copy of the proposal and one (1) electronic copy on a USB flash drive. Copies of the proposal must be submitted in a sealed package bearing the Proposer’s name and address and clearly marked as follows:

“RFP #4375 Water Master Plan Update & On-Call Services”

Proposals can be dropped off at the address below or sent via delivery using the U.S. Postal Service or other means:

**City of Fullerton – Purchasing Department
303 W. Commonwealth Avenue
Fullerton CA, 92832-1775**

3.4.3 California Public Records Act (CPRA)

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

3.5 Acceptance of Proposals

1. 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.
2. City reserves the right to withdraw or cancel this RFP at any time without prior notice, and the City makes no representations that any contract will be awarded to any Proposer responding to this RFP.
3. City reserves the right to postpone proposal openings for its own convenience.
4. Proposals received by the City are public information and must be made available to any person upon request.
5. Submitted proposals are not to be copyrighted.

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

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

3.6.1 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.

- e. **Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by City. The City may require the Consultant to purchase coverage with a lower retention. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

3.6.2 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, the Retroactive Date must be shown and must be before the date of the contract or beginning of contract work. The insurance must be maintained, and evidence of insurance must be provided for at least (5) years after completion of the contract work. If the coverage is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting coverage" for a minimum of five (5) years after completion of work.
- 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. Insurer shall endorse the policy with a waiver of subrogation in favor 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. **Subcontractor.** Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein and consultant shall ensure that City is an additional insured on insurance required from subcontractor.
- 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.

3.6.3 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.

3.6.4 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.

3.7 Additional Information Prior to Submittal

3.7.1 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 RFP;
2. Submitting that proposal to the City; and
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.

3.7.2 Joint Offers

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

4. REQUIRED PROPOSAL CONTENT

4.1 Overall Presentation

Although no specific formatting 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.

Proposals shall be typed and submitted on 8 1/2 x 11" size paper, using a single method of fastening. Charts and schedules may be included in 11" x 17" format. Offers should not include any unnecessarily elaborate or promotional material. Lengthy narrative is discouraged, and presentations should be brief and concise. Links to sample work should be clearly labeled and identified in both the electronic and hard copy version of the proposal.

4.2 Proposal Outline to be Submitted

In order for a proposal to be submitted as complete, the following items must be included in full:

1. Letter of Transmittal

The Letter of Transmittal is limited to two (2) pages and shall be addressed to Karen Chung, Buyer and contain the following:

- a. Identification of Proposer that will have contractual responsibility with the City. Identification shall include legal name of company, corporate address, and telephone number. Include name, title, address, email, and telephone number of the contact person identified during period of proposal evaluation.
- b. Identification of all proposed subcontractor including legal name of company, contact person's name and address, and phone number. Relationship between Proposer and subcontractor, if applicable.
- c. Acknowledgment of receipt of all RFP addenda, if any.
- d. A statement to the effect that the proposal shall remain valid for a period of not less than 180 days from the date of submittal.
- e. An authorized signature. Company personnel signing the cover letter of the proposal or any other related forms submitted must be authorized signers with the requisite authority to represent their firm and to enter into binding contracts.
- f. Signed statement attesting that all information submitted with the proposal is true and correct.

2. Proposer Qualifications

The intent of this RFP is to evaluate the proposals, and select (1) Proposer that will provide the most cost-effective and professional services for the City:

Minimum Qualifications:

- a. Be capable of providing the required services beginning on or around October 2022.
- b. Have the necessary resources, knowledge, skills, and experience to provide the required services as described in the Scope of Services/Scope of Work (Section 2).

- c. Have financial stability and the necessary financial resources to provide the required services.
- d. Demonstrate the requisite technical proficiency. Only Proposers with verifiable cablecasting experience will be considered for award.

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

Proposer to:

- (1) Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size, and location of offices; number of employees.
- (2) Provide a general description of the firm's financial condition, identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Proposer's ability to complete the contract.
- (3) Describe the firm's experience in performing work of a similar nature to that solicited in this RFP and highlight the participation in such work by the key personnel proposed for assignment to this contract.
- (4) Describe experience in working with the various government agencies that may have jurisdiction over the approval of the work specified in this RFP. Please include specialized experience and professional competence in areas directly related to this RFP.
- (5) Provide a list of past joint work by the Proposer and each subcontractor, if applicable. The list should clearly identify the contract and provide a summary of the roles and responsibilities of each party.
- (6) A minimum of three (3) references should be given. Furnish the name, title, address, email and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. Proposer may also supply references from other work not cited in this section as related experience.

3. Proposed Staffing and Organization

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

Proposer to:

- (7) Provide education, experience, and applicable professional credentials of Contract staff. Include applicable professional credentials of “key” Contract staff.
- (8) Furnish brief resumes (not more than two [2] pages each) for the proposed key personnel.
- (9) 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 Contract, current assignment, and level of commitment to that assignment, availability for this assignment and how long each person has been with the firm.
- (10) Include an organization chart that clearly delineates communication/reporting relationships among the staff, including sub consultants.
- (11) Include a statement that key personnel will be available to the extent proposed for the duration of the contract, acknowledging that no person designated as "key" to the Contract shall be removed or replaced without the prior written concurrence of the City.

4. Detailed Work Plan and Implementation Schedule

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

The Proposer shall:

- (12) Describe the proposed approach and work plan for completing the services specified in the Scope of Services. The description of the proposed approach shall discuss the services in sufficient detail to demonstrate the Proposer’s ability to accomplish the City’s objectives.
- (13) Describe the timeline/schedule for the work plan for completing the services specified in the Scope of Services including the amount of time and involvement of key personnel.
- (14) Identify the team to be assigned for these services and qualifications of specific individuals who will work on the project, including resumes.
- (15) Describe the 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 the methods that Proposer will use to ensure quality, budget, and schedule control.

5. Work Samples

Proposer shall provide electronic copies (PDF format) of two (2) recent Asset Management

Plans and two (2) Water Rate Studies prepared by the firm.

The Proposer shall:

- (16) Provide samples of work, queries, and reports from other related projects.
- (17) Provide samples of ongoing support and service agreements.

6. Fee Proposal

The City proposes to issue a contract for preparation of the WMP & WRS as well as providing on-call services following the completion of the WMP & WRS. The WMP & WRS is anticipated to be completed in two (2) years, and the on-call services is anticipated to continue for three (3) years, with a total contract term of five (5) years.

The Proposer will be compensated in accordance with Section 2.0 of the Sample Professional Services Agreement. For the WMP & WRS, compensation will be made based on the negotiated fees and schedule with the selected Proposer. The Proposer fee schedule shall remain in effect during the preparation of the WMP & WRS.

For the on-call services, the Proposer will be compensated based on the Proposer's proposed hourly fees and estimated hours plus direct costs. The Proposer shall provide its hourly rate schedule with its proposal and the proposed total cost for the on-call services shall not exceed \$100,000.00 during the entire term of the Agreement. The Proposer fee schedule shall remain in effect during the first 12 months of the on-call services term. Any proposed requests to change the adopted rates annually shall not exceed the relevant Consumer Price Index for the preceding 12-month period. Other direct costs, intended to be charged to the City, need to be stated. No mark-ups will be allowed for other direct costs. The total compensation for the on-call services shall not exceed the amount specified in Section 2 of the Agreement.

The Proposer shall:

- (18) Submit a Fee Proposal in a separate sealed envelope that includes a clear breakdown for preparation of the WMP & WRS.
- (19) Provide a hourly rate schedule for the on-call services.

7. Required Forms

The required forms to be submitted with the RFP packet are outlined below and available in Section 6:

1. **Attachment A: Non-Collusion Affidavit**
2. **Attachment B: Special Provisions**
3. **Attachment C: Exceptions**

These forms do not need to be placed in any particular section within the RFP packet. However, they are required in order to submit a complete proposal. Failure to include the

require forms will result in immediate disqualification.

8. 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.

4.3 Incorporation of Proposal

This RFP and the Proposer's response, including all promises, warranties, commitments, and representations made in the successful proposal will become binding contractual obligations and will be incorporated by reference in any agreement between City and Proposer.

The selected Proposer shall enter into an agreement with the City based upon the contents of the RFP and the Proposer's proposal. The City's standard form of agreement is included at the end of the document. The proposer shall carefully review the agreement, especially with regards to the indemnity and insurance provisions.

5. EVALUATION AND AWARD

5.1 Evaluation Criteria

City will evaluate the proposals received based on the following criteria. In its evaluation, the City may use different weighting factors for different criteria or sub-criteria. For example, a higher weighting factor may be assigned to the key personnel qualifications than to the team structure.

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

5.2 Evaluation Procedure

An Evaluation Committee will be appointed to review all proposals. The committee will be comprised of City staff and may include outside personnel. The committee members will review and evaluate the proposals. 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.

5.2.1 Right to Reject Proposals

City reserves the right to reject any and all proposals, to waive any non-material irregularities or informalities in any proposal, and to accept or reject any item or combination of items.

Tentative Schedule

****Tentative Schedule may be changed at the City's discretion****

Release of RFP	June 17, 2022
Question Submittal Deadline	June 24, 2022, at 4.00 P.M. PST
Response to Questions Posted	July 1, 2022
RFP Submittal Deadline	July 20, 2022, at 5.00 P.M. PST
RFP Evaluation/Interview & Firm Selection	August/September 2022
Start Date	October 2022

5.3 Award

After conclusion of the evaluation period, a notification of intent to award may be sent to any Proposer selected.

Award is contingent upon the successful negotiation of final contract terms and the approval of City. Negotiations shall be confidential and not subject to disclosure to competing Proposers until an agreement is reached. If contract negotiations cannot be concluded successfully, the City may negotiate a contract with the next best qualified Proposer or withdraw the RFP. In the event the City does not approve the recommendation to award, the RFP may be cancelled without any cost or obligation of City.

The term of the contract will be as provided in Section 4 under 6. Fee Proposal.

5.3.1 Notification of Award

Proposers who submit a proposal in response to this RFP 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.

5.3.2 Execution of Agreement

If a Proposer is not able to execute an agreement within 10 days after being notified of selection, City reserves the right to select the next most qualified proposer or call for new

proposals, whichever City deems most appropriate. (Sample template of agreement is attached).

5.4 Special Terms and Conditions

5.4.1 Audit Requirements

- a. The City reserves the right to periodically inspect and audit the selected Proposer's accounting procedures and supporting documentation in conjunction with the performance of the required services.
- b. The City will notify Proposer in writing of any such requested audit.
- c. The City will inspect and audit in a reasonable manner and at the City's expense.
- d. The Proposer must fully cooperate with any such audit(s).
- e. The City will notify the Proposer in writing of any exception taken as a result of an audit.
- f. If an audit, in accordance with this article, discloses overcharges (of any nature) by Proposer to the City of the value of that portion of the Agreement that was audited, the actual cost of the City's audit must be reimbursed to the City by the Proposer.

5.4.2 Termination

- a. If, in the opinion of the City Manager or his designee, the Proposer fails to perform or provide prompt, efficient service, the City of Fullerton City Manager or his designee has the right to terminate or cancel the Agreement upon 5-day's written notice and pay the Proposer for the value of the actual work satisfactorily performed to the date of termination.
- b. The City Manager or his designee has the right to terminate or cancel the Agreement upon thirty (30) days written notice without cause and pay the Proposer for the value of actual work satisfactorily performed to the date of termination.
- c. These rights are in addition to any other rights that City may have available

6. REQUIRED FORMS

ATTACHMENT A: NON-COLUSION AFFIDAVIT

Note: To be executed by Proposer and submitted with proposal.

State of _____
(the State of the place of business)

County of _____
(the County of the place of business)

_____, being first duly sworn, deposes and
(name of the person signing this form)

says that he/she is _____ of
(title of the person signing this form)

_____, the party making the foregoing bid
(name of bidding company)

that such bid is not made in the interest of or on the behalf of any undisclosed person, partnership, company, association, organization or corporation; that such bid is genuine and not collusive or sham; that said bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that said bidder has not in any manner directly or indirectly sought by agreement, communication, or conference with anyone to fix the bid price of said bidder or of any other bidder or to fix any overhead profit, or cost element of such bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in such bid are true, and further, that said bidder has not directly or indirectly submitted his bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay any fee in connection therewith, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any other individual except to any person or persons as have a partnership or other financial interest with said bidder in the general business

By: _____
(signature)

Printed Name: _____
(name of the person signing this form)

Title: _____
(title of the person signing this form)

ATTACHMENT B: SPECIAL PROVISIONS

All items below apply to this bid proposal:

Hold Harmless and Indemnification: The successful bidder hereby agrees to indemnify, defend, and hold harmless City (including its officials, officers, agents, employees, and representatives) from and against any and all claims of any kind or nature presented against City arising out of vendor's (including vendor's employees, representatives, and subcontractor) performance under this agreement, excepting only such claims, costs or liability which may arise out of the sole negligence or willful misconduct of City.

Insurance Provisions: Unless otherwise stated in the RFP specifications, the following insurance requirements apply:

1. Comprehensive General Liability Insurance: (include products liability) \$1,000,000 per occurrence.
2. Auto Liability Insurance: \$1,000,000 per occurrence, combined single limit (CSL).
3. Workers' Compensation Insurance: as required by State statutes.
4. Employer's Liability Insurance: \$1,000,000 per accident; \$1,000,000 policy limit for disease.
5. Professional Liability Insurance: \$1,000,000
6. All policies of insurance must provide for a minimum of thirty (30) days written notice of any change or cancellation of the policy.
7. Insurance policies to be in a form ad written through companies acceptable to City; and must include those endorsements which are necessary to extend coverage which is appropriate to the nature of the agreement.

Affirmative Action: The successful bidder hereby agrees to comply with Title VII of the Civil Right Act of 1964, as amended, the Civil Rights Act of 1992, and all federal, state, and municipal laws and regulations pertaining thereto, in support of Affirmative Action:

Certified to above - FIRM:

SIGNATURE:

PRINT NAME:

TITLE:

ATTACHMENT C: EXCEPTIONS

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 Proposal, 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:

PROPOSING FIRM: _____ DATE: _____

BUSINESS ADDRESS : _____

SIGNATURE OF REPRESENTATIVE: _____

BY: _____ TITLE: _____

INSTRUCTION REGARDING SIGNATURE: If bidder is an individual, state "Sole Owner" after signature. If bidder 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 bidder 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:

_____	_____
_____	_____
_____	_____
_____	_____

7. SAMPLE PROFESSIONAL SERVICES AGREEMENT

**PROFESSIONAL SERVICES AGREEMENT
SAMPLE ONLY – NOT REQUIRED WITH PROPOSAL**

**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”).

WITNESSETH:

A. City proposes to utilize the services of Consultant as an independent contractor to provide certain 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”] (“Scope of Services”) and incorporated herein by this reference. Consultant is also being retained to provide the Additional Services, after completion of the Scope of Services, as set forth in Exhibit “B” attached hereto and incorporated herein by reference (“Additional Services”).

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 and regulations 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, sex, gender, gender expression, sexual orientation or military or veterans status, 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 is also being retained, to perform the **Additional Services** and shall be compensated in accordance with the fee schedule set forth in **Exhibit "B"**.

Consultant shall not receive compensation for any services provided outside the scope of services specified in **[Exhibit's A and B]** 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.

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 subcontractor(s). 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 \$1,000,000. 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.

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. Subcontractors. Consultant shall require and verify that all subcontractors 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.

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 the superior court 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. Notwithstanding the foregoing, with respect to any professional liability claim or lawsuit, this indemnity does not include providing the primary defense of City, provided, however, Consultant shall be responsible for all of City's defense costs to the extent such costs are incurred as a result of Consultant's negligence, recklessness or willful misconduct, regardless of the percentage of liability of Consultant.

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 subcontractor, 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 subcontractors, 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 subcontractors 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 subcontractors 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

Eric Levitt, City Manager

Date: _____

CONSULTANT

[NAME AND TITLE]

Date: _____

Social Security or Taxpayer ID Number

SAMPLE ONLY – NOT REQUIRED WITH PROPOSAL

EXHIBIT A

SCOPE OF WORK FOR WMP (WATER MASTER PLAN) & WRS (WATER RATE STUDY)

SAMPLE ONLY – NOT REQUIRED WITH PROPOSAL

EXHIBIT B

SCOPE OF WORK FOR ON-CALL SERVICES

SAMPLE ONLY – NOT REQUIRED WITH PROPOSAL

EXHIBIT C

LIST OF AVAILABLE REPORTS AND DATA