

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

DECEMBER 1, 2020

TITLE:

**APPROVE QUALIFIED CONSULTANTS TO
PROVIDE ON-CALL ENVIRONMENTAL AND
PLANNING SERVICES FOR PLANNING
PROJECTS AND SUPPLEMENTAL STAFF
SERVICES FOR A TOTAL NOT TO EXCEED
\$2,650,000
(GENERAL FUND AND NON-GENERAL
FUND)**

/s/ Kristine Ridge

CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED

- ☐ As Recommended
- ☐ As Amended
- ☐ Ordinance on 1st Reading
- ☐ Ordinance on 2nd Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For _____

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

Authorize the City Manager to execute agreements to engage each of the 48 environmental and planning services firms listed below, as-needed, for a period of three years beginning December 1, 2020 through November 30, 2023, to provide on-call environmental, technical, and planning services for the Planning and Building Agency at the fees set forth in their responses to Request for Qualifications (No. 20-100) for a total allocation for requested services not to exceed \$2,650,000, subject to non-substantive changes by the City Manager and City Attorney.

Consultants

Architectural Resources Group, Inc.
Ascent Environmental
Aspen Environmental Group
AZTEC Engineering Group
Chambers Group Inc.
Circlepoint
Civic Solutions Inc.
Converse Consultants
CSG Consultants, Inc.
De Novo Planning Group
Dudek
ECORP Consulting, Inc.
EcoTierra Consulting
Environmental Science Associates (ESA)
Environmental Planning Development
Solutions, Inc. (EPD Solutions, Inc.)

Evan Brooks Associates
Ericsson-Grant Inc.
FCS International, Inc. (FirstCarbon
Solutions)
Fehr & Peers
GPA Consulting
Geotechnical & Env. Science
Helix Environmental Planning, Inc.
ICF Jones & Stokes, Inc. (ICF)
Infrastructure Engineers
Infrastructure Engineering Corporation
(IEC)
Interwest Consulting Group
Kimley Horn and Associates, Inc.
LSA Associates, Inc.

Michael Baker International
Moore, Iacofano, Goltsman, Inc. (MIG)
Page & Turnbull
Phil Martin & Associates, Inc.
PlaceWorks, Inc.
Psomas
Renee Escario DBA RE Consulting
Rincon Consultants, Inc.
RK Engineering Group
Romo Planning Group
Sagecrest Planning & Environmental, LLC

T & B Planning, Inc.
Tetra Tech
Translutions, Inc
UltraSystems Environmental Inc.
Urban Crossroads, Inc.
VCA Code
VCS Environmental
Willdan
Yorke Engineering, Inc

DISCUSSION

In October 2017, the City Council approved a list of qualified consultants to assist staff and developers in the preparation of environmental documents and related technical studies. The list was approved for a period of three years. In October of 2018, the City Council approved a list of consultants for planning services for a period of two years. In August 2020, the City Council authorized staff to distribute a Request for Qualifications (RFQ) (No. 20-100) for consultant services on work efforts related to the California Environmental Quality Act, the National Environmental Policy Act, the preparation or review of technical studies, and planning services. The intent was to establish an updated list of qualified consulting firms for a period of three years, on an as-needed basis.

The Planning Division received a Statement of Qualifications from 50 firms in response to the RFQ. The proposals were reviewed for adequacy, evaluated based on the criteria in the RFQ, and compiled into a list of qualified firms. Two firms were disqualified as non-responsive, with 48 firms qualified to provide services identified in the RFQ. Consultants on the pre-qualified list will provide environmental services and/or related technical studies, planning services for current and advanced planning, historic preservation, and general planning efforts.

If a development project requires an environmental analysis, technical study, and/or planning related services, the developer is given the option to select a firm from the pre-qualified list or obtain proposals from multiple firms from the pre-qualified list. The developer is required to provide payment to the City for the full cost of the contracted service, plus an administrative services fee (currently 10% of full contract price) to be retained by the City. Upon receipt of payment from the developer, the City as the lead agency, will execute a side letter agreement to provide on-call services. When the work is completed, the City will pay the consultant for work completed out of the pass through account. Selecting a consultant from a pre-approved list eliminates the need to circulate a Request for Proposal (RFP), significantly reducing the time it takes to hire a consultant, and streamlining the entitlement process.

In 2017, the City Council approved a similar list of firms to be on the City's bench list of consultants to provide environmental and planning services for development projects. The City Council approval provided for a three-year agreement period that ended on October 3, 2020 for

environmental services and June 5, 2021 for planning services. The current proposal will authorize the list of firms for a period of three years until November 30, 2023

Consultant services under this work scope could include environmental analysis conducted for City projects, such as an ordinance amendment, that requires preparation of required technical studies, peer review of technical studies prepared by others, preparation of Initial Studies, Negative Declarations, Mitigated Negative Declarations, Environmental Impact Reports, Subsequent or Supplemental Environmental Impact Reports, Addendums, Environmental Assessments, and Environmental Impact Statements.

The Planning Division's workload fluctuates and oftentimes increases as development applications rise. Having on-call consultants for planning services will assist the Planning Division in maintaining high customer service levels, meeting deadlines, and keeping pace with development schedules. Occasionally, the Planning Division needs technical expertise to assist with City projects related to urban design, historic preservation and environmental assessments, or needs specialized assistance with zoning ordinance amendments pertaining to off-premise advertising (billboards), short-term rentals, and parking. Utilizing a consultant's knowledge and experience can help reduce the timeframe needed for completing a planning project and ensure that best practices are used by the City.

In addition, under City planning staff supervision, consultants may be assigned to staff the public Planning counter. Consultants may assist with reviewing project plans, responding to public inquires, and case management. Consultants may also assist with review and processing of ministerial permits such as tenant improvements, small additions, sign permits, reroof permits, and window permits. With consultant assistance at the counter, full-time planning staff can focus their efforts on current development projects and updating the General Plan. Firms hired for planning consultant services will be paid from the Planning Agency's Contract Services-Professional and Air Quality Management District accounts.

Appointment to the pre-approved list does not guarantee work to a consultant. If needed, firms will be selected based upon their ability to perform the required work within the timeframe needed and budget constraints. Approval of the list will allow the Planning Division to hire qualified, experienced consultants for specific projects or tasks in a timely manner. As a result, the staff will be better able to respond quickly to fluctuating demands and ultimately provide better service to customers of the City of Santa Ana. It is recommended that the consultant list be approved due to the expertise that the firms have demonstrated in the field of planning.

FISCAL IMPACT

Service fees shall be paid by the developer prior to the consultant commencing any work and the fees will be deposited by the developer into the appropriate revenue account (No. 05316002-53607). In addition, 10% of administrative fees will be deposited by the developer into the EIR Developer Fees account (No. 01116002-53607). Development projects will be assigned activity

numbers to track the budget by the Planning & Building Agency. Upon completion of the work, funds will be expended from various accounts to pay consultants for their services.

Funds will be recorded in account numbers 01116510-62300, 03116510-62300, and 05316021-62308 and will be made available from FY2020-2023 contingent upon annual budget approval.

Fiscal Year	Accounting Unit	Fund Description	Accounting Unit, Account Description	Amount
FY2020/21 December-June	01116510-62300	General Fund	Planning & Building - Planning Contract	\$ 200,000
	03116510-62300	Air Quality Impr.	Planning Air Quality Improv - Contract	\$ 50,000
	05316021-62308	City Services	Consultant Services-EIR Developer Fees	\$ 500,000
FY2021/22	01116510-62300	General Fund	Planning & Building - Planning Contract	\$ 150,000
	03116510-62300	Air Quality Impr.	Planning Air Quality Improv - Contract	\$ 50,000
	05316021-62308	City Services	Consultant Services-EIR Developer Fees	\$ 750,000
FY2022/23	01116510-62300	General Fund	Planning & Building - Planning Contract	\$ 150,000
	03116510-62300	Air Quality Impr.	Planning Air Quality Improv - Contract	\$ 50,000
	05316021-62308	City Services	Consultant Services-EIR Developer Fees	\$ 750,000
Total Contract Amount				\$2,650,000

The Planning and Building Agency will monitor the above-referenced accounts to ensure sufficient appropriations are available to facilitate timely payments to the vendors providing service.

Fiscal Impact Verified By: Kathryn Downs, CPA, Executive Director – Finance and Management Services Agency

Submitted By: Minh Thai, Executive Director - Planning and Building Agency

Exhibit: 1. Approved to Form (Template) – Agreement to Provide On-Call Planning Services

**AGREEMENT TO PROVIDE ON-CALL
ENVIRONMENTAL AND PLANNING SERVICES
RELATED TO CEQA AND NEPA**

THIS AGREEMENT is made and entered into this 1st day of December, 2020, by and between Click here to enter text. ("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. In August of 2020 , the City issued Request for Qualification No. 20-100, by which it sought Consultants to provide on-call environmental, technical and planning services for the Planning Division of the City of Santa Ana. The scope of work may include any and all work efforts related to analysis of a proposed project for compliance with California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). This may include preparation of required technical studies, peer review of technical studies prepared by others, preparation of Initial Studies, Negative Declarations, Mitigated Negative Declarations, Environmental Impact Reports, Environmental Assessments, Environmental Impact Statements and staffing services on an as-needed basis.
- B. Consultant submitted a responsive proposal that was among those selected by the City. Consultant represents that it is able and willing to provide the services described in the scope of work that was included in RFQ No. 20-100 and attached as Exhibit A.
- 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 contracting 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

On an as-needed basis, and at the sole discretion of City, Consultant shall perform the services that are described in **Exhibit A**. Consultant's proposal is incorporated by reference as though fully set forth herein. When the need for services arise, City may initiate services through use of a letter agreement, executed by the Executive Director of the Planning and Building Agency and the Consultant. Work by the Consultant may not proceed absent a previously engaged or fully executed consultant agreement and letter agreement for a specific project.

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 forty-eight (48) Consultants selected to provide environmental and planning services on an as needed basis under RFQ No. 20-100. The total compensation for services provided by all Consultants selected under RFQ No. 20-100 is a collective amount not to exceed Two Million Six Hundred Fifty Thousand Dollars (\$2,650,000.00) 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. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals and Scope of Work, which may reasonably be expected by City.

3. TERM

This Agreement shall commence on the date first written above and continue for three (3) years until November 30, 2023, unless terminated earlier in accordance with Section 17, below. The term of this Agreement may be extended upon a writing executed by the City Manager and the City Attorney.

4. INDEPENDENT CONTRACTOR

Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; however, the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

5. OWNERSHIP OF MATERIALS

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and

perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

6. INSURANCE

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

- a. **Commercial General Liability Insurance.** Consultant shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of Consultant's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$1,000,000 per occurrence, with \$2,000,000 in the aggregate. Such insurance shall (a) name the City, its officers, employees, agents, volunteers and representatives as additional insured(s); (b) be primary with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.
- b. **Business automobile liability insurance,** or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- c. **Worker's Compensation Insurance.** In accordance with the California Labor Code, Consultant, if Consultant has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, Consultant agrees to obtain and maintain any employer's liability insurance with limits not less than \$1,000,000 per accident.
- d. **If Consultant is or employs a licensed professional such as an architect or engineer:** Professional liability (errors and omissions) insurance, with a combined single limit of not less than \$1,000,000 per claim with \$2,000,000 in the aggregate.
- e. **The following requirements apply to the insurance to be provided by Consultant pursuant to this section:**
 - (i) **Consultant shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.**

- (ii) Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved by the City.
 - (iii) Certificates and policies shall state that the policies shall not be cancelled or reduced in coverage or changed in any other material aspect, by consultant, without thirty (30) days prior written notice to the City.
 - (iv) Where the amounts or coverage provided by the certificates of insurance provides coverage greater than those listed by this Agreement, the amounts provided by the certificates of insurance shall be incorporated by reference into the Agreement.
 - (v) Consultant shall supply City with a fully executed additional insured endorsement.
- f. If Consultant fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not affect Consultant's right to be paid for its time and materials expended prior to notification of termination. Consultant waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

8. INDEMNIFICATION

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

9. INTELLECTUAL PROPERTY INDEMNIFICATION

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

10. 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.

11. 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.

12. CONFLICT OF INTEREST CLAUSE

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

13. NOTICE

15. ASSIGNMENT

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

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. TERMINATION

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

- a. As a condition of such payment, the Executive Director may require Consultant to deliver to the City all work product completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Consultant consents to the City's use thereof for such purposes as the City deems appropriate.
- b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

18. 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.

19. 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.

20. 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.

21. 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.

[Signature Page Follows]

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

ATTEST:

CITY OF SANTA ANA


DAISY GOMEZ
Clerk of the Council

KRISTINE RIDGE
City Manager

APPROVED AS TO FORM

SONIA R. CARVALHO
City Attorney

CONSULTANT

By: 
Lisa E. Storck
Assistant City Attorney

BY: Click here to enter text.
Title: Click here to enter text.

RECOMMENDED FOR APPROVAL

MINH THAI
Executive Director
Planning and Building Agency

EXHIBIT B

FEE SCHEDULE (OR) RATES AND CHARGES