

REQUEST FOR PROPOSALS NO. 23-029

FOR

SANITATION SERVICES USERS CHARGE (SANITATION FEE/SANITATION ENTERPRISE) COST OF SERVICE STUDY



CITY OF SANTA ANA

Approved for Release:

Nabil Saba
Executive Director
Public Works Agency

KEY RFP DATES: *The schedule below is tentative and subject to change at the discretion of City, with appropriate notice to prospective Proposers.*

Issue Date:	March 1, 2023
Virtual Mandatory Pre-Proposal Meeting:	March 9, 2023 at 9:00 A.M.
Deadline for Questions:	March 13, 2023 by 4:00 P.M.
Proposal Due Date:	March 20, 2023 by 4:00 P.M.
Presentations/Interviews (<i>if held</i>)	on or about March 27-30, 2023

COST OF SERVICE STUDY



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EXHIBITS

Exhibits provided herein for Proposers' reference only.

EXHIBIT I – SCOPE OF SERVICES

EXHIBIT II – SAMPLE AGREEMENT

ATTACHMENTS

- A REFERENCES
- B NON-COLLUSION AFFIDAVIT
- C NON-LOBBYING CERTIFICATION
- D NON-DISCRIMINATION CERTIFICATION



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I. BACKGROUND

Incorporated in 1886, Santa Ana, a Charter City, established a Council-Manager form of government in 1952. The City Council is composed of seven members; the Mayor elected at large and six Council members elected by ward, who appoint the City Manager, City Attorney and Clerk of the Council. The City of Santa Ana (City) is a full-service City with a diverse population of approximately 335,000.

The City's eleven agencies provide all the traditional municipal services, as well as water utility, library system, 20-acre Zoo, City Jail, Police Department, and contracts with the Orange County Fire Authority for provision of fire services. The City employs 1,342 authorized full-time positions and has an annual citywide budget is \$760.2 million, including the General Fund budget of \$403.6 million.

The City of Santa Ana is located 10 miles inland from the Pacific Ocean, 33 miles southeast of Los Angeles and 90 miles north of San Diego. The City, which is the county seat of Orange County, encompasses an area of approximately 27 square miles and is the 11th largest by population in California.

II. MANDATORY PRE-PROPOSAL MEETING

A mandatory virtual pre-proposal meeting will be held on the date and time specified on the cover page of this RFP.

Failure to attend this meeting shall result in your firm being disqualified from proposing.

Meeting Link: <https://meet.goto.com/794712045>

The meeting will include a detailed discussion of the project and the services provided by the Sanitation Services Users Charge. All questions shall be required to be submitted in written form. After the pre-proposal meeting, City will respond to pre-proposal attendees by e-mail to written questions or requests for clarifications.

III. OVERVIEW OF PROJECT

The City of Santa Ana is seeking a Consultant to perform a cost of service study for the City's Sanitation Services Users Charge (Sanitation Fee/Sanitation Enterprise) in compliance with California Proposition 218 requirements. The City intends to enter into an agreement with a single firm to provide the described services. A detailed Scope of Work is included in EXHIBIT I: SCOPE OF SERVICES.

IV. SCOPE OF SERVICES

SEE EXHIBIT I – SCOPE OF SERVICES

The Contractor shall be an independent contractor capable of providing experienced, knowledgeable and professional staff. The Contractor shall be responsive and maintain excellent working relationships with city residents, businesses, government officials and City staff. The Contractor shall provide adequate staffing levels at all times and adhere to established schedules. The Contractor shall be knowledgeable of and comply with federal, state and local regulations, including but not limited to California Constitution Proposition 218.



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Usage is not guaranteed. Execution of an agreement between the City and successful firm(s) and/or individual(s) does not guarantee work throughout the duration of the contract period. Numerous factors will be evaluated by the City in its delivery of project and assignments, including technical expertise required.

V. TERM OF AGREEMENT

The anticipated term of the agreement is for an initial period of three (3) years. The City may, at its discretion, extend the agreement with the same or more limited scope of required services for one (1), two (2) year renewal, upon mutual agreement contingent upon City Council approval, or City Manager or City Attorney authorization, as appropriate unless the City notifies Contractor in writing at least thirty (30) days before the end of the initial term or any extended term, of its intent to terminate the Agreement at the conclusion of the initial term or any extension. Time is of the essence in the performance of services under this Agreement. The total term of the awarded agreement shall not exceed five (5) years. The contract term is anticipated to commence after City Council award or other required approval of this contract and upon receipt and approval of all required bonds and insurance documents.

VI. MINIMUM QUALIFICATIONS

Proposer's (Firm's) proposed KEY Personnel must have a minimum of five years of experience providing cost of service studies services to similar public agencies.

VII. RESPONSE TO RFP

A. SUBMITTAL INSTRUCTIONS

It is the responsibility of the Proposer to ensure that any proposals submitted have been uploaded to PlanetBids prior to the RFP due date and time. Proposals, including all required sections and forms, shall be submitted electronically via the City's Bid Management System, PlanetBids. No other form of submittal will be accepted.

PlanetBids will not accept late proposals and no exceptions shall be made. Proposers will receive an e-bid confirmation number with a time stamp from PlanetBids indicating that their proposal was submitted successfully. The City will only receive and consider those proposals that were transmitted successfully. Submit proposal online at:

<http://www.planetbids.com/portal/portal.cfm?CompanyID=20137>.

Proposer shall be solely responsible for informing itself with respect to the proper utilization of the bid management system, for ensuring the capability of their computer system to upload the required documents, and for the stability of their internet service. Failure of the Proposer to successfully submit an electronic proposal shall be at the Proposer's sole risk and no relief will be given for late and/or improperly submitted proposals. Proposers experiencing any technical difficulties with the bid submission process may contact PlanetBids at (818) 992-1771. Questions of an operational nature may be directed to the City's assigned Buyer. Neither the City, nor PlanetBids, makes any guarantee as to the timely availability of assistance, or assurance that any given problem will be resolved by the bid submission deadline.

Proposals shall NOT be sent via telegraphic, electronic, or facsimile means.

All notifications, updates and addenda will be posted online on PlanetBids at <https://www.planetbids.com/portal/portal.cfm?CompanyID=20137>. Proposers shall be



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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.

B. COMMUNICATION / CONTACT WITH CITY STAFF

Unless otherwise authorized herein, Proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are only to communicate with the assigned Project Coordinator(s), and no other City staff about this RFP from the date this RFP is issued until a contract is awarded. The City will provide all official communication concerning this RFP in writing via the City's Bid Management System, PlanetBids.

The City will not be responsible for or bound by any oral communication or any other information or contact that occurs outside the official communication process specified herein, unless confirmed in writing by the designated Project Manager(s).

C. REQUEST FOR INFORMATION OR CLARIFICATION / QUESTIONS

Questions regarding this RFP shall be submitted via PlanetBids. Responses to all questions will be posted on PlanetBids no later than the date and time shown at the schedule of key RFP dates on the cover page of this RFP. All prospective Proposers are advised to visit PlanetBids on a regular basis as responses may be posted earlier than the date above (if applicable). No verbal requests or responses will be accepted. Significant interpretations or clarifications will be addressed via addenda to this RFP.

Requests submitted for City's consideration of proposed terms and conditions, including modifications to the City's RFP and/or Contract terms and conditions must be submitted by the deadline for questions. Such requests should include an attachment in Word or PDF format on formal company letterhead that shows the requested modifications.

Significant interpretations or clarifications and responses to questions received by the deadline will be addressed via addenda to this RFP, which will be released and posted on PlanetBids under the "Addenda/Emails" tab.

General process questions may be directed to the following:

Eva Pierce, Buyer

Email: EPierce@santa-ana.org

D. ADDENDA

Any changes in 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 PlanetBids system, <https://www.planetbids.com/portal/portal.cfm?CompanyID=20137>. Proposers shall be responsible for monitoring the site to obtain information regarding this solicitation.

E. UNDERSTANDING PROPOSAL

It is the responsibility of each Proposer to inquire about any criteria, condition, term, provision, or requirement of the RFP that the Proposer does not understand. Responses to inquiries, if they significantly change or clarify the RFP requirements or any aspect of the procurement process, will be forwarded by addenda to all Proposers. The City will not be bound by any oral responses to inquiries. By submitting proposals, Proposers assert that they have fully read the RFP and any addenda issued by the City, the proposed Contract and any other Contract Documents, and affirm that the terms and conditions stated therein are fully



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understood and are acceptable to the Proposer. Each Proposer accepts the terms and conditions of the Contract Documents and indicates their ability and willingness to perform the requested services under such terms and conditions. Any exceptions to the terms and conditions set forth in the Contract Document shall be submitted to the City by the deadline to submit requests for information or clarification/questions set forth herein.

F. PROPOSAL CONTENTS

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Colored displays, promotional materials, photographs etc., are not necessary or desired. Emphasis should be concentrated on conformance to RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content. Digital dividers and clear organization of content and material are encouraged.

Proposals must include a Table of Contents and be limited to a **maximum of 10 pages** (excluding section dividers and exhibits). The page limitation includes all appendices, attachments, and supplemental information.

All electronic proposal submissions shall be on 8-1/2" x 11" white paper (PDF Format).

1. Narrative Proposal must include the following:

i. Cover Letter

Proposals shall include a letter signed by a principal or authorized representative who can make legally binding commitments for the entity. Include type of business entity. Cover Letter shall not exceed three (3) pages. Cover letter must stipulate the proposed pricing will be valid for a period of a minimum of 24 months (no price increase will be considered in the first 24 months) subject to annual CPI increases, indicate the address and telephone number of the Contractor's office nearest to Santa Ana, California, and the office from which the contract will be managed.

Cover letter must be addressed to the following City Project Manager:

Elizabeth Rubio, Projects Manager
City of Santa Ana – Public Works Agency
220 S. Daisy Avenue
Santa Ana, CA 92703

ii. Scope of Services Provided and Schedule

Proposals shall include a description of proposed services to be provided and how they meet the needs of the City; including details of the work phases to be completed, the tasks to be accomplished and the deliverables to be provided. Provide a schedule based on and incorporating the Scope of Services outlined in EXHIBIT I. Include a written statement which provides proposer's current workload and how this project will be accommodated.

iii. Agreement Statement

Proposal shall include a statement outlining your concurrence or concerns with any and all provisions as contained in **EXHIBIT II – Sample Agreement** of this RFP (if any).

iv. Firm and Team Experience



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Proposal shall include a profile of the firm's experience. Include resumes of project team/sub-contractors 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.

v. Understanding the 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, and suggestions or special concerns that the City should be made aware of.

vi. Relevant Project Experience

Proposal shall include a list of relevant projects which your firm or personnel have completed within the last five (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.

vii. References

Proposal shall include references for three (3) public entities for which Proposer has performed similar work within the past five (5) years.

2. Fee Proposal

Provide a fee schedule/pricing information for the project, which shall include the firm's standard hourly fee schedule, and/or a project fee schedule required to perform the services as set forth in EXHIBIT I.

The fee proposal shall be submitted concurrently with the technical proposal, but uploaded as a separate file and clearly labeled as "Fee Proposal".

The City will primarily evaluate proposals based on qualifications. The City reserves the right to negotiate a contract price with the most qualified/highest-rated firm based on available funding.

VIII. CERTIFICATIONS (ATTACHMENTS)

In addition to the SOQ, Narrative/Technical Proposal, and Cost Proposal, the following forms, included in this RFP, shall be signed and included as part of the proposal submittal package:

- Attachment A: References
- Attachment B: Non-Collusion Affidavit
- Attachment C: Non-Lobbying Certification
- Attachment D: Non-Discrimination Certification

The proposal must be completely responsive to the RFP. Incomplete proposals will be deemed as nonresponsive and will be rejected. The City reserves the right to reject any or all proposals submitted and no representation is made hereby that any commitment will be awarded pursuant to this RFP or otherwise.



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PLEASE NOTE: City will not be waive notarization requirement when applicable on any of the required attachments.

IX. REFERENCES

Contractor shall provide three (3) references from other similar public agencies for which services similar to those specified in this RFP have been performed, including contact names and telephone numbers. Use **ATTACHMENT A – References**. The respondent grants permission for the City to contact any individuals listed as references.

City may disqualify a Proposer if:

- References fail to substantiate Proposer's description of services and deliverables provided; or
- References fail to support that Proposer has a continuing pattern of providing capable, productive, and skilled personnel, or
- City is unable to reach the point of contact with reasonable effort. It is the Proposer's responsibility to inform the point of contact(s) of normal City working hours.

X. MINIMUM SCOPE AND LIMIT OF INSURANCE

The selected Proposer shall provide the required evidence of insurance coverage as set forth in the standard agreement within ten (10) business days after receipt of Notice of Intent to Award. Contractor must maintain, for the duration of its contract, insurance coverages as required by the City.

Additionally, Contractor shall provide the following insurance coverage:
Coverage shall be at least as broad as:

- **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 **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- **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 for bodily injury or disease.
- **Professional Liability** (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or 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 Entity.



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Other Insurance Provisions

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

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor 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. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Acceptability of Insurers

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

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years* after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor



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must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

Verification of Coverage

Contractor shall furnish the Entity 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 to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

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



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XI. SELECTION PROCEDURES & CRITERIA

- A. The City will establish a proposal review committee. The review committee will evaluate proposals based on the response to the RFP, which includes adherence to outlined directions and format, and the City evaluation criteria set forth below. A final score will be calculated for each submitted proposal and used to rank the proposers.
- B. Proposers will be ranked by the review committee based on the following criteria:

CATEGORY	POINTS
Firm/Team Experience <ul style="list-style-type: none">Firm experience (Quantity/Similar Project/Scope of Service)Technical & design experienceCompany's structure demonstrates sufficient depth, capacity for its present and additional workload	15
Understanding of Need <ul style="list-style-type: none">Outline demonstrating the firm's understanding of the scope of workAnticipated approachTask necessary for successful competition	30
Relevant Project Experience <ul style="list-style-type: none">Relevant projects firm/personnel completed within the last five (5) years	15
Schedule <ul style="list-style-type: none">Detailed Schedule based on the Scope of Service	15
Fee <ul style="list-style-type: none">Cost of Project	20
References <ul style="list-style-type: none">References that are similar in size and project scope to the City.Customer service approach and reputation with municipal agencies	5
TOTAL POSSIBLE SCORE	100

The committee may interview the top ranking proposers. The City will recommend award of the agreement to the proposers 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.

XII. WITHDRAWALS

Proposers are responsible for verifying all prices and information before submitting a proposal.

Prior to the proposal due date, the Proposer or Proposer's representative may withdraw the proposal by providing written notice of the proposal withdrawal to the City Contact/Project Manager. Verbal or telephonic withdrawals are not permissible.



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XIII. GENERAL TERMS AND CONDITIONS

A. AMERICANS WITH DISABILITIES ACT

The awarded Contractor hereby certifies that it will comply, as applicable, with the Americans with Disabilities Act of 1990 ("ADA"), 42 USC §§ 12101 et seq., and its implementing regulations, including Subtitle A, Title II of the ADA. Contractor will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any contract entered into by the awarded Contractor (or any subcontract thereof), relating to this RFP, shall be subject to the provisions of this paragraph.

B. CITY BUSINESS LICENSE

The selected proposer shall be required to obtain a City of Santa Ana Business license within thirty (30) days of selection and must provide a copy to the City projects manager or designee prior to commencing any work in Santa Ana.

C. 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.

D. CONFLICT OF INTEREST

Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the City. This obligation shall apply to the Contractor; the Contractor's employees, agents, and Subcontractors associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to, establishing precautions to prevent its employees, agents, and Subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence City staff or elected officers from acting in the best interests of the City.

Each Proposer must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. The City reserves the right to disqualify any Proposer on the grounds of actual or apparent conflict of interest.

No person, firm, or subsidiary thereof who has been awarded this Contract may be awarded a Contract for the provision of services, the delivery of supplies, or the provision of any other related action which is required, suggested, or otherwise deemed appropriate as an end product of this Contract. Therefore, Contractor is precluded from contracting for any work recommended as a result of this Contract.

E. CONTRACTOR'S EXPENSE

Pre-Contractual Expenses: The City is not liable for any costs incurred by Proposers prior to entering into a formal contract. Costs of developing a response to this RFP, are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by the City. Pre-contractual expenses are not to be included in the cost proposal. Pre-contractual expenses include, but are not limited to, preparation of the proposal, submission of the proposal and additional information, attendance at pre-proposal conference, negotiating any matter related



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to this RFP with City, and/or any other expenses incurred by the Proposer prior to the date of award and execution, if any, of the contract.

Other Expenses: The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on City sites during the performance of work and services under this Contract.

F. CONTRACTOR'S PROJECT MANAGER/KEY PERSONNEL

Except as formally approved by the City, the key personnel identified in Contractor's proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City. The City shall have the right to require the removal and replacement of the Contractor's Project Manager and key personnel under the awarded contract. The City shall notify the Contractor in writing of such action. The City is not required to provide any reason, rationale, or additional factual information if it elects to request any specific key personnel be removed from performing services under the awarded contract. The City shall review and approve the appointment of the replacement for the Contractor's personnel. Said approval shall not be unreasonably withheld.

Standards of Conduct: Contractor's personnel shall be courteous and maintain good working relationships with all stakeholders, state or outside agencies, other team members and staff within the City.

G. COST PROPOSAL

The awarded Contractor agrees to provide the purchased services at the costs, rates, and fees as set forth in their Fee Schedule in response to this RFP. No other costs, rates or fees shall be payable to the awarded Subcontractor for implementation of their proposal.

H. DATA RETENTION

Contractor shall be responsible for retaining data, records, and documentation for the preparation of required items. These materials shall be made available to and as requested by City.

All materials, documents, data or information obtained from the City Data files or any City medium furnished to Contractor in the performance of an awarded contract will at all times remain the property of the City. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express written consent of the City. All materials, documents, data or information, including copies, must be returned to the City at the end of the contract.

All data, documents and other products used, developed, or produced during response preparation of the RFP will become property of the City. All responses to the RFP shall become property of the City. Proposer information identified as proprietary shall be maintained confidential, to the extent allowed under the California Public Records Act.

I. DRUG-FREE WORKPLACE

The awarded Contractor certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the contract or both, and the Contractor may be ineligible for award of any future City contracts.



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J. EXAMINATION

Proposer represents that it has thoroughly examined and become familiar with the services and responsibilities required this RFP 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 relation to this RFP are fully incorporated.

Any irregularities or lack of clarity in the RFP should be brought to the designated City Contact/Project Manager's attention as soon as possible so that corrective addenda may be furnished to prospective Proposers.

Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.

K. EXECUTION OF AGREEMENT

Upon successful negotiations, the City and the selected Proposer will enter into an Agreement similar to that as shown in **EXHIBIT II – Sample Agreement** 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 disqualify them without any further obligation.

L. FISCAL NONFUNDING CLAUSE

In the event sufficient budgeted funds are not available for a new fiscal period, the City shall retain the right to notify the provider of such occurrence in writing at least thirty (30) days before the end of the current fiscal period and terminate the contract on the last day of the current fiscal period without penalty or expense to the City.

M. INDEPENDENT CONTRACTOR

Contractor is considered an independent Contractor and neither Contractor, its employees, nor anyone working under Contractor will be considered an agent or an employee of City. Neither Contractor, its employees, nor anyone working under Contractor, will qualify for workers' compensation or other fringe benefits of any kind through City.

N. 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 sub-consultant 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 sub-consultants be offered, the Proposer shall provide the same assurances of competence for the sub-consultant plus the demonstrated ability to manage and supervise the subcontracted work. Sub-consultants shall not be allowed to further subcontract with others for work under the Agreement. The provisions of the Agreement shall apply to all sub-consultants in the same manner as the Proposer.

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 and the City reserves the right to reject any proposed Subcontractor(s). Subcontractors shall be the responsibility of the prime Contractor and the City shall assume no liability of such Subcontractors.

O. LITIGATION STATUS

Each Proposer must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Proposer or in which the Proposer has been judged guilty or liable. Failure to



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comply with the terms of this provision will disqualify any proposal. The City reserves the right to reject any proposal based upon the Proposer's prior history with the City or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures.

P. NEGOTIATIONS

The City reserves the right to negotiate final contract terms with any Proposer selected. The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded Contractor's proposal, together with any modifications and clarifications thereto that are submitted at the request of the City during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded Contractor's proposal, and the awarded Contractor's proposal. Specific exceptions to this general rule may be noted in the final executed contract.

Negotiations shall be confidential and not subject to disclosure to competing Contractors unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the City reserves the right to negotiate a contract with another Contractor or withdraw the RFP.

Q. NON-PAYMENTS

Note that payments will NOT be made for any unsatisfactory work until corrected. In the event of nonpayment of undisputed sums by the City, Contractor shall give the City thirty (30) working days to cure the alleged breach.

R. OWNERSHIP OF DOCUMENTS

The City has permanent ownership of all directly connected and derivative materials produced under this contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the City and may be used by the City as it may require without additional cost to the City. Contractor shall provide the City copies of documents upon its request at any time. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the City.

S. PARKING

The City will not provide free parking and/or reimbursement for the cost of parking while providing services and conducting business with the City.

T. PROFESSIONAL STANDARDS

Contractor staff shall be courteous to the public and City staff utilizing facilities where Contractor is performing work, but shall be responsive only to the requests of the City's Project Manager or designee. Contractor staff shall direct all inquiries to Project Manager or designee.

Contractor acknowledges that City locations consist of public-use facilities and recognizes the obligation to ensure Contractor personnel and agents maintain the highest level of professional standards in attire, decorum, and interaction with the public and City personnel.



CITY OF SANTA ANA

U. PROJECT MANAGER

The selected Proposer will assume responsibility for all services in its proposal. The selected Proposer shall identify a sole point of contact, Project Manager, 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.

V. PROPOSAL VALIDITY

Services, pricing, and warranties indicated in a Proposer's Proposal must be valid for a period of 180 days at minimum after the submission of the Proposal.

W. PUBLIC AGENCIES

Other public agencies, as defined by California Government Code Section 6500, may choose to use the terms of this Contract, subject to Contractor's acceptance. The City is not liable or responsible for any obligations related to a subsequent contract between Contractor and another public agency.

X. PUBLIC RECORDS

Proposals will become public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by law. Each Proposer may clearly label all or part of a proposal as "CONFIDENTIAL" provided that the Proposer thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any information that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the information. Proposer information identified as proprietary shall be maintained confidential, to the extent allowed under the California Public Records Act.

Y. SUBCONTRACTORS

Proposals in response to this RFP must identify any Subcontractors, and outline the contractual relationship between the Awarded Subcontractor and each Subcontractor. An official of each proposed Subcontractor must sign, and include as part of the proposal submitted by the Prime Contractor, a statement to the effect that the Subcontractor has read and will agree to abide by the awarded Contractor's obligations. Any Subcontractor proposed after award of contract must be approved by the City before commencement of work.

The City will look solely to the awarded Contractor for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded Contractor shall not be relieved for the non-performance of any or all Subcontractors.

XIV. AWARD OF AGREEMENT

Selected Contractor(s) will be notified in writing. Any award is contingent upon the successful negotiation of final contract terms.

A standard agreement is included as **EXHIBIT II - Sample Agreement** of this RFP. "Proposer" will hereinafter be referred to as "Consultant" or "Contractor" in standard 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.



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XV. IMPLEMENTATION

A. KICK-OFF MEETINGS

A kick-off meeting will be held after award of contract. Consultant and its team will meet with City of Santa Ana staff to conduct introductions, discuss scope of services, and implementation process.

B. NOTICE TO PROCEED

Following the kick-off meeting, a formal Notice to Proceed (NTP) may be issued after the agreement is fully executed, and all insurance documents and contents of the Payment Information Packet have been received and approved.



CITY OF SANTA ANA

EXHIBIT I

SCOPE OF SERVICES

Contractor shall perform services as set forth below.

I. SCOPE OF SERVICE:

The City of Santa Ana is a full-service city with a population of over 335,000, encompassing 27 square miles. Santa Ana is the second largest city in Orange County, the eleventh largest in the state, and the 57th largest in the nation. Incorporated in 1886, Santa Ana has long been the County's government powerbase and serves as the County seat. With a total budget of \$760.2 million, Santa Ana provides public safety, quality-of-life programming, and general & utility services to its residents and business community. The Sanitation Services Users Charge (Sanitation Fee/Sanitation Enterprise) as defined in the Santa Ana Municipal Code Chapter [18 Article XII](#) is 1% of the total budget providing two services: Environmental Sanitation/Weed Abatement and Roadway Cleaning/Street Sweeping. Sanitation services are provided through a combination of city employees and private contractors. The approved Sanitation Enterprise budget for Fiscal Year 2022-23 is \$7.6 million.

The City maintains 400 miles of public right-of-way by removing hazardous material, vegetation, industrial emissions, and litter. The Sanitation Enterprise support efforts to help ensure an equitable approach to cleaning debris and pollutants along curbed streets, helping prevent contamination of local waters and damaging aquatic life and marine ecosystems.

II. DESCRIPTION OF WORK:

Consultant shall prepare a cost of service study and make recommendations for implementing a rate in compliance with California Proposition 218 requirements (anticipated implementation date January 2024). The goals of the study are to:

- A. Propose sanitation rates in accordance with California Constitution (Prop 218), and all applicable laws, that are fair, objective and fiscally appropriate for Santa Ana, covering a ten (10) year study period, including, but not limited to:
 1. Ongoing operations and service enhancements;
 2. A prudent reserve program for operating;
 3. Capital replacement and emergencies; and
 4. Identification of customer life-line programs.
- B. Evaluate existing department operations and budgets, identify the current level of service, and estimate the future level of service.
- C. Evaluate existing department operations and budgets with non-prevailing wage contractor (street sweeping contract) requirement(s) and identify minimum service levels that will be feasible given the recent enactment of prevailing wage (street sweeping contract).
- D. Minimize rate impacts to customers to the greatest extent possible.
- E. Identify existing and potential funding mechanisms to finance department operations and capital improvements.



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Key issues that will impact the overall study are:

1. Continuous increase in cost due to current economic climate.
2. Santa Ana's historic effort to tackle the housing crisis is seeing an influx of redevelopment projects, increasing the City's footprint.

III. CONTRACTOR REQUIREMENTS & RESPONSIBILITIES

I. TASK 1 - SANITATION PROGRAM EVALUATION

A. GENERAL

The City sweeps approximately 54,000 curb miles; responds to over 15,000 service requests for roadway cleaning annually, 2,000 environmental sanitation/weed abatement violations, and more than 1,600 reports to obstructions in the public right-of-way.

B. CONTENT/TASKS

1. Consultant shall review and become familiar with the operation and all pertinent historical performance and financial data. Consultant shall review the following at minimum:
 - a. Surrounding municipalities to establish service level;
 - b. Current and recent budgets and Annual Comprehensive Financial Report (ACFR);
 - c. Background information for the operation including existing regulatory requirements, and other contractual requirements and operations;
 - d. Historical revenues, operating expenses, reserve policies (i.e., working capital and renewal and replacement), approved rates and charges, customer information and number of units; and
 - e. Review other pertinent data as necessary.
2. Consultant shall prepare an "Existing Cost of Service Summary" technical memorandum or executive summary of the existing financial condition of the sanitation enterprises. This summary shall identify:
 - a. The cost of service gaps or discrepancies between the existing rate structure(s);
 - b. The projected maintenance, operations and capital spending plans; and
 - c. The effects of current financial/economic climate.

This summary will also identify the strategy the consultant intends to use to close any cost of service gaps identified.

C. DELIVERABLES

1. Existing Cost of Service Summary
 - a. Digital Copy (PDF)
 - b. Printed Copies (5)



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II. TASK 2 - COST OF SERVICE RATE MODEL & SCENARIO DEVELOPMENT

A. GENERAL

As part of the work required in preparing a comprehensive cost of service and rate study report, the Consultant may develop various forecasting models, projections, and rate adjustment scenarios for the City's consideration.

B. CONTENT/TASKS

Consultant shall perform the following tasks:

1. Classify functional expenses to cost components: capacity (demand) costs, commodity costs, customer costs and other direct costs;
2. Classify operating, administrative, operations and maintenance (O&M) expenses, power costs, distribution systems and reserve fund requirements;
3. For each rate scenario, assess the sensitivity of the projected results to changes in certain key variables, including but not limited to, changes in units changes and changes in the cost of the operation.
4. Propose changes to existing or creation of new sanitation fees and surcharges, as are necessary and/or expedient to achieving the goals of the study.
5. The rate design shall continue to support current service level for all customer classes, provide funding for capital replacement while ensuring the ability of the sanitation enterprises to meet fixed and variable cost obligations.

C. DELIVERABLES

There are no deliverables for this section. Consultant shall meet and confer with City in regards to the cost of service rate model development and various scenarios prior to preparing report.

III. TASK 3 - COST OF SERVICE REPORT

A. GENERAL

Consultant shall prepare comprehensive cost of service reports which satisfies the City's stated goals in Section II, "Description of Work" above.

At a minimum the reports shall be comprised of the following:

1. Executive Summary
2. Introduction/Background including discussions on
 - a. Purpose of study
 - b. Applicable laws and regulatory framework
 - c. Generally accepted rate setting standards
3. Revenue Requirements
4. Cost allocation methodology
5. Recommendations
6. California Proposition 218 Compliant Notices
 - a. Prepare rate adjustment notices compliant with Proposition 218 requirements. Notices will be prepared in three languages, English,



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Spanish and Vietnamese. Notices to be delivered electronically as Microsoft Word document.

- b. Pass-through adjustment formula and means of establishing pass through adjustments shall be explicitly stated.

B. CONTENT/TASKS

Perform a fully allocated sanitation rate study tailored for Santa Ana, including the following:

1. A rate structure based on cost of service sufficient to meet the revenue requirements of the sanitation enterprise;
2. Classify functional expenses to cost components: capacity (demand) costs, commodity costs, customer costs and other direct costs;
3. Classify operating, administrative, operations and maintenance (O&M) expenses, power costs and reserve fund requirements;
4. A rate structure that considers and makes provisions for the following factors:
 - a. Current and future cost of providing sanitation services in accordance with established and anticipated standards and regulations.
 - b. A recommended sanitation rate structure that is in compliance with Proposition 218;
5. Provide a comparison of current sanitation rates to comparable surrounding sanitation program;
6. The type and amount of reserves appropriate to the City's sanitation operations taking into consideration reserves for cash flow, catastrophes, infrastructure replacement (proprietary assets) and other appropriate purposes;
7. A comparison of customer groups and cost of service with neighboring municipalities of comparable size, type of treatment, and level of service;
8. A review and analysis of current block sizes and seasonal rate differentials. Consultant should recommend changes if appropriate; and
9. Consultant shall assess the recommended rate structures and their impacts on the ability to fund sanitation operations as well as their impact on the City's rate payers;
10. A review of elderly low-income and sanitation rate programs provided by other agencies and propose appropriate elderly low-income sanitation rate for Santa Ana;
11. The benefits of any proposed rate modifications shall be weighed against the financial impacts on the ratepayers. Consultant shall analyze the proposed rates for customer impacts and develop alternative rates modeled to address financial impacts on ratepayers. The analysis shall include:
 - a. Preparation of typical bill comparisons for each proposed rate structure for representative customer classes using the current rate schedules as a baseline.
 - b. Compare customer class and proposed rate structures with neighboring agencies of comparable service area.



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C. DELIVERABLES

Consultant shall deliver at a minimum the following:

1. Final Cost of Service Reports
 - a. Digital Copy (PDF)
 - b. Printed and Bound Copies (15) of each
2. Proposition 218 Compliant Notice
 - a. Digital Copy (PDF and MS Word)
3. Pass-through adjustment calculator
 - a. Digital Copy (MS Excel or similar)

Consultant shall meet with the City to discuss the report's outcome and explain in detail the full parameters and outcomes discussed in the report. In addition, the Consultant shall meet with the City to review a draft copy of the report before submitting the final report.

IV. PUBLIC MEETINGS & PRESENTATIONS

Consultant shall participate, as requested by City, at both staff and public meetings. Consultant shall expect to make presentations regarding the results of the cost of service study to City executive staff, Mayor and Council and the general public. For purposes of this RFP, Consultant shall be required to attend a minimum six (6) meetings in the range of two (2) – four (4) hours in length in person.

V. KICKOFF MEETING

Consultant shall attend one (1) contract kick-off meeting at the City's Corporate Yard located at 215 S. Center St., Santa Ana, CA 92703 at which City staff will share contact information, safety and security protocols, and familiarize the Consultant with the City's sites and equipment.

VI. PROJECT MANAGEMENT & COORDINATION

Consultant shall not proceed with any work without the approval of the City's designated Project Manager. Consultants shall invoice the City on a monthly basis for all work performed during the period. Each invoice shall be accompanied by a summary of tasks performed, results, and progress on long-term tasks (if any).

VII. MIDTERM REVIEW

The City intends to implement a five-year rate structure as determined appropriate by the results of the cost of service study. Consultant shall perform a midterm review (either at Year 2 or 3 of implementation) of the adopted rate structure, revenues and expenditures, and make recommendations/findings as to the need for any midterm rate adjustments to meet the City's stated goals. The Consultant shall deliver an addendum report to the initial study presenting said recommendations. The Consultant will provide an updated Proposition 218 notice if requested by the City.

VIII. VALUE-ADDED RELATED SERVICES



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Consultant may propose additional related services that the City has not specifically identified in this RFP to accomplish the stated goals of this RFP. Value-added related services will be considered by the City and may or may not be incorporated in the Agreement.

IX. FEE SCHEDULE

Consultant shall submit a fee schedule in a separate file as described in Section VII.F.3 - **RESPONSE TO RFP – PROPOSAL CONTENTS**.

Fee proposal shall be outlined as follows:

1. Fee for preparing Cost of Service Report (Items I – VI)
2. Fee for performing midterm review (Item VII)
3. Firm's standard hourly fee schedules
4. Optional: Fee for any proposed value-added services, if any (item VIII)

X. TERMINATION

The City reserves the right to terminate the contract, without penalty, for cause immediately or without cause.

1. This agreement may be terminated without cause by City upon thirty (30) days written notice delivered to the Contractor either personally or by mail. Upon termination, City shall pay to Contractor that portion of compensation specified in the Agreement that is earned and unpaid prior to the effective date of termination.
2. In addition to, or in lieu of, remedies provided in this Agreement or pursuant to law, City shall have the right to withhold all or a portion of Contractor's compensation for contract services if, in the judgment of the Projects Manager or designee, falls below appropriate standards and/or Contractor fails to satisfactorily perform contract services.

XI. CONTRACTOR OPTION FOR TERMINATION

The Contractor may request termination of the contract when conditions during the contract make it impossible to perform or when prevented from proceeding with the contract by act of God, by law or official action of a public authority or in the event on nonpayment by the City. Such request will require **sixty (60) days written notice prior to contract termination date requested**. In the event of nonpayment of undisputed sums by the City, Contractor shall give the City a minimum of thirty (30) working days to cure the alleged breach.



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EXHIBIT II

SAMPLE AGREEMENT

THIS AGREEMENT is made and entered into on this ____ day of _____, 2023 by and between _____, ("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 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 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 Services - Exhibit I**, attached hereto and incorporated by reference.

2. COMPENSATION

- a. City agrees to pay, and Consultant agrees to accept as total payment for its services for City, the rates and charges identified in **Compensation - Exhibit II**. The total amount to be expended during the term of this Agreement shall not exceed \$xxxxxx.
- b. Payment by City shall be made within forty-five (45) days following receipt of proper invoice invoiciding 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 for a **written number (3) year term** with the option for the City to grant up to **two, one (1)-year** renewals, exercisable by a writing by the City Manager and the City Attorney, unless terminated earlier in accordance with Section 15, below.

4. INDEPENDENT CONTRACTOR



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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.

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.

MINIMUM SCOPE AND LIMIT OF INSURANCE

The selected Proposer shall provide the required evidence of insurance coverage as set forth in the standard agreement within ten (10) business days after receipt of Notice of Intent to Award. Contractor must maintain, for the duration of its contract, insurance coverages as required by the City.

Additionally, Contractor shall provide the following insurance coverage:

Coverage shall be at least as broad as:

- **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 **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- **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 for bodily injury or disease.



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If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or 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 Entity.

Other Insurance Provisions

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

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor 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. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Acceptability of Insurers

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

Claims Made Policies (note – should be applicable only to professional liability, see below)
If any of the required policies provide claims-made coverage:

4. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
5. Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years* after completion of the contract of work.



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6. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

Verification of Coverage

Contractor shall furnish the Entity 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 to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them.

The Entity 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

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

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.

INTELLECTUAL PROPERTY INDEMNIFICATION

Contractor 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.

RECORDS

Contractor 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



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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.

CONFIDENTIALITY

If Contractor 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.

CONFLICT OF INTEREST CLAUSE

Contractor 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.

NON-DISCRIMINATION

Contractor 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.

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.

ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of Contractor, Contractor 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



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of the services which are the subject to this Agreement performed by City personnel or by other Contractors retained by City.

TERMINATION

The City reserves the right to terminate the contract, without penalty, for cause immediately or without cause.

1. This agreement may be terminated without cause by City upon thirty (30) days written notice delivered to the Contractor either personally or by mail. Upon termination, City shall pay to Contractor that portion of compensation specified in the Agreement that is earned and unpaid prior to the effective date of termination.
2. In addition to, or in lieu of, remedies provided in this Agreement or pursuant to law, City shall have the right to withhold all or a portion of Contractor's compensation for contract services if, in the judgment of the Projects Manager or designee, falls below appropriate standards and/or Contractor fails to satisfactorily perform contract services.

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.

I. 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.

II. 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.

III. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this contract 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)



CITY OF SANTA ANA

P.O. Box 1988
Santa Ana, CA 92702-1988
Fax: 714- 647-6956

With courtesy copies to:

To Contractor:

First & Last Name
Title
Consultant Firm Name
Address
City, State, Zip
Fax:

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.

IV. 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. The Agreement is the final and complete agreement and any prior or contemporaneous agreements for similar services between the parties is superseded by this Agreement. This shall not apply where the Parties are currently engaged and Consultant is providing services not contemplated by this Agreement.
- c. 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

Clerk of the Council

Kristine Ridge
City Manager



CITY OF SANTA ANA

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

By: _____

Assistant City Attorney

CONSULTANT:

(name)
(title)

RECOMMENDED FOR APPROVAL:

SAMPLE ONLY



CITY OF SANTA ANA

ATTACHMENT A

REFERENCES

**THIS SHEET MUST BE COMPLETED IN ENTIRETY AND
RETURNED WITH OFFEROR'S PROPOSAL**

List and describe fully the contracts performed by your firm which demonstrate your ability to provide the services included in the scope of the proposal specifications. Attach additional pages if required. The City reserves the right to contact each of the references listed for additional information regarding your firm's qualifications & customer service reputation.

Reference No. 1	
Customer Name:	Contact Individual/Email:
Address:	Phone Number:
	Facsimile Number:
Project Name:	Year:
Brief Description of Scope of Work:	

Reference No. 2	
Customer Name:	Contact Individual/Email:
Address:	Phone Number:
	Facsimile Number:
Project Name:	Year:
Brief Description of Scope of Work:	

Reference No. 3	
Customer Name:	Contact Individual/Email:
Address:	Phone Number:
	Facsimile Number:
Project Name	Year:
Brief Description of Scope of Work:	

THIS FORM MUST BE COMPLETED AND INCLUDED WITH THE PROPOSAL.
PROPOSALS THAT DO NOT CONTAIN THIS FORM WILL BE CONSIDERED NONRESPONSIVE.



CITY OF SANTA ANA

ATTACHMENT B

NON-COLLUSION AFFIDAVIT

(Title 23 United States Code Section 112 and Public Contract Code Section 7106)

To the CITY OF SANTA ANA

In accordance with Title 23 United States Code Section 112 and Public Contract Code 7106 the proposer declares that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any proposer or anyone else to put in a sham proposal, or that anyone shall refrain from bidding; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and, further, that the proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

Note: The above non-collusion affidavit is part of the proposal. Signing this proposal on the signature portion thereof shall also constitute signature of this non-collusion affidavit. Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution.

Signed _____

State of _____, County of _____

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____, by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Notary Public Signature

Notary Public Seal

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CITY OF SANTA ANA

ATTACHMENT C

NON-LOBBYING CERTIFICATION

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in conformance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Signed: _____

Title: _____

Firm: _____

Date: _____

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CITY OF SANTA ANA

ATTACHMENT D

NON-DISCRIMINATION CERTIFICATION

The undersigned consultant or corporate officer, during the performance of this contract, certifies as follows:

1. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Consultant shall send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Consultant shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Consultant shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation, to ascertain compliance with such rules, regulations, and orders.
1. In the event of the Consultant's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, the contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
2. The Consultant shall include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontract

or purchase order as the administering agency may direct as means of enforcing such provisions,



CITY OF SANTA ANA

including sanctions for noncompliance; provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction by the administering agency, the Consultant may request that the United States enter into such litigation to protect the interests of the United States.

8. Pursuant to California Labor Code Section 1735, as added by Chapter 643 Stats. 1939, and as amended, no discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical handicaps, mental condition, marital status, or sex of such persons, except as provided in Section 1420, and any consultant of public works violating this Section is subject to all the penalties imposed for a violation of the Chapter.

Signed: _____

Title: _____

Firm: _____

Date: _____

THIS FORM MUST BE COMPLETED AND INCLUDED WITH THE PROPOSAL.
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