

CITY OF FULLERTON
REQUEST FOR QUALIFICATIONS



RFQ #2324-04 ON-CALL DEBT COLLECTION SERVICES

**PROPOSAL DUE: FRIDAY, JANUARY 12, 2024 @
4:00 P.M. PST**

**SUBMIT BIDS ELECTRONICALLY AT:
WWW.PUBLICPURCHASE.COM**

RFQ Posted: November 30, 2023

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SECTION I
NOTICE OF REQUEST FOR QUALIFICATIONS
On-Call Debt Collection Services

NOTICE IS HEREBY GIVEN that the City of Fullerton (City) is requesting proposals from qualified firms to perform Debt Collection Services for the City of Fullerton to collect outstanding fees and other delinquent charges or accounts owed to the City of Fullerton. The City intends to establish an On-Call List and may enter into professional services agreements with multiple firm(s) based on number of qualified proposers, types of services needed and availability.

This Request for Qualifications (RFQ) provides information on the City of Fullerton, the required scope of services, the consultant/contractor selection process, and the minimum information that must be included in the RFQ Response. Proposals will be evaluated on the overall best value to the City on the basis of firm’s qualifications and experience, ability to perform scope of services and implementation plan, cost proposal, and any other criteria set out herein this RFQ. The City shall be the sole judge of the qualifications and services and reserves the right to select firm(s) on any basis or weighted criteria that is in the best interests of the City.

BACKGROUND

The City of Fullerton (“City”) is located 22 miles southeast of metropolitan Los Angeles, in the center of North Orange County with a population of 139,431 residents. 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”. During the school year, the population grows by 60,000 people due to CSUF, Hope University, Fullerton College, and Ketchum School of Optometry. The 57 and 91 freeways straddle the City which is also home to Fullerton Airport-the only general aviation airport in Orange County. The City is a “full-service” with its own Fire and Police departments, as well as a full-range Public Works department including water and sewer utility services.

The Administrative Services Department oversees the City’s Utility Services division, which performs the billing, collections and data management for all City utility accounts including water, sewer and sanitation and refuse (trash) services. The Department also oversees general and miscellaneous billings’ function, which includes all City leases and rents, Fire false alarm permits, Airport hangar and tie-downs and miscellaneous billings (i.e. property damage). The City’s other departments also perform their own accounts receivables’ billings and utilizes in-house staff and/or contracted service providers to perform these functions. Examples include (but not limited to): parking violations and administrative citations (Police), building and code violations and code enforcement citations (Community and Economic Development), public works permits and fees (Public Works) and Parks & Recreation programming fees and services. The approximate amount of City accounts the City is soliciting debt collection services for are summarized in the below table.

| City Accounts (Type of Account) | # of Accounts * |
|--|-----------------|
| Refuse/Trash | 31,000 |
| Water Utility (Water, Sewer & Sanitation) | 31,000 |
| Business Registration License/Certificates | 9,600 |
| Miscellaneous & General Billing (i.e. Leases, Airport hangar & tie downs, false alarm & other) | 400 |

** The accounts are approximate and may be billed monthly, bi-monthly, annual or on as-needed basis. **

The City is looking for on-call consultants to perform debt collections services primarily to support Administrative Services utilities and general billing debt collection efforts in accordance to the City's debt collections policy(ies), but may also support debt recovery for all other departments on behalf of the City.

SUBMITTAL DEADLINE

COMPLETE ELECTRONIC PROPOSALS MUST BE SUBMITTED NO LATER THAN Friday, January 12, 2024 at 4:00 PM PST to the City's eProcurement portal, Public Purchase at 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 proposal to this RFQ.

It is not the responsibility of the City to notify potential bidders. Prospective bidders shall be notified via the City's eProcurement portal, Public Purchase at www.publicpurchase.com. Registration is free and prospective bidders and firms may select to be notified of all future bids posted by the City of Fullerton.

Proposed RFQ Schedule

**** Proposed RFQ Schedule is "Tentative" and may be changed at the City's discretion. Interviews will be scheduled if required ****

| | |
|-----------------------------------|-------------------------------------|
| Release of RFQ | November 30, 2023 |
| Question Submittal Deadline | December 13, 2023, at 4:00 P.M. PST |
| Response to Questions Posted | December 20, 2023, at 4:00 P.M. PST |
| RFQ Submittal Deadline | January 12, 2024, at 4:00 P.M. PST |
| Consultant Interviews (if needed) | TBD |
| Agreement/Contract Finalized | TBD |
| Agreement/Contract Award | TBD |

SECTION II

SCOPE OF SERVICES/SCOPE OF WORK

Introduction

The City of Fullerton (City) is requesting proposals from qualified firms to perform Debt Collection Services for the City of Fullerton to collect outstanding fees and other delinquent charges or accounts owed to the City of Fullerton. The City is seeking to establish an On-Call List and may enter into professional services agreements **with up to three (3) firms** based on number of qualified proposers, types of collection services and availability of firms. Examples of debt collection services sought and other delinquent charges or accounts owed to the City of Fullerton include (but are not limited to):

- (a) Utility Services Accounts – Includes water utility, sewer and sanitation charges, and refuse (trash) billings;
- (b) General & Miscellaneous Billings – Includes City leases, false alarms, Airport hangar and tie-downs, property damages and other miscellaneous fees;
- (c) Public Works fees, building and code enforcement violations;
- (d) Debt collection services not collected or performed from third-party City billing services' providers (i.e. false alarm, ambulance billings, parking citation);
- (e) Other debts that may come due to the City.

The City is seeking qualified Firm(s) who can demonstrate competency and experience in providing municipal debt collection services for public agencies, with particular focus with cities with utility services and/or utility agencies (i.e. water, sewer, refuse). The City seeks an experienced and effective firm that minimizes City costs, maximizes the use of available technology, provides excellent client service, and performs thorough and complete collections. The City is also seeking an experienced and effective firm that offers the most competitive rates, maximizes revenue recovery and presents best overall value to the City.

The City desires to enter into a three (3) year agreement term, with two (2) optional one-year extension periods at the City discretion based on performance and satisfactory work and services. **By qualifying on the On-Call List, this does not guarantee a determined amount of work and firms and work will be assigned based on service need, availability and type of collections needed on an on-going basis.**

Scope of Services

The Scope of Work is intended to be a general guide and not an all-inclusive, complete list of all work to be performed. The Proposer shall perform the following key services as required herein of this RFQ:

1. Initiate standard accepted debt collection procedures within 20 days from the date of assignment.
2. Report, correct and/or delete credit bureau reporting and provide evidentiary documentation

to the Administrative Services Department. The City retains the right to recall from the Firm, without charge or penalty, any accounts assigned for collections. Upon recall by the City, no further collection efforts on recalled accounts will be undertaken. If the account being recalled has been reported to any credit bureau, it is expected to be immediately cleared from the customer's credit report and provide written confirmation of such upon request.

3. Comply with Federal, State and Local regulations and laws regarding fair debt collection practices. **Collection shall be conducted through the highest professional, ethical and lawful means with the highest level of customer service.**
4. Maintain a professional customer service image in working with City customers and debtors.
5. Maintain separate files for each account for audit purposes. Audit of any and all assigned records is at the discretion of the City.
6. Maintain confidentiality on all accounts assigned by the City.
7. Maintain a disaster recovery plan to protect the City's receivables and the confidentiality of the information contained therein.
8. Accept data from the City in both paper and electronic formats. The assignment will include the following information, if available, and any other relevant information in the City's possession at the time of referral as deemed appropriate: Name(s); Address; Type of Account; Unpaid Balance, date of birth and driver's license (if on file), phone numbers, account numbers, and account start and stop dates.
9. Immediate return of all accounts still pending upon termination of contract by any party.
10. Accept and process credit card payments via telephone. Accept and process electronic payments from debtors. The Firm is responsible for all costs associated with this service, including but not limited to payment of the merchant's discount fee.
11. Bear all expenses and costs incurred to effect collection of any account referred to them by the City, including but not limited to litigation and transportation.
12. Remit all monies collected, less collection fees, monthly to the City. Remittance should include a breakdown by debtor and type of account and clear itemization of firm's collection fee.
13. Provide monthly reports no later than ten (10) days after the end of the month. This report should include, but not be limited to, the following:
 - a. Status of each account with customer pertinent information:
 - i. Debtor's name and account number
 - ii. Amount and date payments received by the Firm for each individual account.
 - iii. Balance Outstanding
 - b. Monthly status of accounts, including assigned and current balance, number of open accounts and number of returned accounts.
 - c. Collection received during the month.
 - d. Percentage of recovery in comparison to the total dollar value of assigned accounts.

- e. A monthly report detailing current address and phone number of debtors who have relocated.
 - f. Credit Reporting Service Notifications
 - g. On as needed basis, Ad Hoc reports as requested including but not limited to collections, legal actions, adjustments, updated addresses and corrections.
14. On a yearly basis as determined by the Project Manager of the City, a report for all accounts deemed to be uncollectible, along with reasons for no collection and actions taken to attempt collection must be provided.
 15. The Firm must obtain the City's written approval for any payment plan extending beyond one year from the date of the initiation of the payment plan.
 16. The Firm must immediately notify City of Fullerton of any breach of information and notify the customer. Additionally, credit protection must be offered to the customer if personal financial data has been compromised.

SECTION III

INSTRUCTIONS TO PROPOSERS

Examination of Proposal Documents

By submitting a proposal, the 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 and will be posted on Public Purchase website and City of Fullerton Bid Webpage. 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 Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFQ, the proposer should immediately provide the City written notice of the problem and request that the RFQ be clarified or modified. Without disclosing the source of the request, the City may modify the documents prior to the date fixed for submission of proposals by issuing an addendum.

If prior to the date fixed for submissions, a 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.

Request for Information

Submitting Questions

All questions must be submitted and received by the City no later than 4:00 P.M. PST on Wednesday, December 13, 2023.

Request for clarifications, questions and comments must be submitted through the City's eProcurement Portal at Public Purchase (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 on this RFQ from the City.

City Responses

Responses from the City will be posted as an Addendum to this RFQ on the City's bid webpage and the City's eProcurement Portal, Public Purchase, tentatively scheduled to be posted on December 20, 2023.

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

General Inquiries

General questions regarding this RFQ are to be directed to the City's Purchasing Division as follows:

Vanessa Slouka, Buyer
Email: vanessa.slouka@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 4:00 PM on Friday, January 12, 2024.

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

How to Submit

Proposer shall submit one (1) complete electronic copy through the City's eProcurement Portal via Public Purchase (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 #2324-04 On-Call Debt Collection Services
City of Fullerton – Purchasing Division
Attn: Vanessa Slouka, 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 automatic disqualification.

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 7920.000 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.

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 (if applicable) 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/contractor 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 professional services agreement is included in **Section VI**. The firm shall carefully review the City's standard 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, appropriate 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/contractor, his agents, representatives, employees or subcontractors. Consultant/Contractor shall provide current evidence of the required insurance(s) 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 as outlined in Section 6.0.**

City Business License

The successful consultant(s) and/or 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. Proposals 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

The Letter of Transmittal shall be high-level and concise (recommended no more than 1 page), addressed to the City of Fullerton, and at a minimum contain the following:

- (1) Express the firm's intent and formal interest in applying for this RFQ & why their firm's services are advantageous/beneficial to the City.
- (2) 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.
- (3) Identification of all proposed sub-consultants/sub-contractors (if known) including legal name of company, contact person's name and address, phone number and email address. Relationship between proposer and sub-consultant/sub-contractor if applicable.
- (4) Acknowledgment of receipt of all RFQ addenda, if any.
- (5) 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.
- (6) Signature of a person authorized to bind proposer to the terms of the proposal.
- (7) Signed statement attesting that all information submitted with the proposal is true and correct.
- (8) Note - All licensed professionals in "responsible charge" working on City projects 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 & Experience

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 and cities; 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.

Consultant staff assigned to execute the scope of services must have relevant experience and appropriate licenses in providing and/or performing the necessary services as described under the scope of services.

Proposer to:

- (1) Provide a brief profile of your Firm, length of time in business, and key members of the management/collection team. Identify all office/service locations in California or other closest regional office locations (if not in California).
- (2) Provide a statement of your Firm's background and experience in servicing government clients. Please highlight government clients you service in California, with particular emphasis on cities and/or utility agencies within the last five (5) years. Include the number and types of government clients you are currently servicing and the historical percentage of collections by account type.
- (3) Provide a statement of your Firm's knowledge and adherence to the Federal Fair Debt Collection Practices Act, California Government Code, and other applicable laws and regulations.
- (4) Describe any failure or refusal to complete a contract, including details and dates.
- (5) List any disciplinary or investigative action, including audits, in the past five (5) years conducted by any professional body or local, state, or federal branch of government of your Firm.
- (6) List any and all litigation, pending or final, to which you are a party that is related or similar to the services being solicited in the past five (5) years.
- (7) Provide City of Fullerton with information about the Firm's practices in regard to confidentiality, dealing with customers, and backup of information.
- (8) **References.** Please provide at least five (5) government clients' references, with at least three (3) with relevant experience with California government clients in the past five (5) years.

Detailed Work Plan

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

- (1) Describe your firm's general approach to achieving the objectives of the requested scope of work, providing best value services and maximizing revenue recovery to the City.
- (2) Describe the normal method used to collect accounts (first and second placements). Include the specific work standards currently used, the dollar threshold where various levels of follow-up occur, and the number of both written and telephone attempts, as well as, samples of all forms and correspondences that illustrate your organization's methods.
- (3) Describe and provide examples of your organization's procedures for skip accounts, including dollar thresholds for different levels of effort.
- (4) Describe and provide examples of your organization's procedures for accounts that will be pursued through legal action and any parameters used for these accounts, such as minimum balance for lawsuit.
- (5) Describe your organization's policies and procedures on handling customer complaints, escalation and resolution, including expected turn-around time for responses.
- (6) Describe in detail your organization's approach to achieving reasonable collection targets.
- (7) Describe your company's automated abilities from placement procedures to remittance. Additionally, describe what methods of payment your company allows debtor's to use.
- (8) Describe the software programs used for collections and the degree of automation to accept electronic referrals, and to access billing agencies online. Please describe how you wish the City to transmit information to your Firm.
- (9) Describe your organization's disaster recovery plan to protect the City's receivables and the confidentiality of the information contained therein. Describe any off-site storage location and plan for backing up data.
- (10) Management Reports – Please provide information on Management Reports as required herein in Scope of Services and should include:
 - a. Describe and provide three (3) samples of management reports that would be provided to the City and the frequency of these reports.
 - b. Describe the software or online e-platform capability that would allow the City to query accounts and/or prepare ad hoc reports as necessary.
- (11) Describe your approach to client relations with City department/staff. Include name and information of the main contact person for this contract. If needed, describe training (onsite or virtual) for City personnel for account queries and management reports.

Proposed Staffing and Organization

This section of the proposal should establish the method that will be used by the firm to manage the contract/engagement, 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 list of all "key" contract staff that will be responsible for the City's account. Please include current position, applicable professional credentials and relevant experience working with government clients, and their role and responsibility with the City's account.
- (2) Furnish brief resumes (no more than one page each) for key personnel managing this engagement.
- (3) Identify a primary and dedicated Project Manager/Customer Services Manager to serve as project lead with the City's project manager through the duration of the engagement/term with your firm.
- (4) Provide a primary and secondary contact to the City for daily operational issues.
- (5) Include an Organization Chart that clearly delineates communication/reporting relationships among the staff, including sub-consultants/contractors.
- (6) 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 / Cost Proposal

The typical Fee Structure for debt collection services is a *'percentage of'* or *'fixed fee'* of monies owed to the City that is collected. The City is not expecting to remit collection or commission fees directly to Proposer and Proposer agrees to deduct collection fees as part of their monthly collections remitted to the City.

Please submit your most competitive Fee Schedule and rate collections percentage or fixed pricing for all debts collected. This includes rates for two (2) primary debt collection categories: 1) Utilities (i.e. water, sewer and sanitation, and refuse) and 2) Miscellaneous billings, which includes all other standard City general billings for various City services. Other specified billings or collection services may be provided.

The City is seeking a Fee Schedule that is fixed for the first two (2) years of the Agreement, with annual cost escalators being clearly described every year of the Agreement, including optional years. Adjustment of the fee schedule can be negotiated at the beginning of each Agreement 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.

In addition to the Fee Schedule, the Proposer's demonstrated history of collections and collection recovery percentages may also be considered when evaluating the Cost Proposal of this RFQ.

Appendices

Information considered by Proposer to be pertinent to this agreement 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/sub-contractor 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 and may utilize various weighting factors and percentages for different criteria or sub-criteria. 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.

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

1. **Adherence to RFQ Instructions** - 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 and firm's quality management system.
5. **Cost Proposal/Fee Schedule** - Reasonableness of proposed fees and/or most cost-effective rates to City, in addition to firm's collection successes and amounts collected and/or recovery rate.

The City will select firm(s) based upon the completeness and adherence to RFQ instructions, responding firms' qualifications and experience, project management approach and work plan or implementation plan, as well as responses to any requests for information as set forth herein to this RFQ. If any addenda are made to the RFQ, the information provided will be considered as well. It should be noted that none of these factors in and of themselves are determinative, and the City reserves the right to select any firm on any basis or weighted criteria 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 be selected to review and evaluate all proposals. The Evaluation Committee will be comprised of City staff and may include outside consultants to review all proposals

submitted. The City of Fullerton reserves the right to request clarification of additional information from any firm at any time. After the proposals are evaluated, the City may elect to interview all, some, or none of the firms for clarification to help clarify and better evaluate each proposal. Firms may be asked to submit additional documentation at or after the interview stage or prepare a presentation. *Please note that Interviews are at the City's sole discretion and are not a requirement to make any recommendation to award an agreement.*

Based upon evaluation of the proposals and any interviews (if conducted), the Evaluation Committee will recommend the top-ranked firm(s) to be selected on the On-Call List to the City Manager and/or City Council (if necessary).

The City reserves the right to select a firm without conducting interviews or abandon this RFQ. **Final selection of the awarded firm(s) and the authority of awarding the agreement to proceed with these services shall be at the sole discretion of the City and if required, City Council.**

Award

After conclusion of the evaluation period, a **"Notice of Intent to Award"** will be sent to all proposers to this RFQ identifying the firm(s) selected. Award to any firm(s) selected is *contingent upon* the successful negotiation of final agreement terms and the approval of City. The City 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 Proposer's Proposal submitted should contain firm's most favorable terms and conditions.

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 an agreement with the next best qualified Proposer or withdraw the RFQ. *In the event the City does not approve the recommendation to award, the RFQ may be cancelled without any cost or obligation of City.*

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

Proposer 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. **Notice of Intent to Award** will be sent to all firms who submitted a proposal via Public Purchase, the City's eProcurement platform, and will also be available on the City's bid webpage www.cityoffullerton.com/business/bids-rfps.

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 “A,” 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, XXXX)]**, 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.

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

5.2. Minimum Scope and Limits of Insurance.

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

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

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

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

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

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

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

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

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 a court of competent jurisdiction located in Orange County, California.

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

6.8. Indemnification and Hold Harmless. To the fullest extent of the law, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents, and employees, at Consultant's sole expense, from and against claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents, and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the professional services undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents, and employees based upon the work performed by Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints, or suits arising out of the sole 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.

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

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

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:

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |