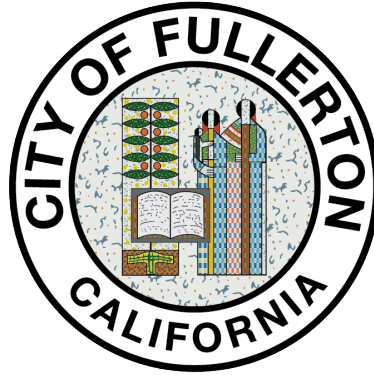


**CITY OF FULLERTON**  
**REQUEST FOR QUALIFICATIONS**



**RFQ #4391 ON-CALL PROFESSIONAL ENGINEERING SERVICES**

**PROPOSAL DUE: MAY 18, 2023 @ 2 P.M. PST**

**SUBMIT BIDS ELECTRONICALLY AT:  
[WWW.PUBLICPURCHASE.COM](http://WWW.PUBLICPURCHASE.COM)**

**RFQ Posted: April 13, 2023**

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**SECTION I**  
**NOTICE OF REQUEST FOR QUALIFICATIONS**  
**On-Call Professional Engineering Services**

**NOTICE IS HEREBY GIVEN** that the City of Fullerton is requesting statement of qualifications from professional engineering consulting firms to provide on-call engineering services related to our Public Works Capital Improvement Program and General Engineering/Private Development divisions. The City intends to select up to three (3) consultants for each respective service category, but the actual number of consultants selected may be subject to change based on number of responses and qualifications.

This Request for Qualifications (RFQ) provides information on the City of Fullerton, 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 on the basis of the overall best value to the City based on quality, service, price, 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.

**BACKGROUND**

The City of Fullerton 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. At 22.4 square miles, Fullerton is also one of the largest cities in Orange County by area and is the sixth most populous.

**SUBMITTAL DEADLINE**

**COMPLETE ELECTRONIC PROPOSALS MUST BE SUBMITTED NO LATER THAN Thursday, May 18, 2023 at 2:00 PM PST via the City's eProcurement portal, Public Purchase, at [www.publicpurchase.com](http://www.publicpurchase.com).** Proposals submitted by email, mail, or fax will not be accepted nor considered. Failure to upload due to electronic glitches is not a legitimate reason for proposals submitted after the deadline. The City may extend the deadline at its discretion. Please see instructions in **Section III** for details on how to submit a qualified statement of qualifications.

It is not the responsibility of the City to notify potential bidders. Prospective bidders shall register as a vendor and will be notified via the City's eProcurement portal, Public Purchase at [www.publicpurchase.com](http://www.publicpurchase.com) Registration is free and organizations may select to be notified of all future bids posted by the City of Fullerton.

## SECTION II

### SCOPE OF SERVICES/SCOPE OF WORK

The City of Fullerton would like the selected firms to provide professional on-call engineering services (design, plan checking, studies, investigations, testing, etc.) for City projects to support the Public Works Department, Engineering Division. The City intends to award an agreement for the solicited on-call services for a term of three (3) years with an option to renew for an additional two (2) year period at the City's discretion. The City encourages firms to submit qualifications for any or all parts of the key services listed below to be eligible for placement on the qualified on-call/as-needed list for each service category.

At the City's discretion, successful firms will be assigned projects based on qualifications in relation to the project(s) scope of work on an as-needed basis for various projects in the city. **The City does not guarantee successful firms will be provided any projects.**

### **MINIMUM QUALIFICATIONS**

Only those consultants with verifiable experience as it relates to the services requested in this solicitation will be considered during the evaluation process. Consultant staff assigned to execute the scope of services must have relevant experience in providing the necessary services as described under the scope of services. All personnel assigned to the work shall possess appropriate certifications or registrations as required by state and local agencies.

### **SCOPE OF WORK**

Selected firms will report to, and operate under, the direction of the City of Fullerton Public Works staff, to provide professional engineering services to the City. In general, the selected consultant will be expected to provide services and staffing for the following categories:

- Civil Engineering Design
- Water Engineering Design
- Geotechnical Engineering and Materials Testing
- Survey and Mapping Design and Plan Check
- Private Development Plan Check
- Staff Augmentation

Consultants may submit qualifications for one or more of the service categories requested; however, **separate proposals and letter of transmittals must be submitted for each category.**

#### **Civil Engineering Design**

Provide complete design services for Capital Improvement Program projects. Examples of services include, but not limited to:

- Plan preparation for street improvements, repair, rehabilitation or other related street improvements.

- Plan preparation for traffic signal installations or modifications.
- Plan preparation for storm drain and sewer improvements, upgrades, modifications, extensions, repair, or rehabilitation.
- Preparation of hydrology and hydraulic analysis and reports.
- Preparation of WQMP's, SWPPP's or related NDPES documents/reports.
- Preparation of project technical provisions.
- Preparation of detailed cost estimates.
- Perform mapping and prepare legal descriptions for right of way acquisitions, easements, vacations, etc.
- Provide construction survey staking.
- Provide construction assistance.
- Coordination with, and obtain approvals from, other permitting agencies and utility companies.

### Water Engineering Design

Provide various engineering services for new and rehabilitation of existing municipal water system facilities as related to the conveyance, storage, treatment, and distribution of water.

As part of assigned preliminary and/or final design work, Consultant may be required to incorporate sustainable infrastructure practices consistent with the Institute for Sustainable Infrastructure's (ISI) Envision Rating System and/or LEED (Leadership in Energy and Environmental Design) frameworks.

Services provided will include planning; investigations; technical analysis; technical reviews; conceptual, preliminary, and final design; cost estimation, engineering support during bid advertisement and construction, and other project support tasks. Examples of services include, but not limited to:

- Design package preparation for new conveyance and distribution water system improvements and/or rehabilitation of existing facilities.
- Design package preparation for multi-discipline improvements or repairs to storage tanks, pump stations, wells, etc.
- Preparation of project technical provisions.
- Preparation of detailed cost estimates.
- Preparation of studies and analyses of water system facilities such as storage tanks, pump stations, wells, etc.
- Provide pipeline assessment and pipeline integrity testing.
- Perform surge and fire flow analyses.
- Perform hydraulic calculations & modeling.
- Provide regulatory and environmental compliance support, including jurisdictional permitting services.
- Provide equipment condition assessment and testing.
- Provide plan check services and technical guidance on civil, mechanical, structural, hydrogeology, electrical, and instrumentation and control (I&C) designs.
- Provide technical guidance on water treatment processes including problem-solving

consultations.

- Provide construction management support services.

Firms should indicate their ability and experience with SCADA integration consulting for water systems.

### Geotechnical Engineering and Material Testing

Provide complete design and construction services for City improvement projects. Services include, but not limited to:

- Complete soils investigation and preparation of Geotechnical Engineering reports and studies such as pavement design, grading requirements, retaining wall parameters, slope stability analysis, etc.
- Laboratory work related to all aspects of Geotechnical Engineering.
- Provide construction inspection of items such as asphalt concrete, aggregate base and concrete placement during construction, grading excavation and backfill.
- Provide testing services such as field compaction and lab testing of soils, aggregates, asphalt and concrete.

### Survey and Mapping

Provide complete land survey services for Capital Improvement Program projects and/or plan check services for private development improvements. Including, but not limited to:

- Design and Construction related services
  - Perform design topographic surveys.
  - Perform aerial topographic surveys.
  - Perform boundary surveys and boundary analysis.
  - Perform mapping and prepare legal descriptions for right of way acquisitions, easements, vacations, etc.
  - Prepare pre- and post-construction corner records.
  - Prepare Record of Surveys
  - Perform construction staking
- Private Development Plan Check related services
  - Provide plan check for tentative maps, final maps, lot line adjustments, certificate of compliance, easements, vacations, etc.
  - Prepare plan check comments in concise and understandable manner.
  - Interact with private and public personnel.

### Private Development Plan Check

Provide complete plan check services for the private development projects. Including, but not limited to:

- Perform review of civil related improvement plans, grading, sewer, storm drain, erosion control, etc. plans.
- Perform review of traffic signal installation or modification plans.
- Perform review of studies and reports such as sewer, drainage, WQMP, etc.

- Have good working knowledge of commonly used software programs and Orange County Hydrology and Local Drainage Manuals.
- Prepare plan check comments in concise and understandable manner.
- Interact with private and public personnel.

**Staff Augmentation Services** - *Firms may submit only for positions or services they provide.*

Provide qualified and available personnel to provide professional staff augmentation services and/or backfill various positions and classifications within the Engineering Division on short notice. Positions include, but are not limited to: Engineers, Permit Technicians, Administrative/Financial Analysts, Inspectors, etc. Positions may require personnel reporting to City offices.

Sample duties include, but not limited to:

- Provide staff to supplement various duties/responsibilities in the Engineering Division
- Provide permit technicians to assist public at Engineering public counter
- Project GIS support and data analytics
- Provide support for preparation and/or monitoring of budget reports; compliance reports (Federal, State, etc.); grant applications and reporting; administrative support for purchasing documents; invoice processing, etc.
- Provide Construction Inspection services, such as:
  - CIP projects such as street rehabilitation; sewer or storm drain improvements, facility modifications and improvements; park rehabilitation and improvements.
  - Private development including grading, drainage, erosion control measures, paving, utilities, etc.
  - Water projects such as tank and pump station rehabilitation, well construction, and trenchless rehabilitation.
  - Private utility company repairs and improvements
  - Deputy inspection services
- Project staff to fill vacant positions and perform duties as an “Acting” City representative

## **SECTION III**

### **INSTRUCTIONS TO PROPOSERS**

#### **Examination of Proposal Documents**

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

#### **Addenda**

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

If a firm 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 firm(s) knows of or should have known of an error in the RFQ but fails to notify the City of the error, the firm 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.

#### **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/or recommendation for action is made to the City Manager and/or 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.

#### **Request for Information**

##### **Submitting Questions**

All questions must be submitted and received by the City no later than 4:00 P.M. PST on **Tuesday, May 2, 2023.**



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 eProcurement's. Registration is free and interested firms can select to receive automatic bid notifications from the City.

### City Responses

Responses from the City will be posted on the City's bid webpage and the City's eProcurement Portal, Public Purchase, tentatively scheduled to be posted on May 9, 2023.

City's Bid Webpage: [www.cityoffullerton.com/business/bids-rfps](http://www.cityoffullerton.com/business/bids-rfps)  
City's eProcurement Portal – Public Purchase: [www.publicpurchase.com](http://www.publicpurchase.com)

### CITY CONTACT

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

Karen Chung, Buyer

Email: [Karen.Chung@cityoffullerton.com](mailto:Karen.Chung@cityoffullerton.com)

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

## Submission of Proposals

### Date and Time

**Proposals must be submitted at or before 2:00 PM on Thursday May 18, 2023.**

Proposals received after the above specified date and time will not be accepted by the City and will not be considered evaluation.

### How to Submit

Firm shall submit one (1) complete electronic copy of the proposal and (1) letter of transmittal for each applicable category through the City's eProcurement Portal via Public Purchase ([www.publicpurchase.com](http://www.publicpurchase.com)). The cover page of the proposal must bear the firm's name and address with the following clearly marked as follows:

RFQ #4391 On-Call Professional Engineering Services  
City of Fullerton – Purchasing  
Attn: Karen Chung, Buyer

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.

## 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 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.

3. City reserves the right to postpone proposal openings for its own convenience.
4. Submitted proposals are not to be copyrighted.
5. City does not guarantee any work upon award of an agreement.

## Pre-Contractual Expenses

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

Pre-contractual expenses are defined as expenses incurred by firm(s) 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 firm prior to date of award, if any, of the Agreement.

## Joint Offers

Where two or more firms 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.

## Exceptions and Deviations

The firm 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 firm 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 if there 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.**

## 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.

See attached sample Professional Services Agreement for insurance requirements.

## City Business License

The successful consultant(s) and sub-consultants are required to obtain and maintain a City of Fullerton business license. The license shall be maintained for the duration of the Agreement. A current business license is not a prerequisite for submittal of the qualifications.

## **SECTION IV**

### **REQUIRED PROPOSAL CONTENT**

#### **Proposal Format and Content**

This section provides the requirements which the City will look for and expect to be included in the proposal.

Electronic proposals shall be submitted electronically in a format that will print on 8 ½" x 11" size paper. Charts and schedules must adhere to this requirement as well. Offers should not include any unnecessary elaborate or promotional material. Lengthy narrative is discouraged, and presentations should be brief and concise. There is no page limitation, however, excessive or irrelevant material will not be favorably received. Links to sample work should be clearly labeled and identified in the proposal.

The proposal should be in the order shown and include the following:

#### **Letter of Transmittal**

A Letter of Transmittal shall be submitted for each category in which the proposer is submitting a proposal for. The Letter of Transmittal shall be addressed to the City of Fullerton and, at a minimum, contain the following:

- (1) Clearly indicate the on-call service category(ies).
- (2) Express why firm is interested in the RFQ.
- (3) Identification of proposer that will have contractual responsibility with the City. Identification shall include legal name of company, corporate address, telephone and email address. Include name, title, address, email and telephone number of the contact person identified during period of proposal evaluation.
- (4) Identification of all proposed sub-consultants (if known) including legal name of company, contact person's name and address, phone number and email address. Relationship between proposer and sub-consultant if applicable.
- (5) Acknowledgment of receipt of all RFQ addenda, if any.
- (6) A statement to the effect that the proposal shall remain valid for a period of no less than 120 days from the date of submittal.
- (7) Signature of a person authorized to bind proposer to the terms of the proposal.
- (8) Signed statement attesting that all information submitted with the proposal is true and correct.
- (9) Note - All licensed professionals in "responsible charge" working on City projects (Engineer and/or surveyor) are required to disclose all disciplinary actions against them, including

any future actions. Provide a copy of the actions with submittal of proposal. Please provide statement if there are no disciplinary actions.

## **Technical Proposal**

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

This section of the proposal should establish the ability of the firm(s) 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 firm(s); staffing capability; work load; record of meeting schedules on similar contracts; and supportive client references. Most recent references preferred.

Proposer to:

- (1) A brief description of your firm's background, size, office locations in California, and relevant experience history as it may be relevant to the services required. Include subconsultants as applicable.
- (2) Describe your experience providing similar services for other public agencies and authorities, with an emphasis on local area jurisdictions and agencies.
- (3) Similar Projects/Contracts – Provide a brief description of the project scope, personnel involved and their roles, plus agency and contact information for agency Project Manager. Indicate firm's role in project (prime or sub).
- (4) 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 (5) years. For each client, please provide the name, street address, telephone number, and email address.
- (5) Other Services – Please provide list of other services that your firm provides which are not identified in the Scope of Work but could be beneficial to the City.

### **Work Plan**

- (1) Describe your firm's general approach to projects related to the requested scope of work, including how your firm produces deliverables free of errors and how you will address errors if they occur.
- (2) Describe your firm's strengths.
- (3) Provide any unique attributes or distinguishing characteristics which would be of value to the City.

## **Proposed Staffing and Organization**

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

Proposer to:

- (1) Provide current position, education, experience and applicable professional credentials of contract staff. Include applicable professional credentials of "key" contract staff only and how long each person has been with the firm.
- (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, 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.

## **Fee Schedule**

Submit a rate sheet of key personnel who will be assigned to perform the services outlined in the "Scope of Work" of this RFQ. 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.

The fee schedule shall include a comprehensive list of positions and labor rates for all services provided by the prime consultant and all subconsultants. Rates shall include all necessary resources including labor, equipment, materials, incidental report, transportation, etc. Any percentage markup of subconsultant invoices shall be specified.

The fee schedule shall remain fixed for each City fiscal year of the Agreement, unless formally amended by the City Council. Adjustment of the fee schedule can be negotiated at the beginning of each fiscal year, however, the maximum increase shall be based on the applicable consumer price index (CPI) rate. Rate increases must be approved in writing by the City.

The City is subject to prevailing wage laws which apply to those professional services providers and their subconsultants for whom the Department of Industrial Relations has established a wage determination, including but not limited to, Field Soils Materials Testers, Operating Engineers, Surveyors, and Building/Construction and Specialty Inspectors.

Prevailing wage requirements apply when a Consultant and/or Consultant Team is awarded a contract for a specific project which is designated by the issuance of a City Purchase Order. Invoices will not be paid unless accompanied with copies of applicable certified payroll.

**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.

**Status of Past and Present Contracts Form**

Firm(s) are 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. The firm 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 five (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. Firm 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 firm confirming that the information provided is true and accurate. The firm(s) are required to submit a copy of the completed form(s) as part of the proposal.

## **SECTION V**

### **EVALUATION AND AWARD**

#### **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 firms 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. Presentation, completeness, clarity, organization, and conformance to the RFQ content.
2. 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.
3. Project Management Approach - Qualifications of proposed key personnel; logic of organization; and adequacy of labor and resources to satisfactorily perform the requested services and meet the City's needs.
4. Work Plan - Understanding of the City's requirements, objectives, and approach.
5. Fee Schedule - 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.

#### **Evaluation Procedure**

An Evaluation Committee will review all proposals. The committee will be comprised of City staff and may include outside consultants. After the submittals are evaluated, The City, at its sole discretion, may elect to interview all, some, or none of the firms for clarification of additional information at any time. Firms may be asked to submit additional documentation at or after the interview stage. Based upon evaluation of the proposals and any interviews (if requested) and, the committee will recommend to the City Manager the top-ranked firm(s) whose proposal(s) are the most advantageous



to the City of Fullerton. If required, the City Manager will then forward its recommendation to the City Council for final action.

The City reserves the right to select a firm without conducting interviews or abandon this RFQ.

## **Award**

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

City Manager and/or City Council action will be requested by City staff to award agreement(s) to the selected firm(s).

## **Notification of Award**

Firms who submit a proposal(s) in response to this RFQ shall be notified regarding the firm(s) awarded an agreement. Such notification shall be made within seven (7) days of the date the agreement 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 [www.cityoffullerton.com/business/bids-rfps](http://www.cityoffullerton.com/business/bids-rfps) and on the City’s eProcurement platform ([www.publicpurchase.com](http://www.publicpurchase.com)).

### **Tentative Schedule**

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

<b>Release of RFQ</b>	<b>April 13, 2023</b>
<b>Question Submittal Deadline</b>	<b>May 2, 2023 at 4:00 P.M. PST</b>
<b>Response to Questions Posted</b>	<b>May 9, 2023</b>
<b>RFQ Submittal Deadline</b>	<b>May 18, at 2:00 P.M. PST</b>
<b>Consultant Interviews/Contract Scope Negotiations</b>	<b>TBD</b>
<b>Contract Award</b>	<b>July/August 2023</b>

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

**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 [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 City’s Request for Proposals (“RFP”), attached hereto as Exhibit “A,” and Consultant’s Response to City’s RFP (“Consultant’s Proposal”), attached hereto as Exhibit “B,” both 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 and regulations 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 "B"**.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in Consultant's Proposal set forth in **Exhibit "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. 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 prior to the commencement of work under this Agreement. It is the Consultant's responsibility to provide to the City any revised or updated W-9 form during the term of this Agreement.

### **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. **[Add renewal language if applicable.]**

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 the Consultant, its agents, representatives, employees or subcontractors subject to the limitations of Civil Code Section 2782.8. 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.

**For Architects and Engineers, use the above paragraph and delete following paragraph.  
For non-architect/engineer consultants, delete the above paragraph and use the following paragraph.**

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 \$2,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit.

B. Business Automobile Liability Insurance. Consultant shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form

# CA 00 01, with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.

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

D. Professional Liability Insurance. Consultant shall maintain professional liability insurance appropriate to Consultant's profession with a limit of not less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate.

E. Employee/Officer Fidelity Bond. Consultant shall maintain a fidelity bond with a minimum limit of \$1,000,000, providing coverage for the acts of all employees, officers and directors of Consultant. (Required if the consultant will be handling City funds otherwise omit).

F. 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. (Required if the consultant is providing IT services/software and or will have access to City's network otherwise omit)

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. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

B. Commercial General Liability. This insurance shall be primary insurance at least as broad as ISO CG 20 01 04 13 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, 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 City.

E. Employee/Officer Fidelity Bond, City shall be named as third party beneficiary for losses arising from work done on behalf of City. (Omit if the consultant is not handling City project funds)

F. 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.

G. 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 subconsultants.

H. 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, and consistent with Civil Code section 2782.8, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against City, its elected and appointed officials, officers, agents, and employees to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in performing design professional services pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence, recklessness or willful misconduct of 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, recklessness, or willful 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 and appointed officials, officers, agents, and employees based upon such negligence, recklessness, or willful misconduct, whether or not the 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 negligence, active negligence or willful misconduct of the City; and does not apply to any passive negligence of the City unless caused in part by the Consultant. Further, in no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault, unless otherwise specified in Civil Code section 2782.8. 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.

For Architects and Engineers, use the above paragraph and delete following paragraph.  
For non-architect/engineer consultants, delete the above paragraph and use the following.

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 negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

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

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

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

6.11. Cooperation. In the event any claim or action is brought against City relating to

Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

constitute one agreement.

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

6.27 Executive Order N-6-22. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the City determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The City shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the City.

Contractor shall immediately notify City in writing upon being subjected to Economic Sanctions or upon being charged by an government agency of conducting prohibited transactions within the meaning of Executive Order N-6-22.

**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 J. Levitt, City Manager

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

CONSULTANT

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

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

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

APPROVED AS TO FORM:

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



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

Firm 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. Firm 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 five (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. Firm must also identify and state the status of any litigation, claims or settlement agreements related to any of the identified contracts. If no contract ended in termination, settlement or litigation, a statement to that effect shall be made on this form. Each form must be signed by the firm’s confirming that the information provided is true and accurate. Firm is required to submit a copy of the completed form(s) as part of the electronic proposal on the one (1) USB Drive requested.

<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**

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 Qualifications, 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 firm 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:

_____	_____
_____	_____
_____	_____
_____	_____