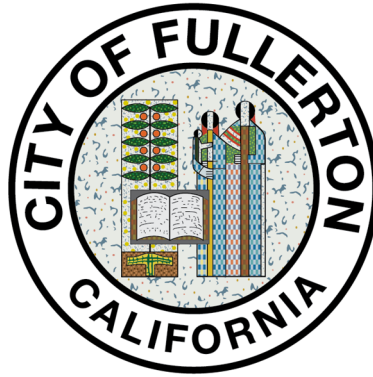


**CITY OF FULLERTON**  
**REQUEST FOR PROPOSAL**



**RFP #2324-08 FULLERTON MULTI-MODAL SAFETY ACTION PLAN  
SAFE STREETS AND ROADS FOR ALL (SS4A)**

**PROPOSAL DUE: THURSDAY, JANUARY 18, 2024 @  
4:00 P.M. PST**

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

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**SECTION I**  
**NOTICE OF REQUEST FOR PROPOSALS**  
**Fullerton SS4A Multi-Modal Safety Action Plan**

**NOTICE IS HEREBY GIVEN** that the City of Fullerton is requesting proposals from professional engineering consulting firms to develop and complete a Comprehensive Multi-Modal Safety Action Plan (Plan). The development of this Plan will be funded with Federal funds under the Safe Streets and Roads for All (SS4A) program, and the total estimated cost is \$250,000. The goal of the Plan is to develop a holistic, well-defined strategy to prevent fatalities and serious injuries in the City of Fullerton.

This Request for Proposals (RFP) 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 RFP Response. Proposals will be evaluated based 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 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.

The safety of our residents and roadway patrons is paramount! With a fatality rate over 6 per year, the City of Fullerton is committed to identifying and implementing potential strategies/improvements to reduce fatalities and severe injuries on our roadway network. The development of an Action Plan will give us the foundation to implement low-cost, high-impact strategies to improve safety over a wide geographic area, including within our disadvantaged communities. The City is actively looking for ways to mitigate collisions within our intersections and roadways. We recently completed a Local Road Safety Plan (LRSP) which will be a great resource in development of the Action Plan.

With nearly 60% of the City's population in Disadvantaged Census Tracts, the Plan will identify safety needs in these communities. The needs in these areas are typically greater and should be identified in the Plan. Safety is universal and does not discriminate. The goal is to implement safety improvements for everyone.

## SUBMITTAL DEADLINE

**COMPLETE ELECTRONIC PROPOSALS MUST BE SUBMITTED NO LATER THAN Wednesday, January 18, 2024 at 4:00 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 proposal to this RFP.

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](http://www.publicpurchase.com). Registration is free and organizations may select to be notified of all future bids posted by the City of Fullerton.

### Proposed RFP Schedule

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

Release of RFP	November 30, 2023
Question Submittal Deadline	December 19, 2023, at 4:00 P.M. PST
Response to Questions Posted	January 4, 2024, at 4:00 P.M PST
RFP Submittal Deadline	January 18, 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 is requesting proposals and looking for an experienced, qualified engineering/planning firm with ample experience with similar projects to complete the City's comprehensive Multi-modal Safety Action Plan. We encourage proposals to include innovative approach methodologies and/or added value to the base scope.

Funds from the U.S. Department of Transportation (USDOT) Fiscal SS4A Grant Program will be used to fund all or a portion of this Project. Therefore, the selected Consultant shall be required to comply with all federal funding requirements associated with this SS4A grant, including but not limited to federal contract provisions identified in the sample Professional Services Agreement attached hereto in Section VI.

#### **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.

**The designated Project Manager (PM) and/or Deputy Project Manager (DPM) shall be a licensed Civil Engineer in the State of California and/or a certified Roadway Safety Professional (RSP1/RSP2) by the Transportation Professional Certification Board (TPCB).**

#### **SCOPE OF WORK**

The Scope of Work is intended to be a general guide, but also may outline a complete list of all work to be performed as required of this RFP. 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. The Proposer shall perform the following tasks and key services as required herein of this RFP:

##### **Task 1: Project Management, Coordination, & Administration**

###### **Kick-off Meeting:**

The City will meet with Consultant to discuss the overall vision for the Plan. The agenda will include, at a minimum, the project's goals, objectives, tasks, and timeline, the expectations of the City and grant requirements. At the meeting, the parties will outline the plan for completing all tasks. The Project Kick-off Meeting will be led by the Consultant. All key staff will be required to attend. Detailed meeting minutes are shall be provided and distributed for comments within two(2) days of the meeting.

#### Project Design Team (PDT) Meetings:

Consultants Project Manager will conduct collaborative monthly project team meetings. All parties will work together to monitor project progress, prepare for next steps, discuss completed tasks, conduct problem-solving, and ensure the project remains within the designated timeframe as well as within budget. Detailed meeting minutes are shall be provided and distributed for comments within two(2) days of each meeting.

#### Advisory Committee Meetings:

City and Consultant will recruit an Advisory Committee composed of representatives from the community. These members will provide input on data collection methods, community meeting locations and topics, and proposed alternatives. At a minimum, the Advisory Committee will meet quarterly to discuss project milestones, outreach strategies, and analyze collected data.

#### Schedule:

Upon receipt of a Notice-to-Proceed from the City, the PM shall prepare a detailed project schedule to be used by the project team. This schedule shall be presented to the City's PM for comment and be updated on an as-needed basis throughout the design process.

#### Communication:

The designated PM will work closely with the City, stakeholders, and sub-consultants to uphold the project schedule and budget. The City strongly believes in proactive critical thinking and communication to minimize project delays. To avoid any unwanted surprises, the selected consultant is requested to be completely transparent and proactive in dealing with any issues so the City can make knowledgeable decisions.

#### Quality Control:

A key factor to project success is accountability. The consultant will be accountable to deliver on what is outlined in this proposal. Every deliverable shall go through a thorough quality control/quality assurance process prior to being submitted to the City for review. Each subsequent submittal shall have a response to comments included for reference. Any deliverable that contains substantive errors for omissions will be rejected. No additional compensation shall be provided for resubmittals after poor quality deliverables.

### **Task 2: Existing Conditions / Data Collection**

#### Accident Data Collection:

Consultant will obtain relevant available data and will use, at a minimum, information from:

- Statewide Integrated Traffic Records System (SWITRS) database
- Transportation Information Mapping System (TIMS)
- Local Police Department accident reports, not included in the SWITRS database
- Interviews with local law enforcement/fire department personnel for historical and personal observations of problem areas, accident frequency and types; and
- Interviews with individual property owners in key areas with personal observational data regarding problem areas, accident frequency and types.

#### Literature Review:

Consultant will review existing plans and programs as they relate to the transportation goals, visions, and efforts. Literature review will include, at a minimum:

- Census Tract data
- Fullerton Housing Element
- Fullerton General Plan
- Fullerton Downtown Active Transportation Plan
- Fullerton Bike Connector Plan
- Fullerton Local Road Safety Plan (LRSP)
- OCTA Long Range Transportation Plan (LRTP)
- OCTA OC Active Report
- Caltrans Sustainability Plans and Programs
- State of California Plans and Programs

#### Claims Data Review:

Consultant shall review City claims history from the last ten (10) years. The focus of the data will be isolate and analyze claims related to bike and pedestrian safety. The consultant shall visual display the data from a cumulative citywide perspective and also identify any specific areas that have high volume and/or severity of claims.

#### Community Input, Stakeholder Interviews, & Surveys:

Consultant shall perform the following two initial community meetings as identify in Task 3 Public Outreach.

- In-person stakeholder meetings to include residents and property owners with the purpose of collecting data.
- Virtual stakeholder meeting to include residents and property owners with the purpose of collecting data, in an online format to ensure inclusion.

Consultant will reach out to residents of underserved communities via online and hard copy surveys to collect additional feedback and identify transportation barriers.

Consultant will conduct intercept surveys where representatives will interview residents at various commercial centers throughout the City to gather insights on current issues, access challenges, barriers to mobility, and ideas for improvement. The surveys will provide community members with an opportunity to discuss the project one-on-one with a planning expert.

Consultant will also represent the project at a minimum of three City sponsored community events where they will offer residents an opportunity to provide direct input on transportation needs, concerns, and expectations.

#### **Task 3: Public Outreach**

Consultant will develop the Outreach Plan based on the outline developed during the Project Kick-off Meeting. The Outreach Plan will outline the specifics for conducting the following meetings and presentations:

- In-person stakeholder meetings to include residents and property owners with the purpose of collecting data.
- Virtual stakeholder meeting to include residents and property owners with the purpose of collecting data, in an online format to ensure inclusion.
- Final stakeholder meeting where the project team will share the findings and discuss potential solutions with property owners, patrons, community members, and City officials.

The Outreach Plan will be a comprehensive Technical Memorandum provided to the City and stakeholders that will include, at a minimum, the following elements:

- Meeting format (workshop, digital, in-person, walking tour, etc.).
- Topics to be covered
- Strategy for community outreach (public announcements, flyers).
- Social media, public events, digital engagement
- Costs of community outreach strategy
- Suggested times and duration of meetings
- Points of contact for each meeting; and
- Method for collecting feedback

#### Flyers, Announcements, and Social Media:

Consultant will utilize the strategies outlined in the Outreach Plan to develop and disperse announcements for community meetings throughout the City including storefronts, take home flyers at businesses and restaurants, posts on the City's website and social media, and local community groups and churches.

The team member will provide a bilingual survey that can also be reached via an online portal. The same surveys will also be available at City sponsored functions such as summer concerts and recreational events. English, Spanish, and Korean speaking team representatives will be available at each City sponsored function to engage the community and get additional input.

#### Direct Mail Announcements:

Consultant will conduct a direct mail campaign to key stakeholders and residents of disadvantaged communities. The bilingual direct mail announcements will provide an outline of topics to be discussed at community meetings and a comprehensive list of meetings including dates, times, and locations, allowing residents to choose which meeting to attend. Additionally, they will provide a QR code allowing residents to provide input virtually if desired.

### **Task 4: Analysis**

#### Equity Analysis:

The consultant shall prepare and equity analysis, in collaboration with appropriate partners, focused on initial equity impact assessments of the proposed projects and strategies, and population characteristics.



#### Identify Countermeasures and Project Opportunities:

Information gathered through data collection and public outreach will be used to guide Consultant in selecting and prioritizing countermeasures to reduce transportation challenges. Countermeasures may include reconfiguring roads, the addition of sidewalks, safe crossings, traffic calming measures, traffic control upgrades, circulation improvements, and other transit, pedestrian, and bicycle infrastructure.

#### Benefit Cost Analysis:

Using the TIMS system (and other benefit costs analysis tools available on the open market), Consultant will prepare Benefit Cost Analysis for each proposed capital improvement and proposed alternative.

#### Project Identification:

Using preliminary costs and data collected for countermeasures, and information from the Benefit Cost Analysis, Consultant will develop a list of potential projects to be listed in the draft and final Plan.

#### **Task 5: Conceptual Design, Cost Estimate, & Fact Sheets**

Once projects have been identified, the City and Consultant will select a minimum of five (5) projects for each of the following categories:

- Vehicular safety – Project locations should include roadway intersections or segments with a high volume and/or severity of vehicle-vehicle collisions.
- Bicycle Safety - Projects locations should include critical gaps in the bicycle networks and deficient or sub-standards facilities on roadways with high bike volumes. Project should also include any locations where there is high volume and/or severity of vehicle-bike collisions.
- Pedestrian Safety - Projects include citywide sidewalk repair based to trip & fall claims, critical gaps in the pedestrian networks, and deficient or sub-standards facilities with high pedestrian activity/volumes. Project should also include any locations where there is high volume and/or severity of vehicle-ped and/or bike-ped collisions.

The projects shall be developed to a conceptual design level. The project team (including a licensed civil engineer) shall visit each project sites to review the data collected and evaluate if/how countermeasures can be implemented to improve multi-modal safety.

Conceptual designs shall identify topography, drainage, traffic, utilities, right of way, geotechnical data, and any other information required to ensure constructability. The conceptual designs will be provided to the City in .pdf and .dwg format. The concept shall be to a level of detail to determine a accurate cost estimate. The cost estimate shall be itemized and reflect anticipate cost escalations at project year build-out.

#### Fact Sheets:

The consultant shall prepare a fact sheet for each identified project. The fact sheet shall have all relevant information to be “grant ready” for future SS4A implementation grants. The Consultant shall study the requirements and application for implementation grants and prepare the fact sheets

to streamline applying for future grants. Details on the fact sheet include, but are not limited to, project location, mode focus, benefit/cost ratio, collision/claim data, statistics, applicable countermeasures, anticipated implementation cost,

#### **Task 6: Draft and Final Plan**

##### Draft Fullerton Multi-modal Safety Action Plan:

Consultant will develop the Draft Multi-modal Safety Action Plan, which will include the analysis of data collected, outreach performed, methodology and project selection, list of projects, concept designs, cost estimates, fact sheets, and phased implementation plan for addressing the improvements.

The Plan shall also include an assessment of current policies, plans, guidelines, and standards to identify opportunities to improve how processes prioritize multi-modal safety.

##### Presentation of Draft Plan:

Consultant will present the Draft Plan to key stakeholders, including City staff, Active Transportation Committee (ATC), Transportation & Circulation Commission (TCC), Infrastructure and Natural Resources Committee (INRAC), and City Council. Consultant will gather feedback from all stakeholders and make appropriate revisions.

##### Final Fullerton Multi-modal Safety Action Plan:

Consultant will develop the Final Multi-modal Safety Action Plan for review and approval by the City Council and Caltrans. The Final Plan will include next steps for environmental work, permitting, and engineering, and will be presented at one Fullerton City Council Meeting. The community will be encouraged to attend these open, public meetings, to provide final comments on the Plan.

##### Council Review and Adoption:

Once the Final Plan is deemed complete, an item will be placed on the City Council agenda for a publicly held meeting. City Council will vote to adopt the Plan and incorporate it into the City's planning documents.

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

If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the proposer should immediately provide the City written notice of the problem and request that the RFP be clarified or modified. Without disclosing the source of the request, the City may modify the documents prior to the date fixed for submission of proposals by issuing an addendum.

If prior to the date fixed for submissions, a firm(s) knows of or should have known of an error in the RFP 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 Tuesday, December 19, 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 as an Addendum to this RFP on the City's bid webpage and the City's eProcurement Portal, Public Purchase, tentatively scheduled to be posted on January 4, 2024.

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)

## General Inquiries

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

Vanessa Slouka, Buyer

Email: [vanessa.slouka@cityoffullerton.com](mailto: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 Thursday, January 18, 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](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:

**RFP #2423-08 Fullerton SS4A Multi-Modal Safety Action Plan  
City of Fullerton – Purchasing  
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 disqualification.

## California Public Records Act (CPRA)

All proposals submitted in response of this RFP 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 RFP at any time without prior notice, and the City makes no representations that any contract will be awarded to any proposer responding to this RFP.

3. City reserves the right to postpone proposal openings for its own convenience.
4. 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. Proposer 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 RFP;
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 RFP, 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 RFP 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, 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 Section VIII - Sample Professional Services Agreement for insurance requirements.**

## City Business License

The successful consultant 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**

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 (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.
- (4) Acknowledgment of receipt of all RFP 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 (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 & 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; 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 RFP 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.

### **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 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) Identify all task deliverables.
- (3) Project a preliminary project schedule
- (4) 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/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 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 / Cost Proposal**

Submit a Fee Schedule to complete the services outlined in the "Scope of Work" of this RFP. 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 key staff/classifications and fully burdened 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 City is subject to prevailing wage laws which apply to those professional services providers and their subconsultants for whom the Department of Industrial Relations (DIR) 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 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 RFP 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 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.

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

1. **Adherence to RFQ Instructions** - Presentation, completeness, clarity, organization, and conformance to the RFP 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 / Cost Proposal** - Reasonableness of proposed fees and/or most cost-effective rates to the City.

The City will select a firm based upon the completeness and adherence to RFP 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 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 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 to award an agreement 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 RFP. **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 RFP notifying of the top firm 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 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

Proposers who submit a proposal(s) in response to this RFP 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](http://www.cityoffullerton.com/business/bids-rfps).

SECTION VI  
SAMPLE PROFESSIONAL SERVICES AGREEMENT  
*(Do not include in Proposal)*

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

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

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

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

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

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

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

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the 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.

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.

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, 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.

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



## APPENDIX

### APPENDIX II TO PART 200, TITLE 2 CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

#### **APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60–1.3](#) must include the equal opportunity clause provided under [41 CFR 60–1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp.](#), p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended ([40 U.S.C. 3141–3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141–3144](#), and [3146–3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that

each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701–3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act ([42 U.S.C. 7401–7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251–1387](#)), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401–7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251–1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#))—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with

obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See [§ 200.323](#).

(K) See [§ 200.216](#).

(L) See [§ 200.322](#).

**EXHIBIT A**  
**REQUEST FOR PROPOSALS**

**EXHIBIT B**  
**CONSULTANT'S PROPOSAL**

**EXHIBIT C**  
**CERTIFICATES OF INSURANCE**

## SECTION VI

### 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 RFP 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 VII**  
**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 Proposal, please indicate below and describe details: (check any that apply).

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

Please explain any of the checked items

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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:

_____	_____
_____	_____
_____	_____
_____	_____