

**CONSULTANT AGREEMENT BETWEEN THE CITY OF SANTA ANA AND
RICHARD FISHER ASSOCIATES FOR ON-CALL ENGINEERING, TECHNICAL,
AND ADMINISTRATIVE STAFF SUPPORT SERVICES**

THIS AGREEMENT is made and entered into on this 6th day of August, 2024 by and between Richard Fisher Associates (“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 (“City”).

RECITALS

- A. The City desires to retain a Consultant for on-call engineering, technical, and administrative staff support services
- 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 during the term of this Agreement, the tasks and obligations including all labor, materials, tools, equipment, and incidental customary work required to fully and adequately complete the services described and set forth in **Scope of Work - Exhibit A**, attached hereto and incorporated by reference.

2. COMPENSATION

- a. City neither warrants nor guarantees any minimum or maximum compensation to Consultant under this Agreement. Consultant shall be paid only for actual services performed under this Agreement at the rates and charges identified in Exhibit B. Consultant is one of five (5) Consultants selected to provide Engineering, Technical, and Administrative Staff Support Services on an as needed basis under RFP 24-001. The total compensation for services provided by all Consultants selected under RFP No. 24-001 is a collective amount not to exceed two million five hundred thousand dollars (\$2,500,000.00) during the term of the Agreement, including any extension periods.
- 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. City and Consultant agree that all payments due and owing under this Agreement shall be made

through Automated Clearing House (ACH) transfers. Consultant agrees to execute the City's standard ACH Vendor Payment Authorization and provide required documentation. Upon verification of the data provided, the City will be authorized to deposit payments directly into Consultant's account(s) with financial institutions. 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 August 6, 2024 for a three (3) year term expiring August 6, 2027 with the option for the City to grant up to one (1) two (2) year renewal, exercisable by a writing by the City Manager and the City Attorney, unless terminated earlier in accordance with Section 15, below.

4. INDEPENDENT CONTRACTOR

Consultant shall, during the entire term of this Agreement, be construed to be an independent Consultant 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 any subcontractors to obtain and maintain insurance as described below for the

entire Term of this Agreement against claims for injuries to persons or damage to property which may arise from or in connection with services, products and materials supplied to City. Total cost of such insurance shall be borne by Consultant.

MINIMUM SCOPE AND LIMIT OF INSURANCE

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence and \$4,000,000 aggregate. Required policy limits can be met with primary and umbrella/excess insurance policies.
2. **Automobile Liability:** Insurance Services Office Form CA 00 01 covering Code 1 (any auto), with limits no less than \$1,000,000 combined single limits. In the event Consultant does not maintain commercial automobile liability insurance, City will accept evidence of personal automobile insurance.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident, policy or employee, for bodily injury or disease. Coverage is not required if Consultant has no employees and signs request to waive such insurance.
4. **Professional Liability Insurance:** with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 aggregate.

If Consultant maintains broader coverage and/or higher limits than the minimum requirements for each line of coverage shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions

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

1. City, its City Council, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds, under Consultant’s CGL, Professional Liability, and Automobile Liability policies, with respect to any liability arising out of work or operations performed by or on behalf of the Instructor including materials, parts, equipment, and personnel furnished in connection with such work or operations.
2. Consultant’s Insurance company(ies) agrees to waive all rights of subrogation against City, its City Council, its officers, officials, employees, agents, and volunteers for losses paid under the terms of any policy which arise from work performed by Consultant under this Agreement.

3. For any claims related to this contract, Consultant's insurance coverage shall be primary and any insurance maintained by City, its City Council, its officers, officials, employees, agents, or volunteers shall not contribute with it.
4. A severability of interest provision must apply for all the additional insureds, ensuring that Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.
5. Insurance policies required herein shall provide that coverage shall not be canceled, suspended, voided, reduced in coverage or in limits, non-renewed by the carrier, or materially changed except after thirty (30) days prior written notice has been given to City. Ten (10) days prior written notice shall be provided to City for policy cancellation or non-renewal due to non-payment of premium.
6. Certificate Holder on each Evidence of Insurance certificate shall be: City of Santa Ana, **Attention: Risk Management Division, 20 Civic Center Plaza**, Santa Ana, CA 92701. The name and location of project must be included in the Description of Operations section of each certificate.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the State of California with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to City.

Verification of Coverage

Consultant shall furnish City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive Consultant's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7. INDEMNIFICATION

Consultant agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, contractors, 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 negligent operations of the Contractor, its subcontractors, agents, employees, or other persons acting on its 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. Notwithstanding the foregoing, to the extent Contractor's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor.

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. NON-DISCRIMINATION

Consultant shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, gender expression, gender, medical conditions, genetic information, or military and veteran status, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, teaching, training, utilization, promotion, termination or other employment related activities or any services provided under this Agreement. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

13. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Contractor, 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 Contractor. 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 is not embodied herein.

14. ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of Contractor, 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 Contractors 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(s) 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. WAIVER

No waiver of breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure or right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

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. 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:

City Clerk
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, Public Works Agency
City of Santa Ana
20 Civic Center Plaza (M-21)
P.O. Box 1988
Santa Ana, California 92702

To Contractor:

Richard Fisher
Owner
Richard Fischer Associates
4902 Kron
Irvine, CA 92604

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.

20. 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.

[Signatures on the following page]

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

ATTEST:

CITY OF SANTA ANA

Jennifer L. Hall
City Clerk

Alvaro Nuñez
Acting City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

CONSULTANT:

By: Jose Montoya
Jose Montoya
Assistant City Attorney

Richard A Fisher
Richard Fisher
Owner

RECOMMENDED FOR APPROVAL:

Nabil Saba

Digitally signed by Nabil
Saba
Date: 2024.07.08 10:00:27
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Nabil Saba, PE
Executive Director
Public Works Agency

EXHIBIT A
SCOPE OF WORK

**Appendix
ATTACHMENT 1
SCOPE OF WORK**

**CITY OF SANTA ANA
REQUEST FOR PROPOSALS
FOR
ON-CALL ENGINEERING, TECHNICAL AND ADMINISTRATIVE
STAFF SUPPORT SERVICES
RFP NO. 24-001**

INTRODUCTION

The City of Santa Ana is located in the County of Orange in Southern California. The City encompasses 27.5 square miles and a population of over 325,000 people.

The City of Santa Ana Public Works Agency is soliciting proposals for staff services from consulting firms to assist in the Design, Construction Management, Plan Check, Project Management, Inspection, Oversight and delivery of Public Work Services.

In the past, the City has utilized professional and administrative staff on as needed basis to meet the goals and objectives of the City in the delivery of quality and on time services. The staff services are an extension to the current workforce and work in conjunction to better serve and complement the needs of the Public Works Agency.

In summary, the City of Santa Ana is soliciting proposals from qualified firms to provide engineering, technical, and administrative support services for Public Works. This request for proposal (RFP) provides interested qualified firms with the information enabling them to submit a Service Bid Proposal and to provide the services described herein. The City may select up to five (5) consultants to provide the services described herein.

Description of Work:

On as needed basis, the Consultant/s will provide the City with professional staff to perform engineering, technical and administrative tasks on the delivery Public Work Services. These tasks may include: Engineering design for street rehabilitation and street widening projects plans and specifications. Underground utility design and review for water, sewer and storm drain plans and specifications; Electrical and Mechanical consulting, review of design of plans and specifications for water infrastructure (i.e. development and permit projects) review of and processing of right of way maps and legal descriptions; Engineering and administrative support of Neighborhood Traffic Management and Residential Permit Parking program; Landscaping and irrigation system design for public work projects. In addition, services may include traffic signal design, road striping, survey services, contract management, project inspection and oversight, and administrative support services.

Consultant Responsibilities:

On an on-call basis, the Consultant/s might be requested to fill position titles listed below. The Consultant's ability to fill all listed positions is desirable, but not a requirement.

Engineering/Technical

- Project Engineer
- Senior Civil Engineer (P.E. License Required)
- Assistant Engineer II, (Civil, Traffic, Electrical, Mechanical)
- Assistant Engineer I, (Civil, Traffic, Electrical, Mechanical)
- Engineering Aide
- CADD – Designer
- GIS Analyst
- Land Surveyor (L.S. License Required)
- Project Manager
- Field Inspector (Construction)
- Field Inspector (Buildings)
- Storm Water Coordinator
- Plan Check Engineer (Grading, Street Improvement, Utilities)
- Map Checker

Administrative

- Senior Accounting Assistant
- Accounting Assistant
- Administrative Assistant
- Senior Office Assistant
- Contract Administrator
- Permit Parking Assistant

After the City identifies the need for a position to be filled, the selected consultant/s will be asked to expeditiously provide resumes of the candidates for the position. The City reserves the right to interview any of the candidates prior to making the selection. Registered Professional Engineers and Licensed Land Surveyors may be required to sign plans, specifications and contract legal documents.

The City will accommodate the chosen candidate/s with a workstation, provide office supplies, and City issued building access cards (temporary identification), if the City determines that the chosen candidate will work at a City work site. Many of the parking areas at City work sites require payment. The City does not reimburse for consultant parking.

Sample Fee Proposal

Consultant shall submit a fee proposal as described below. The proposal will be used for fee comparison and evaluation purposes.

The proposer shall complete this form and include it along with the billing rates breakdown. This schedule will be used for comparison purposes only.

PROPOSER FEE RATE SCHEDULE

<u>TITLE</u>	COMPANY NAME (date)	<u>BILLING RATE</u>
Project Engineer		\$
Senior Civil Engineer (P.E., License Required)		\$
Assistant Engineer II		\$
Assistant Engineer I		\$
Engineering Aide		\$
CADD- Designer		\$
GIS- Analyst		\$
Land Surveyor (L.S., License Required)		\$
Project Manager		\$
Field Inspector (Construction)		\$
Building Inspector (Buildings)		\$
Storm Water Coordinator		\$
Plan Check Engineer		\$
Map Checker		\$
Senior Accounting Assistant		\$
Accounting Assistant		\$
Administrative Assistant		\$
Senior Office Assistant		\$
Contract Administrator		\$
Permit Parking Assistant		\$

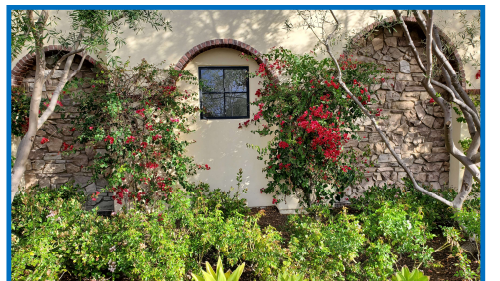
Furthermore, this fee proposal will become part of Exhibit B of the Contract Agreement and will be used to compare with an actual work request.

EXHIBIT B

Fee Proposal for



ON-CALL LANDSCAPE INSPECTION SERVICES RFP 24-001



March 26, 2024



Richard Fisher Associates • Landscape Architects
4902 Kron • Irvine, CA 92604
(714) 342-5467 • rfisher@rfaland.com

PROPOSER FEE RATE SCHEDULE

RICHARD FISHER ASSOCIATES

March 26, 2024

<u>TITLE</u>	<u>BILLING RATE</u>
Project Landscape Architect	\$150.00
Principal Plan Checker	\$150.00
Design Associate	\$110.00
AutoCAD Operator	\$85.00
Certified Arborist	\$145.00
Sr. Landscape Inspector	\$145.00
Word Processor	\$60.00