

**REQUEST FOR PROPOSALS (RFP)**  
**FOR**  
**BUSINESS PROCESS ASSESSMENT AND IMPLEMENTATION PLAN**  
**RFP NO.: 17-072**



**CITY OF SANTA ANA**  
**Santa Ana Public Works Agency**  
**20 Civic Center Plaza**  
**Santa Ana, CA 92701**

**Margaret Mercer**  
**Administrative Services Manager**  
**(714) 647-5050 Office**  
**[mmerc@santa-ana.org](mailto:mmerc@santa-ana.org)**

Approved for Release:

Fred Mousavipour  
Executive Director  
Public Works Agency

**KEY RFP DATES (Subject to change at discretion of City):**

Issue Date:	Wednesday, September 13, 2017
Deadline for Requests for Information:	Monday, September 25, 2017 (See Sec. III.C. for contact)
Proposal Due Date:	Friday, October 13, 2017 – 2:00 pm.
Tentative Interview Date:	Monday, October 23, 2017 – Tuesday, October 24, 2017
Projected Award Date:	Tuesday, November 7, 2017



## **NOTICE INVITING PROPOSALS**

NOTICE IS HEREBY GIVEN that proposals will be received from qualified firms for the Business Process Assessment and Implementation Plan.

Responses to this Request for Proposals (RFP) will be accepted until Friday, October 13, 2017, at 2:00 p.m. Proposals received after this date/time will not be considered. It is the responsibility of the proposer to ensure that any proposals submitted have sufficient time to be received by the City of Santa Ana prior to the proposal due date and time.

All notifications, updates and addenda will be posted on the City's RFP Bid page at [santa-ana.org/bids-rfps](http://santa-ana.org/bids-rfps). Proposers shall be responsible for monitoring the site to obtain information regarding this solicitation. Failure to respond to required updates may result in a determination of a nonresponsive proposal.

Proposals shall be enclosed in a sealed envelope and marked clearly with following information, formatted as follows:

"SEALED PROPOSAL FOR  
RFP NO. 17-072; BUSINESS PROCESS ASSESSMENT AND IMPLEMENTATION PLAN  
IN THE CITY OF SANTA ANA  
DO NOT OPEN WITH REGULAR MAIL."

City of Santa Ana  
Attn.: Margaret Mercer  
Public Works Agency;  
20 Civic Center Plaza; 4th Floor, Ross Annex  
Santa Ana, CA 92701

**Proposals shall be MAILED, HAND DELIVERED, OR COURIERED.  
LATE, TELEGRAPHIC, ELECTRONIC OR FACSIMILE PROPOSALS WILL NOT BE CONSIDERED.**



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REQUEST FOR PROPOSALS  
FOR  
BUSINESS PROCESS ASSESSMENT AND IMPLEMENTATION PLAN  
RFP NO. 17-072**

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**CITY OF SANTA ANA  
REQUEST FOR PROPOSALS  
FOR  
BUSINESS PROCESS ASSESSMENT AND IMPLEMENTATION PLAN  
RFP NO. 17-072**

**I. INTRODUCTION / PROJECT DESCRIPTION**

The City of Santa Ana is requesting proposals from experienced consulting firms to complete a Business Process Assessment and develop an Implementation Plan to improve and streamline operations. In an effort to maintain an unbiased process, proposals will only be accepted from consulting firms where the primary source of revenue does not come from sales and support of the software system recommended as part of this RFP process. In order to ensure the highest quality of the Proposer's responses and facilitate the fair and objective assessment of those responses, this document provides guidance to all of the Proposers regarding scope/requirements for a business process assessment and implementation plan and the format and content requirements for vendor proposal submissions. A detailed Scope of Work is attached herein as **Exhibit A**.

**II. PROPOSAL TERMS AND CONDITIONS**

By submitting a Proposal in response to RFP No. 17-072, the Proposer acknowledges that it has thoroughly examined and accepts the Terms and Conditions of this RFP as described below:

A. Examination of RFP 17-072: Proposer represent that it has thoroughly examined and become familiar with the services and responsibilities required under RFP No. 17-072 and that it is capable of effectively and efficiently performing quality work to achieve the City's objectives. Any attachments referenced herein or any interpretations, clarifications or amendments subsequently posted in the relation to this RFP are fully incorporated as part of RFP No. 17-072.

B. Execution of Agreement: The City and the selected Proposer will enter into an Agreement similar to that as shown on **Exhibit B** of this RFP. If a Proposer is unwilling or unable to execute an Agreement within thirty (30) days after being notified of selection under this RFP, the City reserves the right to select the next most qualified Proposer or call for new Proposals, whichever the City deems most appropriate.

C. Proposal Validity: Services, pricing and warranties indicated in a respondent's Proposal must be valid for a period of 120 days after the submission of the Proposal.

D. Pre-Contractual Expenses: Santa Ana shall not, in any event, be liable for any pre-contractual expenses incurred by Proposers in the preparation of its proposal.

E. Joint Offers/Subconsultants: Where two or more Proposers desire to submit a single Proposal in response to this RFP, they should do so on a prime-subconsultant basis. The City intends to contract with a single firm and not with multiple firms doing business as a joint venture. Should the use of subconsultants be offered, the Proposer shall provide the same assurances of competence for the subconsultant plus the demonstrated ability to manage and supervise the subcontracted work. Subconsultants shall not be allowed to further subcontract with others for work under the Agreement. The provisions of the Agreement shall apply to all subconsultants in the same manner

as the Proposer.

### III. **INSTRUCTIONS TO PROPOSERS**

#### A. CITY RESPONSIBILITIES

The City will provide information in its possession relevant to preparation of required information in RFP. The City will provide only the staff assistance and documentation specifically referred to herein.

#### B. PROPOSER RESPONSIBILITIES

Point of Contact: The selected proposer will assume responsibility for all services in its proposal. The selected proposer shall identify a sole point of contact with the greatest knowledge in regard to the required service operations and contractual matters, including payment of any and all charges resulting from the Agreement.

Evidence of Financial Capacity: Proposer may be requested to submit its most recent audited financial statement, evidencing proposer's financial capacity to fully perform the required services, including provision of equipment and personnel expenses over a ninety (90) day period. If said financial statement does not reflect full ninety (90) day operational capacity, proposer may include a letter of credit as evidence of supplemental capacity.

#### C. REQUEST FOR INFORMATION OR CLARIFICATION

All questions or requested clarifications shall be made in writing via e-mail to the Administrative Services Manager (contact information as noted below) by Monday, September 25, 2017. No verbal requests or responses will be accepted. Significant interpretations or clarifications will be addressed via addenda to this RFP, as indicated in Section II.D.

Margaret Mercer  
Administrative Services Manager  
(714) 647-5050 Office  
[mmercercer@santa-ana.org](mailto:mmercercer@santa-ana.org)

#### D. ADDENDA

Any changes in the RFP from the date of release to date of submittal will result in an addendum or amendment. Notification of such addendum or amendment shall be posted on City's website, [santa-ana.org/bids-rfps](http://santa-ana.org/bids-rfps).

#### E. LICENSES & PERMITS

The selected Proposer shall be required to obtain a City of Santa Ana Business license within ten (10) business days of selection and must provide a copy to the City Project Manager or designee prior to commencing any work in Santa Ana.

Additionally, Proposer will be responsible for obtaining any licenses/permits required by the Scope of Work.

#### F. INSURANCE

The selected Proposer shall provide the required evidence of insurance coverage as set forth in the sample agreement within ten (10) business days after receipt of notice of award.

#### G. PAYMENT INFORMATION PACKET

The selected Proposer shall return a completed payment information packet within ten (10) business days after the successful Proposer has received notice that the agreement has been awarded. The packet is available on the City's website: [santa-ana.org/bids-rfps](http://santa-ana.org/bids-rfps).

#### H. PRE-PROPOSAL MEETING

A pre-proposal meeting has not been scheduled for this RFP.

#### I. CITY RIGHT TO REJECT

The City reserves the right to reject any or all proposals submitted and no representation is made hereby that any agreement will be awarded pursuant to this RFP or otherwise.

The City reserves the right to accept or reject the combined or separate components of this proposal in part or in its entirety or to waive any minor inconsistency, informality or technical defect in the proposal.

The City reserves the right to reject, replace and approve any and all subcontractors. All subcontractor(s) shall be identified in the response to the RFP. Subcontractors shall be the responsibility of the successful Proposer and the City shall assume no liability of such subcontractors.

#### J. PROTEST

Proposer with concerns or rebuttal of any staff determination of non-responsiveness or non-responsibility may submit, in writing, within five (5) business days, to the Project Manager, any concerns regarding the RFP process or staff determination. Such writing shall be considered by the City Manager or his designated representative, and may be acted upon with five (5) business days. If no action is taken within such time, there shall be no change to the staff determination. The exercise by Proposer of its right to submit written concerns shall be a condition precedent to seeking judicial review of any award of a contract hereunder.

### IV. **SUBMITTAL REQUIREMENTS**

#### A. GENERAL

1. **Number of Copies and signature:** Four (4) hard copies and one (1) digital file on USB Flash Drive (or equivalent) of your Statement of Qualifications shall be signed by a company official with the power to bind the company and submitted to the City of Santa Ana, per the "Notice Inviting Proposals". One (1) copy of your Fee Proposal shall be submitted, as outlined below.
2. **Deadline:** Proposals are due to the City of Santa Ana, at the date, time, and location set forth above in the Notice Inviting Proposals.

#### B. PROPOSAL CONTENTS

A responsive proposal shall contain the following documentation:

## 1. STATEMENT OF QUALIFICATIONS

The Statement of Qualifications shall be limited to a MAXIMUM of (10) DOUBLE-SIDED PAGES (excluding front and back covers, section dividers and attachments). Font size shall be minimum 11-point Arial. The Statement of Qualifications includes the following:

- a. Cover Letter – Proposals shall include a letter signed by a principal or authorized representative who can make legally binding commitments for the entity.
- b. Agreement Statement: Proposal shall include a statement outlining your concurrence or concerns with any and all provisions as contained in the sample agreement attached as **Exhibit B**.
- c. Understanding of Need: Proposal shall include an outline which demonstrates the firm's understanding of the scope of work. This outline should include anticipated approach, tasks necessary for successful completion, deliverables, and suggestions or special concerns that the City should be made aware of. Identify any assumptions and/or exclusions used in preparation of the scope of work and associated fee estimate.
- d. Firm and Team Experience: Proposal shall include a profile of the firm's experience. Include resumes of project team/sub-contractors who will be providing services that outline their technical and design experience. At a minimum, this should include the project manager/principal agent, associates in charge when project manager/principal agent is unavailable, key personnel, firm size, and an organization chart identifying only those who will perform work for the proposed project and the percentage of each individual's time devoted to this project. The project manager/principal agent shall be the primary contact person to represent your firm and will be the person to conduct the presentation, if invited for an interview.
- e. Relevant Project Experience: Proposal shall include a list of projects which your firm or personnel have completed within the last 5 years, including significant work with public agencies. Project information should include project description, year completed, client name, along with a person to contact and their telephone number.
- f. Schedule: Proposal shall include a timeline to complete the project, based upon the Scope of Work as detailed in Exhibit A of this RFP and availability of skilled labor force
- g. References: Proposal shall include a listing of relevant projects with references for three public entities for which Proposer has performed similar work within the past five (5) years

## 2. FEE PROPOSAL:

Proposer's fee proposal shall be submitted concurrently with the Statement of Qualifications, but in a separately sealed envelope, clearly labeled as "Fee Proposal." This shall include the firm's Standard Hourly Fee Schedule, and/or a Project Fee Schedule where applicable and as outlined in the Scope of Work.

If required by the funding source, the fee proposal will not be opened until the proposals have been evaluated by the proposal selection committee. The City will select the consultant based on qualifications, and then negotiate a contract price based on available funding.

**V. PROPOSAL REVIEW (CONSULTANT SELECTION)**

**A. EVALUATION AND RATING**

The criteria for evaluating the proposals submitted will take the following items into consideration:

- Understanding of Need 25%
- Relevant Project Experience 25%
- Firm/Team Experience 20%
- Schedule 15%
- References 15%



The City has established a proposal review committee to evaluate proposers based on the response to the RFP, which includes adherence to outlined directions and format, and the City evaluation criteria set forth above. A final score will be calculated for each submitted proposal and used to rank the proposers.

## B. SELECTION

The committee may interview the top ranking proposers. The City will recommend award of the agreement to the proposer who will provide the best quality and value to the City. City reserves the right to begin negotiations and enter into an agreement without interview or further discussions.

## VI. **AWARD OF AGREEMENT**

### A. REQUEST FOR COUNCIL ACTION

Following evaluation and rating by the proposal review committee, the Project Manager will recommend award of an agreement to the proposer providing the best quality and value to the City.

### B. EXECUTION OF AGREEMENT

A sample agreement is attached as **Exhibit B**. "Proposer" will hereinafter be referred to as "Consultant" in sample agreement.

The term of the agreement will begin after the agreement is fully executed, and all required bonds, insurance documents and contents of the payment information packet have been received and approved.

## VII. **PUBLIC RECORDS**

All responses to the RFP shall become property of the City, and proposals will become public record after award of agreement. Proposer information identified as proprietary information shall be maintained confidential, to the extent allowed under the California Public Records Act.

## **EXHIBIT A SCOPE OF WORK**

### **CITY OF SANTA ANA REQUEST FOR PROPOSALS FOR BUSINESS PROCESSES ASSESSMENT & IMPLEMENTATION PLAN RFP NO.: 17-072**

#### **Introduction and Background:**

The Public Works Agency (Agency) is responsible for building and maintaining all public streets, storm drains, sewers, and water facilities. In addition, the Agency coordinates refuse collection and recycling, street sweeping, landscaping of the public right-of-way, tree trimming, and graffiti removal. The Agency is also responsible for ensuring that the community enjoys high-quality drinking water and is able to travel around the City efficiently through the use of a state-of-the-art traffic management system. Agency staff works with neighborhood associations to resolve speeding, parking, and traffic problems, and with developers to ensure that City development standards are met.

The Agency is made up of four major divisions that include Administrative Services, Engineering Services, Water Resources, and Maintenance Services. Within each division there are a total of 15 subdivisions with potentially different ways of doing business. Over the years, each Public Works Division has developed its own internal procedures to perform various business processes, including but not limited to accounting, budgeting, cash receipting, payroll, fixed assets, etc. Documentation of these procedures is not consistent nor is it standardized across all divisions.

The Administrative Services Division includes a Financial Services section that provides many of the accounting and payroll services for the Agency. They also interact with the City's Finance and Accounting staff on a regular basis. Operationally, staffing within the Administrative Services Financial Services Section has remained essentially the same for the last 10 years or more, only instituting changes related to the City's Enterprise Management System and incorporating internal upgrades to computer technology.

In December 2013, the U.S. Office of Management and Budget (OMB) issued comprehensive grant reform rules titled, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance). As a recipient of Federal funding, these OMB Uniform Guidance regulations impact the Agency by regulating the way grants and contracts are to be managed, and the accounting principles utilized. It is unknown if all of the relevant procedures being used across the Agency are in compliance with the OMB requirements.

#### **Description of Work:**

The Public Works Agency is seeking professional consulting services to evaluate current financial and administrative business practices and recommend operational changes to implement immediately and into the future. The Scope of Work includes the following major areas:

1. Document all relevant "As-is" Agency business processes.
  - Proposers should note that this includes processes currently in place as well as any workarounds that are currently employed.

- The proposal must detail the methodology for documenting “As-is” processes and studying, discovering, identifying, and formulating recommendations.
- 2. Provide recommendations for new procedures to streamline and standardize these processes throughout the Agency.
- 3. Identify and incorporate OMB Uniform Guidance requirements as needed to bring all relevant current and new procedures into compliance with the most up-to-date regulations. This includes establishing procedures, checklists and other tools to assist the Agency in grant development, contract management, performance tracking, grant reporting, and compliance requirements for the entire grant life cycle.
- 4. Recommend operational and staffing improvements for the Administrative Services Financial Services Section that will improve the efficiency and efficacy of the recommended procedures.
- 5. Recommend specifications for a software system that will facilitate streamlined process improvements, provide the ability to have data readily available for budgeting and reporting purposes, and can be interfaced with the City’s Enterprise Management System.
- 6. Identify implementation strategies for all recommendations.
  - The plan should propose a strategy for implementing the recommendations resulting from the findings. The Agency expects this plan to span several years and to include a schedule identifying which changes should be put into practice immediately, over time, and/or with the implementation of new software.

**Relevant Agency Processes:**

The following business processes are relevant for both the “As-Is” business process documentation and the operational improvement evaluation and implementation plan.

1. **Cash:** Encompasses the business functions necessary to receive and account for cash.
2. **Asset Management:** Includes all business functions required to obtain, manage, and dispose of fixed assets and assets under construction. This includes such functions as capital project outlays and expenditures, contract review, asset management and depreciation, and capitalized interest.
3. **Budget:** Encompasses all business functions necessary to plan, formulate, create, execute against, control, and report on the budget and business activities of the entity. This includes updates to the general ledger, as well as position budgeting and control.
4. **Procurement:** Includes all business functions necessary to define a need for and to pay invoices for goods or services; all processes related to procurement of goods, professional services and construction contracts; and coordination of annual project and purchase order carryforward. Additional processes include maintaining current certificates of insurance for active vendors.
5. **Billing:** Includes all functions necessary to accurately and timely bill for projects, grant-funded projects, etc.
6. **Timesheet:** Includes all business functions to accurately and timely account for staff time. Staff time, for the most part, is accounted for on a project basis. On occasion, for grant-related projects, staff time is billed to outside entities.

Prior to the closure of the Request for Information period, Proposers may recommend other processes they believe to be relevant in their experience. After that time, additional processes will not be considered for this RFP. If additional business processes are to be incorporated into this RFP, the Agency will notify all Proposers through the Addenda process outlined in the Instructions to Proposers (p. 5).

### **Desired Outcomes & Deliverables**

Upon completion of this project, the Agency expects a detailed roadmap to achieving streamlined financial and business processes agency wide. These processes are to provide consistency and transparency at every level within the Agency and seamless reporting/communication with external agencies, including the City's Finance & Management Services Agency, and outside grant agencies.

The services requested by this RFP will provide evidence-based operational improvement recommendations, conceptually redesigning the way the Agency functions with respect to Administrative Services Financial Services Section, specifically in the areas of:

1. Organizational Configuration – The Agency recognizes the need to align and plan for changes to its operational and business structure (e.g., centralized or de-centralized functions).
2. Roles and Responsibilities – The Agency also anticipates changes to current roles and responsibilities of business process owners and users as a result of, or in conjunction with, changes to fundamental operations.
3. Policies and Procedures – The Agency requests an evaluation of its current policies and procedures to ensure compliance with legal regulations and alignment with industry best practices. The Agency recognizes that this operational improvement effort will necessitate some modifications of, and in some cases, entirely new, policies and procedures.
4. OMB Uniform Guidance Regulations – The Agency recognizes that aligning any new and/or updated procedures with OMB Uniform Guidance Regulations will demonstrate positive efforts toward meeting compliance requirements. The Agency requests the plan to include educating staff on policy changes and instructions on how to achieve compliance.
5. Financial Reporting – The Agency requests recommendations for ongoing data collection and report generation that will provide easily accessible financial information for Agency operations and for communicating with other City and outside grant agencies.
6. Software Implementation – The Agency recognizes the benefit of specialized software to facilitate ongoing data collection and reporting. Proposers are expected to provide specifications for recommended software that sufficiently specifies system requirements so that, if necessary, an appropriate Scope of Work can be developed for a subsequent RFP process. The Agency is not interested in sole-source marketing materials or any response that is focused on a single vendor or solution. In consideration of these parameters, proposers responding to this RFP are not precluded from any subsequent RFP process for software selection and implementation.

### **Schedule**

The Agency desires completion of the elements of this Scope of Work and receipt of all approved deliverables by December 2017. Proposers should present their most expedited schedule in their response to this RFP.

**EXHIBIT B  
SAMPLE AGREEMENT**

**CONSULTANT AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_ by and between \_\_\_\_\_, a sole ownership entity, (hereinafter "Consultant"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter "City").

**RECITALS**

- A. The City desires to retain a consultant having special skill and knowledge in the field of \_\_\_\_\_.
- B. Consultant represents that Consultant is able and willing to provide such services to the City.
- C. In undertaking the performance of this Agreement, Consultant represents that it is knowledgeable in its field and that any services performed by Consultant under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

**NOW THEREFORE**, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

**1. SCOPE OF SERVICES**

Consultant shall perform those services as set forth in **Exhibit A** to this Agreement.

**2. COMPENSATION**

- a. City agrees to pay, and Consultant agrees to accept as total payment for its services, the rates and charges identified in Exhibit B. The total sum to be expended under this Agreement shall not exceed \$\_\_\_\_\_ during the term of this Agreement.
- b. Payment by City shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by City.

**3. TERM**

This Agreement shall commence on the date first written above and terminate on \_\_\_\_\_, 2015, unless terminated earlier in accordance with Section 15, below. The term of this Agreement may be extended upon a writing executed by the City Manager and the City Attorney.

**4. INDEPENDENT CONTRACTOR**

Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Consultant performs the services which are

the subject matter of this Agreement; however, the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

## **5. OWNERSHIP OF MATERIALS**

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

## **6. INSURANCE**

Prior to undertaking performance of work under this Agreement, Consultant shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

- a. **Commercial General Liability Insurance.** Consultant shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of Consultant's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$1,000,000 per occurrence, with \$2,000,000 in the aggregate. Consultant shall supply City with a fully executed additional insured endorsement in substantially the form attached hereto as Exhibit C upon execution of this Agreement and shall be approved in form by the City Attorney.
- b. **Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence.** Such insurance shall include coverage for owned, hired and non-owned automobiles.
- c. **Worker's Compensation Insurance.** In accordance with the provisions of Section 3700 of the Labor Code, Consultant, if Consultant has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, Consultant agrees to obtain and maintain any employer's liability insurance with limits not less than \$1,000,000 per accident.
- d. **If Consultant is or employs a licensed professional such as an architect or engineer: Professional liability (errors and omissions) insurance, with a combined single limit of not less than \$1,000,000 per claim with \$2,000,000 in the aggregate.**

- e. The following requirements apply to the insurance to be provided by Consultant pursuant to this section:
  - (i) Consultant shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
  - (ii) Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved by the City.
  - (iii) Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.
- f. If Consultant fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not affect Consultant's right to be paid for its time and materials expended prior to notification of termination. Consultant waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

## **7. INDEMNIFICATION**

Consultant agrees to and shall indemnify and hold harmless the City, its officers, agents, employees, consultants, special counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the direct or indirect operations of the Consultant or its contractors, subcontractors, agents, employees, or other persons acting on their behalf which relates to the services described in section 1 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. The Consultant further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding.

## **8. INTELLECTUAL PROPERTY INDEMNIFICATION**

Consultant shall defend and indemnify the City, its officers, agents, representatives, and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in the work product or documents provided by Consultant to the City pursuant to this Agreement.

## **9. RECORDS**

Consultant shall keep records and invoices in connection with the work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures, and disbursements charged to the City for a minimum period of three (3) years, or for any longer period required by law, from the date of final

payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of the City to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement during regular business hours. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

## **10. CONFIDENTIALITY**

If Consultant receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Consultant agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Consultant disclosed in a publicly available source; (c) is in rightful possession of the Consultant without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Consultant without reference to information disclosed by the City.

## **11. CONFLICT OF INTEREST CLAUSE**

Consultant covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

## **12. NOTICE**

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City: Clerk of the City Council  
City of Santa Ana  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, CA 92702-1988  
Fax 714- 647-6956

With courtesy copies to:

Executive Director – Fred Mousavipour  
City of Santa Ana  
20 Civic Center Plaza (M-21)  
P.O. Box 1988  
Santa Ana, California 92702

And



City Attorney  
City of Santa Ana  
20 Civic Center Plaza (M-29)  
P.O. Box 1988  
Santa Ana, California 92702  
Fax 714- 647-6515

To Consultant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

**13. EXCLUSIVITY AND AMENDMENT**

This Agreement represents the complete and exclusive statement between the City and Consultant, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Consultant. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Consultant or the City. Each party to this Agreement 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.

**14. ASSIGNMENT**

Inasmuch as this Agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other consultants retained by City.

**15. TERMINATION**

This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, Consultant shall be entitled to receive and the City shall pay Consultant compensation for all services performed by Consultant prior to receipt of such notice of termination, subject to the following conditions:

- a. As a condition of such payment, the Executive Director may require Consultant to deliver to the City all work product completed as of such date, and in such case such work

product shall be the property of the City unless prohibited by law, and Consultant consents to the City's use thereof for such purposes as the City deems appropriate.

- b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

**16. DISCRIMINATION**

Consultant shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

**17. JURISDICTION - VENUE**

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**18. PROFESSIONAL LICENSES**

Consultant shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Consultant shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

**19. MISCELLANEOUS PROVISIONS**

- a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.
- b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

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

ATTEST:

CITY OF SANTA ANA

\_\_\_\_\_  
MARIA D. HUIZAR  
Clerk of the Council

\_\_\_\_\_  
DAVID CAVAZOS  
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO  
City Attorney

By: \_\_\_\_\_  
Name of Attorney  
\_\_\_\_\_ City Attorney

RECOMMENDED FOR APPROVAL:

CONSULTANT

\_\_\_\_\_  
Name  
Executive Director – (Agency)

\_\_\_\_\_  
(NAME)  
(Title)

Tax ID# \_\_\_\_\_

EXHIBIT A  
SCOPE OF SERVICES

EXHIBIT B  
FEE SCHEDULE (OR) RATES AND CHARGES

EXHIBIT C

ADDITIONAL INSURED ENDORSEMENT  
FOR COMMERCIAL GENERAL LIABILITY POLICY

Insurance Company \_\_\_\_\_

This endorsement modifies such insurance as is afforded by the provisions of Policy # \_\_\_\_\_ relating to the following:

1. The City of Santa Ana, 20 Civic Center Plaza, Santa Ana, California 92701; its officers, employees, agents, volunteers and representatives are named as additional insureds ("additional insureds") with regard to liability and defense of suits arising from the operations and uses performed by or on behalf of the named insured.

2. With respect to claims arising out of the operations and uses performed by or on behalf of the named insured, such insurance as is afforded by this policy is primary and is not additional to or contributing with any other insurance carried by or for the benefit of the additional insureds.

3. This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.

4. With respect to the additional insureds, this insurance shall not be cancelled, or materially reduced in coverage or limits except after thirty (30) days written notice has been given to the City of Santa Ana, 20 Civic Center Plaza, Santa Ana, California 92701.

(Completion of the following, including countersignature, is required to make this endorsement effective.)

Effective \_\_\_\_\_, this endorsement form as a part of  
Policy # \_\_\_\_\_  
Issued to \_\_\_\_\_

Named Insured

Countersigned by \_\_\_\_\_  
Authorized Representative