



CITY OF FULLERTON

PUBLIC WORKS

REQUEST FOR PROPOSALS FOR WIRELESS MARKETING PROGRAM

PROPOSAL DUE DATE: Thursday, September 7, 2017

**Fullerton Public Works
1580 W. Commonwealth Ave.
Fullerton, CA 92822**

SECTION I: GENERAL INFORMATION

I. Purpose

The City of Fullerton ("City" or "Fullerton") invites interested parties to demonstrate their knowledge and expertise ("Qualifications") for developing a Wireless Marketing Plan (the "Plan" or "Marketing Plan"). The Marketing Plan will be used to strategically develop the City's wireless telecommunication infrastructure to meet the City's current and future needs. The successful Responder would be expected to use the Plan and work on the City's behalf to develop agreements to construct, manage, and leverage certain City assets and telecommunication infrastructure with third parties. It is anticipated that this project could utilize the following City assets: building(s), pole(s), tower(s), fiber, conduit(s), cable(s), cabinets(s), street furniture, vault(s), and any structures which could be utilized for the purposes of promoting, transmitting or facilitating wireless communications.

The ideal Responder will demonstrate expertise in several areas including:

- Negotiating favorable property agreements (e.g., sub license and encroachment agreements) with multiple telecommunication service providers;
- Developing and managing service contracts with multiple telecommunication service providers;
- Developing similar networks in other jurisdictions;
- Outdoor Distributed Antenna System ("oDAS") design, installation, and maintenance;
- Wireless Small Cell design, installation, and maintenance;
- Outside Plant Cable design, installation and maintenance;
- Citywide Wi-Fi design, installation, and maintenance, and;
- Delivering benefits which could be offered to the City as part of the Plan (e.g., financial benefits that would support the wireless infrastructure and expansion efforts, wireless communications infrastructure, services, hardware, and programs to underserved communities).

II. City's Rights, Options and Policies

The City reserves the right to reject any or all submittals, correct any technical errors in the RFP process, waive any irregularities in any submittal, negotiate with any of the Responders, accept other than the lowest fee offer, or enter into a subsequent agreement with another Responder if the originally selected Responder fails to execute its agreement with the City.

Any agreement is not binding unless it is executed by authorized representatives of the City and the selected Responder. Proposing firms are solely responsible for any expenses incurred in preparing their Submittals in response to this RFP.

Submittals should provide straightforward, concise descriptions of the firm's capabilities to satisfy the requirements of this RFP. The emphasis should be on completeness and clarity of content. To expedite Submittal evaluations, it is essential that specifications and instructions contained in these instructions are followed as outlined.

Submittals will become the exclusive property of the City. At such time as City staff recommends a Responder to the City Council, all Submittals received in response to this RFP become a matter of public record and will be disclosed upon receipt of a request for public disclosure pursuant to the California Public Records Act; provided, however, that if any information or elements of the Submittal is set apart and clearly marked as "Trade Secret" or "Proprietary" when it is provided to the City, the City will give notice to the Responder of the request for disclosure to allow the Responder to seek judicial protection from disclosure.

Any/all Responders responding to this RFP do so entirely at their expense. There is no expressed or implied obligation by the City to reimburse any individual or firm for any costs incurred in preparing or submitting responses, for providing additional information when requested by the City or for participating in any selection demonstrations or interviews, including pre-contract negotiations and contract negotiations.

The City reserves the right to decide that one Responder is more responsive than the others and to select that Submittal based on review of the Submittal only. The City reserves the right to reject individual firm members, firms, and subcontractors and request substitution without indicating any reason.

If there is reason to believe collusion exists among the proposers, the City may refuse to consider proposals from participants in such collusion. No person, firm, or corporation under the same or different name, shall make, file, or be interested in more than one proposal for the same work unless alternate proposals are called for.

All public works projects that are subject to prevailing wage requirements shall also be subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). Contractors are prohibited from working on any public works contract with a subcontractor who is ineligible to perform work pursuant to section 1777.1 or 1777.7 of the labor code. All contractors and subcontractors must also comply with sections 1777.5, 1777.6 and 1777.7 of the California labor code concerning the employment of apprentices. The contractor shall also comply with sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 as required by the California labor code.

SECTION II: GENERAL REQUIREMENTS AND SCOPE OF WORK

I. RFP Due Date and Submittal Instructions:

RFP submittals are due by Thursday, September 7, 2017 at 3:30 pm to:

City of Fullerton Public Works
ATTN: Tim Campbell
1580 W. Commonwealth Ave.
Fullerton, CA 92833

Proposers shall submit one original with wet signatures and one copy, along with a complete electronic copy in PDF or MS Word format. **Submittal envelopes must be plainly marked “Fullerton Wireless Marketing Plan RFP”.** All submittals must include the individual's name, company, address, and contact information. Late submittals will be returned to the sender unopened.

II. RFP Questions

All questions regarding this RFP should be sent via email to Tim Campbell at Timc@ci.fullerton.ca.us. Responses will be shared with all potential respondents. All questions must be received no later than Tuesday, September 5 by 4:00 PM PST. Responses will be shared with all potential respondents.

Responders may rely only upon written information and/or instructions from the City. The City shall not be responsible for any oral information and/or instructions given with regard to this RFP from third parties.

III. Submission Requirements:

The following information must be included with RFP submissions:

- a. Statement of Interest
- b. Relevant qualifications demonstrating experience with property agreements (e.g., sublicense and encroachment agreements) and contract negotiations with service providers; experience in developing oDAS, WiFi, and Small Cell networks; and service level agreements.
- c. A conceptual property agreement rate structure for wireless carriers for both capital and recurring expenses. Rates shall include:
 - 1) oDAS network buildout and small cell site deployment
- d. Provide a revenue cost share/split proposal with the City.

Qualifications may be withdrawn or modified before the due date by delivering a written and signed request by the due date. A request for modification of the Submittal after the due date will not be considered, including a representation that the Responder was not fully informed regarding any information pertinent to the Submittal or the offer. The City shall not be responsible for or bound by any oral instructions, interpretations or information provided by the City or its employees other than the RFP contact.

IV. Scope of Work

IV-A: Project Scope

1. CONTRACTOR (for the purpose of this section CONTRACTOR means or refers to selected responder) shall provide consulting and planning services to identify City of Fullerton ("City") assets to market. These services, which shall be refreshed at a minimum annually, shall include RF analysis, asset inventory, wireless master planning, review of equipment and pole mounting for the wireless infrastructure (aesthetics) and other associated services which shall be shared with the City.

Specifically, the CONTRACTOR will provide, at no cost to the City:

a comprehensive radio frequency ("RF") analysis, which will, among other things:

(i) describe the current state of wireless coverage within City's jurisdiction for each major wireless telecommunications carrier;

(ii) identify key areas of multiple wireless broadband service provider coverage needs;

(iii) identify available City assets that would satisfy coverage needs, and;

(iv) provide RF modeling to show how the selection of additional sites for wireless telecommunications facilities will address coverage needs.

The items referred to in clauses (i), (ii), and (iii) from the preceding sentence are hereinafter referred to as the "*Master Plan*," while the items referred to in clauses (i), (ii), (iii), and (iv) in the preceding sentence are hereinafter referred to as the "*Consulting Services*".

CONTRACTOR, will, for the duration of the agreement term, provide, on a quarterly basis, a written update summarizing investments, technology changes, financial gains and provider plans, and on an annual basis, ongoing RF analysis with reports, feasibility analyses, pricing and fee recommendations, form factor and aesthetic policy development, technology refresh and advancement updates, and other consultation specific to wireless broadband service providers to ensure the City is capitalizing on opportunities to improve wireless broadband service to the community.

2. At no cost to the City and as an advocate for the City, CONTRACTOR shall exclusively market City assets to build out the wireless infrastructure to all carriers ("Marketing Plan"). The purpose of the Marketing Plan is to build out wireless capacity that lays the foundation for sustained economic growth.
3. CONTRACTOR will recommend potential City assets to market and the City will have the right to determine which City assets are marketed.

4. The City assets that may be marketed include building(s), pole(s), tower(s), fiber, conduit(s), cable(s), cabinets(s), street furniture, vault(s), and any structures which could be utilized for the purposes of promoting, transmitting or facilitating communications.
5. CONTRACTOR will negotiate and propose property agreements (e.g., license, sublicense, or encroachment agreements) with Carriers for City-approved sites. The City shall have the final authority to grant or approve all property agreements pursuant to this Plan.
6. CONTRACTOR and the City shall negotiate a revenue split from the revenue received from all property agreements under this plan.
7. The City will retain underlying ownership of any City owned or licensed property.
8. CONTRACTOR shall provide an annual report summarizing marketing efforts, network construction, market changes, and RF analysis results.

IV-B: City Assets

The City desires to expand the availability of its wireless infrastructure to serve various community stakeholders, diversify the local and regional economy, and enhance the quality of life for all. It is projected City of Fullerton assets will be available to support cellular carrier small cells and City Wi-fi services. As mentioned in Section IV-A.4 above, these assets include building(s), pole(s), tower(s), fiber, conduit(s), cable(s), cabinets(s), street furniture, vault(s), and any structures which could be utilized for the purposes of promoting, transmitting or facilitating communications

The City currently owns and maintains over 6,600 streetlights. Some light standards can be modified to support small cells and City Wi-Fi services.

IV-C: Submission Content and Format

At a minimum, the statement of qualification/proposal shall include the following:

1. **Letter of Transmittal:** The letter will summarize, in a brief and concise manner, the Responder's understanding of the requested services. Please include the official name of the firm submitting the Submittal, mailing address, email address, telephone number, fax number and contact name. The letter must be signed by an official authorized to bind the Responder contractually and contain a statement that the Submittal is firm for ninety (90) days.
2. **Submittal Signature:** If the Submittal is made by an individual, it shall be signed and the individual's full name and address shall be given. If it is made for a firm or partnership, it shall be signed with the firm or partnership name by a principal of the firm or partnership, who shall sign his or her own name and title.
3. **Company Information/Qualifications and Experience:** The Responder shall include qualifications and experience of the firm and resumes of individuals who would be assigned to this project. The Responder shall state the year the firm was established, the total number of employees, and the number of employees focused on this type of engagement. The Responder will provide a financial reference or annual report for the most recently completed fiscal year.
4. **Client References:** The Responder must provide client references for similar work performed for clients of a similar size, complexity and business. The Responder will

provide the following information about clients being used as references: client name, client contact information, client size and industry, and brief description of the engagement. Examples of similar projects should be provided.

IV-D: Submittal Evaluation / Selection Criteria

Submittals will be evaluated on the basis of the overall best qualifications to the City based on the criteria set out in this RFP. Firms may be asked to participate in an oral interview and a proof of concept.

Submittals should be straightforward and concise, while ensuring complete and detailed descriptions of the Firm's abilities to meet the requirements of this RFP.

The City recognizes each Responder may have developed unique methods of service delivery. Variations in services equivalent to or of better quality and performance than that requested, which provides the necessary service, will receive full consideration for award.

The Contractor must commit a professional staff and an experienced Project Manager who will be responsible for coordinating the services with the City. Service shall be the best of its respective kind. All professionals shall be skilled, knowledgeable, and successfully experienced in all aspects of providing the required services.

The Contractor shall be required to obtain any necessary licenses and shall comply with all Federal, State and local laws, codes and ordinances without cost to the City. The successful proposer must obtain a City of Fullerton business license.

The Contractor must show evidence of insurance coverages per Attachment One.

Rejection of Submittals: The City of Fullerton reserves the right to reject any and all Submittals received in response to this request, or to negotiate separately with any source whatsoever in any manner necessary to serve the best interest of the City. The City of Fullerton may at its discretion determine not to award a contract solely on the basis of this RFP and will not pay for the information solicited or obtained.

IV-E: Contract Negotiations

Contract negotiations may be undertaken simultaneously during the evaluation of Submittals with the finalist(s) as determined by the City. The City will not accept any changes to the professional services agreement, including contract exhibits.

IV-F: Contract Term

The approved proposer will be required to sign the City's Consultant Agreement, which shall be effective on the date it is executed by all parties and shall be in effect for an initial term of five (5) years, with four (4) five year renewals subject to the written mutual consent of the PARTIES. The full potential term of the Agreement is twenty five (25) years. A sample agreement is attached as Attachment Two. The CONTRACTOR'S service agreement may be incorporated into the City's master Consultant Agreement by reference.

ATTACHMENT ONE INSURANCE REQUIREMENTS

Once the contract is awarded, the contractor must meet the insurance requirements listed below:

CONTRACTOR 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 products, materials or services supplied to the CITY OF FULLERTON. CONTRACTOR 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 within the purchase order agreement or the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property.

I. Minimum Scope and Limits of Insurance

- A. Commercial General Liability Insurance: CONTRACTOR shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form #CG 001 ED. 11/88, 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: CONTRACTOR shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form # CA 000 T ED. 6/92, 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: CONTRACTOR 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. If the contractor maintains higher limits or has broader coverage than the minimums shown above, the City requires and shall be entitled to all coverage, and to the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

II. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the CITY.

III. Other Insurance Provisions

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

- A. Commercial General Liability, Business Automobile Liability.

The CITY, its elected or appointed officials, officers, employees and volunteers are to be covered as "ADDITIONAL INSUREDS" with respect to liability arising out of products,

materials, or services of the CONTRACTOR; or with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONTRACTOR. Such coverage as an additional insured shall not be limited to the period of time during which the CONTRACTOR is conducting ongoing operations for the CITY but rather, shall continue after the completion of such operations. The coverage shall contain no special limitations on the scope of its protection afforded to the CITY, its officers, employees and volunteers.

B. Commercial General Liability, Business Automobile Liability.

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

C. Workers' Compensation and Employers' Liability Insurance.

Insurer **shall waive their right of subrogation** against CITY, its officers, employees and volunteers for work done on behalf of the CITY.

D. All Coverages.

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

IV. Acceptability of Insurers

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

V. Verification of Coverage

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

MAIL CERTIFICATE(S) TO:

**CITY OF FULLERTON – RISK MANAGEMENT
303 W. Commonwealth Ave.
Fullerton CA 92832-1775**

**ATTACHMENT TWO: SAMPLE AGREEMENT
CITY OF FULLERTON CONSULTANT AGREEMENT
WITH _____**

This agreement ("Agreement"), dated this _____ day of _____, 20__ (the "Effective Date"), is entered into in the City of Fullerton, to be performed in the City of Fullerton, by and between City of Fullerton, 303 West Commonwealth Avenue, Fullerton, CA 92832, a municipal corporation ("CITY") and _____ an _____ firm, having a place of business at _____, _____, CA _____ ("CONSULTANT").

I

RECITALS

WHEREAS, CITY needs and requires the professional services of a qualified consultant in connection with providing professional services for _____ ("Project"), as described in the Request for Proposal ("RFP"), attached hereto as Attachment "A" and is incorporated herein by this reference.

WHEREAS, CONSULTANT is qualified and is willing to perform the professional services herein required, and has submitted a proposal to the CITY to provide those services ("Proposal"). A copy of the Proposal, including fee schedule, is attached hereto as Attachment "B" and is incorporated herein by this reference.

WHEREAS, CITY has reviewed CONSULTANT's Proposal and finds that it will be compatible with CITY's intent, and the City Council has authorized entering into this Agreement based upon the Proposal.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions contained herein, CITY and CONSULTANT agree as follows:

II

SCOPE OF SERVICES

- A. CITY hereby engages CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the various services set forth in Attachments "A" and "B" (the documents contained in Attachments "A" and "B" shall be hereinafter referred to as the "Scope of Services") and is made a part thereof in its entirety by reference.
- B. 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 circumstances in accordance with sound professional practices.
- C. At any time during the term of this Agreement, CITY may request that CONSULTANT perform Extra Work. As used herein, "Extra Work" means any services or work outside the Scope of Services. CONSULTANT shall not perform Extra Work until receiving prior written authorization from CITY. It is specifically understood and agreed that oral requests and/or approvals of "Extra Work" shall be barred and are unenforceable. Failure of CONSULTANT to secure CITY's written authorization for "Extra Work" shall constitute a waiver of any and all right to adjustment

in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate CITY authorization.

III

COMPENSATION AND METHOD OF PAYMENT

- A. Compensation. CITY shall pay CONSULTANT for the professional services rendered pursuant to this Agreement, as follows:

Compensation shall be on a lump sum basis in accordance with the schedule listed hereunder.

Lump Sum, not to exceed \$ _____
_____ dollars

The above listed amount includes all reimbursable expenses.

- B. Extra Work. Extra Work approved by CITY shall be paid in accordance with the normal hourly rates set forth in CONSULTANT's fee schedule, in effect at the time of execution of this Agreement, a copy of which is included in Attachment "B" and is incorporated herein by this reference. Said rate schedule shall be effective throughout the entire term of this Agreement or any extension thereof. CONSULTANT shall not receive compensation for any Extra Work unless prior approval is obtained in writing from CITY.
- C. Method of Billing. Billings may be made on a progress basis, but no more often than monthly. CITY shall pay CONSULTANT's invoice within thirty (30) calendar days from the date CITY receives said invoice. Said billings shall be based upon the total of all professional services, which have been completed to CITY's sole satisfaction. For reimbursable expenses, the invoice shall include supporting documentation to validate the amounts claimed.

IV

MATERIALS TO BE PROVIDED BY CITY OF FULLERTON

CITY shall furnish CONSULTANT with those items listed in Attachments "A" and "B".

Electronic files of City of Fullerton AutoCAD sheet layout, AutoCAD standard layers, AutoCAD linetypes, and AutoCAD plotting style.

Project's Department of Industrial Relations (DIR) number shall be provided by the City.

V

TIME OF PERFORMANCE

- A. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days of CONSULTANT's receipt of the written Notice to Proceed (NTP) from CITY. Said services shall be performed in strict compliance with the time schedule approved by CITY (attached hereto as Attachment "C" and is incorporated herein by this reference), or as amended by mutual agreement. Failure to commence work within five (5) days of the NTP and/or diligently pursue work to completion may be grounds for cancellation of the NTP and/or termination of services. The execution of this Agreement by the parties hereto does not constitute an authorization to proceed. CONSULTANT shall not proceed

on any authorized tasks until receipt of NTP. If CONSULTANT falls behind according to the approved time schedule, it shall immediately notify the CITY of the estimated delay, and shall provide a written explanation of the delay, if requested by the CITY.

This contract shall remain and continue in effect until all services are completed to the satisfaction of CITY, unless terminated sooner pursuant to the terms of this Agreement. The term of this Agreement may be extended upon the mutual agreement of the parties in writing. The expiration of the term or termination in accordance with this Agreement shall not affect those provisions which explicitly survive expiration or termination.

A project Manager is to be designated prior to start by name and may not be changed without prior written approval by the City. The project manager (Registered Professional) shall be available throughout the term of the each project and will verify and approve all aspects of the project. All sub-consultants' work shall be coordinated through the CONSULTANT's project manager.

- B. 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 reasonably and directly related to performance of this Agreement, riots, acts of war, or any other conditions beyond the reasonable control of the party or parties. In such cases, CONSULTANT shall be entitled to a reasonable extension which ordinarily will be equivalent to the time actually lost by such delay.

VI

AGREEMENT TERMINATION

- A. Notice. CITY reserves the right and privilege to terminate, cancel, suspend, or abandon this Agreement, or all or any part of the work related to the Agreement, at any time by providing prior written notice to CONSULTANT and specifying the effective date of termination. Unless stated otherwise, termination shall become effective upon CONSULTANT's receipt of the notice of such termination from the CITY. CONSULTANT shall be liable to CITY for any reasonable additional costs incurred to correct or cure unsatisfactory work or services performed by CONSULTANT which, at CITY's discretion, must be revised, in part or in whole, to complete the services under this Agreement. Termination may be with cause due to CONSULTANT'S failure to perform or provide prompt, efficient, and thorough service. Termination may also be without cause due to circumstances beyond CONSULTANT's control, such as changes in CITY's project or funding priorities.
- B. Documents. In the event of termination of this Agreement, all finished or unfinished design, development and construction documents, data studies, drawings, maps and reports prepared by CONSULTANT shall be delivered to CITY within five (5) days of receipt of termination notice, and at no additional cost to CITY.
- C. Compensation. If this Agreement is terminated as provided herein, CONSULTANT will be paid for all professional services actually performed up to the effective day of termination and acceptable to City in accordance with the Scope of Services and Article III of this Agreement-Compensation and Method of Payment, which shall not include any anticipated profit or unperformed service. In ascertaining the professional services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in progress, complete and incomplete drawings, and to other documents,

whether delivered to CITY or in possession of CONSULTANT, and to authorized reimbursable expenses.

VII

INDEPENDENT CONTRACTOR STATUS

CONSULTANT's relationship to CITY in the performance of this Agreement is that of an independent contractor. The parties agree that no activities of the CITY or CONSULTANT or statements by the CITY or CONSULTANT in connection with this Agreement shall be interpreted as establishing any type of business relationship other than one of principal and independent contractor. CONSULTANT's personnel, performing services under this Agreement, shall at all times be under CONSULTANT's exclusive direction and control, shall be employees of CONSULTANT, and shall not be employees of CITY. CONSULTANT shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, worker's compensation, and similar matters.

Per Section 1771 and 1774 Consultants and Sub-consultants must pay prevailing wages to workers employed on City contracts for the following classifications; Inspection, Field Surveying, Soil Field Technician and other State's qualified non-professional field work. The classified employer shall be directed to the Department of Industrial Relations (DIR) pursuant to Senate Bill 854 to maintain the DIR registration number during the contract period and upload their electronic Certified Payroll Reporting (eCPR). Project DIR number shall be provided by the City.

VIII

NOTICES

Any notices required to be given hereunder shall be in writing and shall be personally served or delivered by First Class United States mail. Any notice given by mail shall be deemed given when deposited in the United States Mail, postage prepaid, addressed to the party to be served as follows, or as may be hereafter changed, with notice to the other party in accordance with this section.

TO CITY:

City of Fullerton
303 West Commonwealth Avenue
Fullerton, CA 92832
Attn: Donald K. Hoppe, Director of Public Works

TO CONSULTANT:

Attn: _____

IX

INSURANCE

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 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 X or the extent to which CONSULTANT may be held responsible for payments of damages to persons or property.

I. Minimum Scope and Limits of Insurance

1. Commercial General Liability Insurance. CONSULTANT shall maintain commercial general liability insurance coverage 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.
2. Business Automobile Liability Insurance. CONSULTANT shall maintain business automobile liability insurance coverage with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.
3. 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.
4. Professional Liability Insurance. CONSULTANT shall maintain professional liability insurance appropriate to CONSULTANT'S profession with a limit of not less than \$1,000,000. Architects' and engineers' coverage shall be endorsed to include contractual liability. If policy is written as a "claims made" policy, the retro date of the policy shall be prior to the start of the contract work.

II. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the CITY.

III. Other Insurance Provisions

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

A. Commercial General Liability, Business Automobile Liability.

The CITY, its elected or appointed officials, officers, employees and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of CONSULTANT, including materials, parts or equipment furnished in connection with such work or operations; or with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Civil Code Section 2782.8. Such coverage as an additional insured shall not be limited to the period of time during which the CONSULTANT is conducting ongoing operations for the CITY but rather, shall continue after the completion of such operations. The coverage shall contain no additional special limitations, outside standard coverage exclusions and coverage limits, on the scope of its protection afforded to the CITY, its officers, employees and volunteers.

B. Commercial General Liability, Business Automobile Liability.

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

C. Workers' Compensation and Employers' Liability Insurance.

Insurer shall waive their right of subrogation against CITY, its officers, employees and volunteers for work done on behalf of the CITY.

D. All Coverages.

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

IV. Acceptability of Insurers

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

V. Verification of Coverage

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

X

INDEMNIFICATION AND HOLD HARMLESS

Notwithstanding the existence of insurance coverage required of CONSULTANT pursuant to this Agreement, CONSULTANT agrees to the following indemnification:

Consistent with California Civil Code section 2782.8, when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend (with counsel acceptable to the CITY), and hold harmless CITY, and its employees, officials, volunteers and agents, from and against any and all losses, claims, damages, costs, including attorneys' fees and defense costs, and liability arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, employees, agents, sub-consultants or subcontractors, in the performance of design professional services under this Agreement, excepting only liability arising from the sole negligence or intentional misconduct of CITY. Pursuant to California Civil Code section 2782.8(b), this Agreement incorporates by this reference all provisions of Section 2782.8.

Other than in the performance of professional services by a design professional, which shall be solely addressed by the paragraph above, to the fullest extent permitted by law, CONSULTANT shall indemnify, defend (with counsel acceptable to the CITY), and hold harmless CITY, and its employees, officials, volunteers and agents, from and against any and all losses, claims, damages, costs, including attorneys' fees and defense costs, and liability arising out of the performance of this Agreement by CONSULTANT, its officers, employees, agents, volunteers, sub-consultants or subcontractors, excepting only liability arising from the sole negligence or intentional misconduct of CITY. Nothing in this paragraph shall be construed to limit or otherwise contradict the provisions of California Civil Code section 2782.8.

XI

AGREEMENT BINDING/ENTIRE AGREEMENT

CITY and CONSULTANT each binds itself, its partners, subsidiaries, successors, and assignees to this Agreement. This Agreement represents the entire agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, or agreements, either written or oral. Each party acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein. This Agreement may be amended only by written instrument signed by both CITY and CONSULTANT. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the other provisions of this Agreement shall be valid and binding on the parties hereto.

XII

MISCELLANEOUS PROVISIONS

A. Assignability.

This Agreement may not be sold, transferred, or assigned by CONSULTANT, or by operation of law, to any other person or persons or business entity, without CITY's express written consent. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without express written consent, may be deemed by CITY to constitute a voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.

B. Attorney's Fees.

In the event any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the Court to be reasonable.

B. Compliance With Law.

CONSULTANT shall comply with applicable federal, state and local laws, rules, ordinances, and regulations affecting the CONSULTANT and his/her/its work hereunder.

D. Confidentiality, Ownership and Copyright.

All documents, including but not limited to all findings, reports, information, drawings, plans, data studies, construction documents and exhibits, prepared or assembled by CONSULTANT in connection with the performance of its professional services pursuant to this Agreement are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written consent of CITY. All such documents are the sole property

of CITY and are a work for hire, such that all copyright ownership and interest in such documents belongs solely to the CITY. CONSULTANT shall deliver to the CITY all such documents, to the CITY, no later than the conclusion of the performance of the services by CONSULTANT.

E. Conflict of Interest.

CONSULTANT covenants that he/she/it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. CONSULTANT further covenants that in the performance of this Agreement, no person having any such conflict of interest shall be employed by CONSULTANT.

F. Counterparts.

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement.

G. Covenant Against Contingent Fees.

CONSULTANT warrants that he/she/it has not employed or retained any company or person, other than a bona fide employee working with CONSULTANT, to solicit or secure this Agreement, and that he/she/it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability, or, in its discretion to deduct from CONSULTANT's compensation provided under this Agreement, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

H. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal action relating to or arising out of this Agreement shall be subject to the jurisdiction of the County of Orange, California.

I. Headings.

Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, and are not intended to modify or explain or to be a full or accurate description of the content thereof.

J. Non-Exclusive Agreement.

CONSULTANT acknowledges that CITY may enter into agreements similar to this Agreement with other consultants. CITY reserves the right to employ other consultants in connection with this work or services required in this Agreement.

K. Order of Precedence.

In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by the following documents in the order of precedence indicated:

1. This Agreement

2. The Request for Proposal
3. The Proposal

L. Patent Rights.

CONSULTANT shall abide by all applicable patent and copyright laws, codes and regulations in the performance of services under this Agreement.

M. Records and Audits.

Complete and accurate records of CONSULTANT's personnel and expenses related to the work performed under this Agreement shall be continuously maintained on a generally recognized accounting basis, and shall be made reasonably available to CITY or its authorized representatives for inspection and/or audit at mutually convenient times during the course of the performance of this Agreement, and for a period of three (3) years from the date the Agreement is terminated.

N. Representatives.

Director of Public Works or his/her designee shall be the representative of CITY for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of CITY, called for by this Agreement, except as otherwise expressly provided in this Agreement.

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

O. Responsibility for Errors.

CONSULTANT shall be responsible for its own work and results, including any and all work or results by any sub-consultants, under this Agreement, and shall not be responsible for any work by CITY performed prior to the date of this Agreement or for any other acts or omissions directly attributable to CITY. CONSULTANT, when requested, shall furnish clarification and/or explanation as may be required by CITY, regarding any services rendered under this Agreement, at no additional cost to CITY. In the event that a mistake, error, omission, oversight, neglect or inadvertence attributable to CONSULTANT occurs, then CONSULTANT shall, at no cost to CITY, provide all necessary design drawings, estimates and other CONSULTANT professional services as authorized by this Agreement, 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.

P. Statement of Economic Interest.

If CITY determines CONSULTANT comes within the definition of a "consultant" under the Political Reform Act (Government Code § 87100 et. seq.), CONSULTANT shall complete and file and shall require any other person doing work under this Agreement, to complete and file a "Statement of Economic Interest" with the City Clerk of CITY, disclosing CONSULTANT and/or such other person's financial interests.

Q. Subconsultants.

Any subconsultants named in the Proposal shall work on the Project through to completion and no other subconsultants shall be used by CONSULTANT unless a replacement is approved in advance and in writing by CITY. CONSULTANT may employ special firms in the performance of this Agreement only upon prior written approval by CITY. In the event CONSULTANT employs subconsultants not named in the Proposal, CONSULTANT shall not be relieved from its responsibility regarding the adequacy, accuracy and/or quality of the designs or other work required by this Agreement.

R. Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in third parties.

S. Time of Essence.

Time is of the essence for each and every provision of this Agreement.

T. Waiver.

No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. CITY's consent or approval of any act by CONSULTANT requiring CITY's consent to or approval of any subsequent act of CONSULTANT or any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

U. Warranty.

CONSULTANT warrants that it shall perform the professional services required by this Agreement in compliance with the Federal and California laws related to minimum hours and wages, fair employment and fair employment practices, including but not limited to the applicable sections of the California Labor Code, the United States Code, the Code of Federal Regulations, and the Civil Rights Act, and all other federal, state and local laws and ordinances applicable to the work required under this Agreement. CONSULTANT further represents and warrants to CITY that it has all licenses, permits, qualifications and approvals that are legally required to practice its profession and to provide the services hereunder, and that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

By: _____
_____ Date

CITY OF FULLERTON

Donald K. Hoppe
Director of Public Works

Lucinda Williams
City Clerk

Date

Richard D. Jones
City Attorney