

CITY OF FULLERTON
REQUEST FOR QUALIFICATIONS



RFQ #2425-02
ENGINEERING DESIGN SERVICES FOR
NUTWOOD AVENUE BICYCLE & PEDESTRIAN MOBILITY
IMPROVEMENTS
ACTIVE TRANSPORTATION PROGRAM (ATP) CYCLE 6

PROPOSAL DUE: OCTOBER 14, 2024 @ 4 P.M. PST

SUBMIT BIDS ELECTRONICALLY AT:
WWW.PUBLICPURCHASE.COM

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SECTION I

NOTICE OF REQUEST FOR QUALIFICATIONS

Engineering Design Services for Nutwood Avenue Bicycle and Pedestrian Mobility Improvements

NOTICE IS HEREBY GIVEN that the City of Fullerton is requesting proposals of qualifications from professional engineering consulting firms to design bicycle and pedestrian mobility enhancements along Nutwood Avenue from State College Boulevard to Placentia Avenue (Project). Fullerton received an Active Transportation Program (ATP) grant for the environmental assessment; right-of-way certification; utility coordination; preliminary/final plans, specifications, estimates; permitting; construction, and funding administration.

This **Request for Qualifications (RFQ)** provides information on the City of Fullerton, the required scope of services, the consultant selection process, and the minimum information that must be included in the RFQ Response. Proposals will be evaluated on the basis of the overall best value to the City based on quality, service, and any other criteria set out herein including but not limited to, the proposer's ability to meet the requirements, qualifications, and competencies set out herein. The City shall be the sole judge of the qualifications and services and reserves the right to select a firm on any basis or weighted criteria that is in the best interests of the City.

BACKGROUND

The City of Fullerton is located 22 miles southeast of metropolitan Los Angeles, in the center of North Orange County with a population of 139,431 residents. Fullerton is a full-service, general law city that was incorporated in 1904. Fullerton is renowned for its unique mix of residential, commercial, industrial, educational, and cultural environments and is known for being the "Education Community". During the school year, the population grows by 60,000 people with California State University Fullerton (CSUF), Hope University, Fullerton College, and Ketchum School of Optometry. Fullerton has 52 City parks, a museum, a cultural center, a public library, a golf course, and 29 miles of recreational trails. Fullerton provides an outstanding quality of life for both residents and businesses. At 22.4 square miles, Fullerton is also one of the largest cities in Orange County by area and is the sixth most populous.

The City has been awarded \$7,140,000 of State ATP Grant Funds by California Transportation Commission (CTC) to fully fund the development of the Nutwood Avenue Bicycle & Pedestrian Mobility Enhancement Project. The total Project budget, including local match share, is \$7,290,000 which includes design engineering services, environmental studies, right-of-way, construction, and construction management services.

The project closes a priority gap to increase connectivity on the Brea-CSUF-Santa Ana River Trail by implementing pedestrian and bicycle infrastructure along Nutwood Avenue including improvements for crossing under State Route 57 (SR-57). The Project will connect to several large residential developments with sizable student populations and shopping on the east side of SR-57 with the

campuses, and existing infrastructure to Downtown Fullerton, and employment centers on the west side of SR-57.

Nutwood Avenue is a primary access to two universities, California State University Fullerton (CSUF) and Hope University, with a combined student enrollment, faculty, and staff of over 44,000. This project will create nearly a mile of new Class I bike paths, Class II buffered bike lanes, and Class IV protected bikeways on both sides of Nutwood Avenue where there are currently only Class III bike routes. The new bike facilities will allow students, faculty, and staff to safely travel along this portion of Nutwood Avenue to connect to the CSUF campus bike path. Improvements will be constructed in City right of way, Caltrans right of way and on CSUF campus. Project will widen Nutwood Avenue under the SR-57 by cutting back existing slopes and constructing retaining walls; construct ADA ramp improvements; and add conflict zone markings at intersections and driveways. The project also includes a bike roundabout, median modifications, lighting, traffic signal modifications, landscape/hardscape improvements, and utility modifications.

CSUF is currently designing a new pedestrian and bicycle bridge over Nutwood Avenue at the easterly leg of the Commonwealth Avenue intersection. This bridge will provide a connection to CSUF facilities on the south side of Nutwood Avenue and an alternative path for students and public crossing Nutwood Avenue. The City and CSUF are coordinating the design of this bridge and it is expected to have minimal impacts to the improvements proposed by this project, however, Consultant shall ensure proposed improvements are compatible with the bridge improvements. Authorization for bidding and constructing the bridge is currently programmed for Summer 2025.

SUBMITTAL DEADLINE

COMPLETE ELECTRONIC PROPOSALS SHALL BE SUBMITTED NO LATER THAN (DAY, MONTH, DATE, YEAR) AT 4:00 PM PST to the City's eProcurement portal, Public Purchase at www.publicpurchase.com. *Proposals submitted by email, mail, or fax will not be accepted nor considered.* Failure to upload due to electronic glitches is not a legitimate reason for proposals submitted after the deadline. The City may extend the deadline at its discretion. Please see instructions in **Section III** for details on how to submit a proposal to this RFQ.

Technical Proposals shall be titled **"Proposal for Nutwood Avenue Bicycle and Pedestrian Mobility Improvements – (Proposer's Name)"**. Proposals must bear agreement binding signatures.

It is not the responsibility of the City to notify potential bidders. Prospective bidders shall register as a vendor and will be notified via the City's eProcurement portal. Registration for the City of Fullerton's eProcurement platform is free and bidders may select to be notified of all future bids posted by the City of Fullerton.

Proposed RFQ Schedule

**** Proposed RFQ Schedule is “Tentative” and may be changed at the City’s discretion, Interviews and Negotiations will be scheduled if required ****

Release of RFQ	September 11, 2024
Question Submittal Deadline	September 23, 2024, at 4:00 P.M. PST
Response to Questions Posted	September 30, 2024
RFQ Submittal Deadline	October 14, 2024, at 4:00 P.M. PST
Consultant Interviews	Week of November 18 th (Tentative)
Scope/Fee Proposal Finalized	Week of December 16 th (Tentative)
Agreement/Contract Award	January / February 2025 (Tentative)

SECTION II

SCOPE OF SERVICES/SCOPE OF WORK

The City of Fullerton is seeking qualified and experienced engineering firm to provide professional engineering services to design bicycle and pedestrian mobility enhancements along Nutwood Avenue from State College Boulevard to Placentia Avenue (Project). The engineering firm should have extensive and ample experience with similar Active Transportation and bicycle and pedestrian projects. It is strongly encouraged to designate a project manager with strong Active Transportation design experience. We encourage proposals to include innovative approach methodologies and/or added value to the base scope.

Funds from California's Active Transportation Program (ATP) Grant will be used to fund all or a portion of this Project. The successful Consultant shall be required to comply with all funding requirements associated with this State-funded ATP grant. Consultant must also comply with all State regulations as set forth in this RFQ, the City/Consultant Professional Services Agreement and [Caltrans Local Assistance Procedures Manual \(LAPM\)](#).

Please note that the City is seeking a Statement of Qualifications Proposal, in which a *'Cost Proposal' or 'Fee Schedule' is not being requested* at this time. The City is intending to select and award one (1) engineering firm from the qualification proposals to design the Project. Once the top-ranked firm is selected, the City will seek a Cost Proposal for said Project. The City reserves the right to negotiate with the top firm, and reserves the right to negotiate with any other qualified firm(s) that best meets the City's needs and in order to meet Project and grant budget.

MINIMUM QUALIFICATIONS

Only those consultants with verifiable experience as it relates to the services requested in this solicitation will be considered during the evaluation process. Consultant staff assigned to execute the scope of services must have relevant experience in providing the necessary services as described under the scope of services. All personnel assigned to the work shall possess appropriate certifications or registrations as required by state and local agencies.

SCOPE OF WORK

The Consultant shall prepare a Scope of Work that includes all tasks to deliver a complete project. Selected firms will report to, and operate under, the direction of the City of Fullerton Public Works staff, to provide professional engineering services to the City. Items of work not specifically excluded in the proposal, but required for a complete project, are assumed included in Consultant's Scope of Work. The Project Scope of Work includes, but is not limited to:

Task 1: Project Management, Coordination, & Administration

Kick-off Meeting:

The City will meet with Consultant to discuss the overall project scope. The agenda will include, at a minimum, the project's goals, objectives, tasks, timeline, expectations of the City, and grant requirements. The Project Kick-off Meeting will be led by the Consultant. All key staff will be required

to attend. Detailed meeting minutes shall be provided and distributed for comments within two (2) days of the meeting.

Project Design Team (PDT) Meetings:

Consultants Project Manager will conduct collaborative monthly project design team meetings. All parties will work together to monitor project progress, prepare for next steps, discuss completed tasks, conduct problem-solving, and ensure the project remains within the designated timeframe as well as within budget. Detailed meeting minutes shall be provided and distributed for comments within two (2) days of each meeting.

Schedule:

Upon receipt of a Notice-to-Proceed from the City, the Consultant Project Manager (PM) shall prepare a detailed project schedule to be used by the project team. This schedule shall be presented to the City's PM for comment and be updated on an as-needed basis throughout the design process.

Communication:

The Consultant PM will work closely with the City, stakeholders, and sub-consultants to uphold the project schedule and budget. The City strongly believes in proactive critical thinking and communication to minimize project delays. To avoid any unwanted surprises, the selected consultant shall be completely transparent and proactive in dealing with any issues so the City can make knowledgeable decisions.

In addition, the Consultant PM will engage in coordination with the City, California State University, Fullerton (CSUF) and their design team concerning their Bridge Project over Nutwood Avenue. This will involve detailed planning and communication to ensure the City's project is aligned with the University's objectives and design specifications.

The Consultant PM will also liaise with the California Department of Transportation (Caltrans) to obtain the encroachment permit and address any issues related to the project's encroachment onto Caltrans' right of way, ensuring compliance with state regulations and securing necessary approvals.

Quality Control:

A key factor to project success is accountability. The selected consultant, chosen for their expertise and qualifications will be accountable and responsible for delivering the project to completion. Every deliverable shall go through a thorough quality control/quality assurance process prior to being submitted to the City for review. Each subsequent submittal shall have a response to comments included for reference. Any deliverable that contains substantive errors or omissions will be rejected. No additional compensation shall be provided for resubmittals after poor quality deliverables.

For design plans, the City prefers to utilize Bluebeam Revu Software for all QA/QC activities. This software allows for paperless review, simultaneous commenting, cloud-based record keeping, and clean response to comments. The Consultant shall be responsible to control tracking tools for this project.

Final Submittal/Closure & Auditors:

State requirements designate that agencies receiving state funds maintain records of all paperwork, including but not limited to all approved certifications, noticing, invoice submittals, progress reports, receipts, amendments, exhibits, transmittals, and all other relevant documents pertaining to the funded project. Ensuring compliance with these requirements is crucial for the timely reimbursement of funds, including final submittal and auditing purposes. To this end, the Consultant shall be responsible for maintaining all paperwork in both electronic and hard copy format.

Based on the City's experience, it is imperative all paperwork be organized in large binders by phase, tabbed/filed by date, and most importantly, arranged in a manner consistent with Caltrans' administrative organizational procedures ensuring ease of access and rapid response to Caltrans and State agency inquiries. The electronic copy shall be arranged and organized consistent with the hard copy. The Consultant shall provide Quality Assurance/Quality Control (QA/QC) by diligently reviewing and documenting each item in a records management log. The records management log will indicate the date, document, originator, and modifier for any changes made to the binder throughout the project. This system will ensure precise depictions of the Project from start to finish and allow for an accurate and complete paper trail to be established. Moreover, the system will allow the maintenance of all data and information which will inform the final submittal, closeout, and audit.

Upon final closeout of the project, the Consultant shall submit a copy of all files and binders to the City. The Consultant shall be responsible for remaining in contact with the project for a minimum of five (5) years after final closure is submitted. The minimum five (5) year time limit involves the possible review with auditors. The Consultant shall be responsible for meeting with auditors, including the provision of documentation and answering of questions with respect to the project's state process and invoicing.

Task 2: Preliminary Engineering

Records Research:

The Consultant shall obtain record drawings and documents relevant to the project location. Record drawings and documents can include, but are not limited to existing improvement plans, topographic maps, assessor maps, centerline ties, corner records, as-built plans, utility plans, traffic counts, previous traffic studies, etc.

Utility Verification & Coordination:

The City shall provide a list of contacts for utility companies with facilities in the project limits. City shall also request utility maps from the utility companies and will provide all received maps and documents to the Consultant.

The consultant shall also coordinate with the City to send notification to all utility companies within the project limits at the 60%, and 100% design stage for review to determine any possible conflict with proposed improvements. The Consultant shall work closely with utility companies and municipalities to resolve any conflict prior to final design. A comprehensive log will be preserved throughout the project and provided to the City upon request.

As needed, the Consultant shall coordinate with Southern California Edison (SCE) for new and/or modified service points of connection (POC) and design requirements.

Geotechnical Investigation:

The Consultant team shall perform a detailed geotechnical investigation of the project area. The Consultant team shall conduct field exploration and analyze soil samples from the project site. The results from the field exploration and geotechnical laboratory tests shall be evaluated and engineering analyses shall be performed to provide geotechnical recommendations for the design and construction of the proposed project. A geotechnical report shall be prepared to summarize the data collected, conclusions, and recommendations for design and construction of the proposed project, including retaining wall parameters.

The Consultant team shall obtain all necessary encroachment permits from Caltrans to perform necessary investigations within Caltrans right-of-way. No additional compensation shall be provided.

Survey Engineering:

The Consultant team shall complete a detailed topographic survey of the project area, including ground survey sufficient to accurately design and construct all proposed improvements.

The Consultant team shall provide detailed right-of-way information based on the available right-of-way maps, assessor parcels maps, easement information, and legal documentation within the project limits. The team shall develop a digital file using AutoCAD containing center lines, right-of-way, property lines, Assessor Parcel Numbers, owners, and easements within the project limits. The file will be referenced into all relevant construction documents and clearly labeled to identify proposed work that encroaches into private property or Caltrans right-of-way.

Site Evaluation/ Investigation:

The Consultant team shall take the survey and conduct a comprehensive site investigation, walking the entire project to investigate site conditions, drainage, needed repairs, non-ADA compliant improvements, verify utility locations, and note other typical features not included on the provided survey. Photographs shall be taken throughout the project area for use during design and for pre-construction reference.

At traffic signal locations, the team shall collect and research all available records pertaining to each project intersection, including traffic signal, traffic signal interconnect, bus priority communication plans, controller cabinet inventory, and other crucial information. If a project intersection has a shared jurisdiction, the Consultant shall coordinate with neighboring agencies to obtain the as-built plan and permission to access their traffic signal equipment for inventory.

Base Map Preparation:

Utilizing available information, collected materials, survey, and field investigation data, the Consultant shall prepare a base plan(s) for the project corridor. The base plan is the backbone to accurately design proposed improvements. At this stage of the process a thorough QA/QC review shall be performed on the base plan to ensure accuracy prior to design. The base plan shall show all existing conditions,

including but not limited to, centerline, right-of-way, relevant existing street improvements, utilities, landscape, and existing traffic controls. The base plan shall also have a high-resolution aerial image in the background to illustrate the location of existing improvements relative to buildings and private property features.

Task 3: Preliminary Design

The Consultant shall prepare a 30% preliminary design exhibit for public viewing. A significant element of the conceptual design will be to identify opportunities and constraints within the project limits. The goal is to clearly highlight the project's design features and identify the associated impacts to existing infrastructure. The conceptual plans shall be overlaid on an aerial image and include typical sections to offer enhanced perspective of the project limits and design features. A preliminary concept was prepared for the project application and can be found in Section VI of this RFQ.

In addition, the Consultant shall prepare a conservative preliminary cost estimate based on the concept plan. This will be an important tool to facilitate discussion to refine the plan due to budget limitations.

Preliminary Design Site Walk:

A site walk shall be performed with City staff, sub-consultants, and applicable stake holders to identify project opportunities, constraints, and challenges based on the initial concept design. We encourage a collaborative dialog to identify the project "must haves" and to brainstorm solutions on how to achieve the City's vision.

Refined Preliminary Design:

The Consultant shall refine the preliminary design and cost estimate based on feedback from the site walk. The refined concept shall be provided to the City for final review prior to presenting to the public and key stakeholders.

Design Presentations:

Consultant shall present the 30% preliminary plan to key stakeholders, including City staff, Active Transportation Committee (ATC), Transportation & Circulation Commission (TCC), Infrastructure and Natural Resources Committee (INRAC), and CSUF. Consultant shall gather feedback from all stakeholders and make appropriate revisions.

Consultant shall also assist the City will presentation documents highlighting the proposed improvements adjacent to the Marriott Hotel property. Approval from both CSUF and the hotel operator is required at this stage.

Preferred Concept (30% Design):

The Consultant shall refine the concept and cost estimate based on feedback from the various Commissions, Committees, and stakeholders. The preferred concept shall be provided to the City for final review prior to moving into final design.

Task 4: Plans, Specifications, & Estimate (PS&E)

Plans:

The Consultant shall prepare all construction plans, including, but not limited to, street improvements, drainage, lighting/electrical, traffic signal, irrigation, hardscape/landscape, structural, signing/stripping, and traffic control. The plans shall be prepared at the appropriate scale for the respective discipline and include detailed general notes, construction notes, dimensions, annotations, references, etc. to clearly demonstrate the intended construction activity. All plans shall be prepared to City standards and requirements.

Cost Estimate:

The Consultant shall provide the City with a probable cost of construction concurrent with each submittal. The cost shall be itemized and display anticipated bid items, quantity of material, and unit cost for each item.

Specifications:

The City will provide the Consultant with sample specifications, and Consultant shall compile and assemble special provisions in the format of the City of Fullerton standards. The special provisions will serve as a supplement to the Standard Specifications for Public Works Construction (SSPWC) and Caltrans Standard Specifications, latest edition.

Submittal and Review:

The Consultant shall compile and submit the PS&E at the 60%, 90%, and Final stage to the City for review and comment. All comments shall be compiled into a response matrix to ensure all applicable comments are addressed. The response matrix shall be provided to the City along with each subsequent submittal for reference.

Encroachment Permit:

The Consultant shall prepare the necessary documents and assist the City in obtaining the necessary Caltrans Encroachment Permits and any temporary construction easements, and right-of-entry for this project. The Consultant shall coordinate and prepare all required plans, maps, exhibits, applications, and include other supporting documentation as outlined by Caltrans. Applicant shall access [Caltrans Encroachment Permit System \(CEPS\)](#) to file the City's Encroachment Permit Application Package (EPAP). Additional information and guide on how to file an encroachment permit can be found at [Caltrans Encroachment Permits](#). It is the responsibility of the consultant to assess the project should it require additional permits and/or ROW acquisition from other properties onsite.

Task 5: Bid & Construction Support

The Consultant team shall provide on-call services to the City as may be requested for:

- Attendance at pre-bid meeting
- Responding to bidders' questions
- Preparing addenda as necessary
- Attendance at pre-construction meeting
- Attendance at in-progress construction meetings
- Field visits during construction

- Review of shop drawings, cut-sheets, submittals, and change orders
- Response to Requests for Information (RFI)
- Design changes during construction

The Consultant shall prepare comprehensive record drawings as the closeout of construction. The drawings shall be provided to the City in digital format for review prior to acceptance. The Consultant shall update the drawings based on City comments and provide a final set record drawings to the City in the forms of CAD and PDF files.

SECTION III

INSTRUCTIONS TO PROPOSERS

Examination of Proposal Documents

By submitting a proposal, firm represents that it has thoroughly examined and become familiar with the work required under this RFQ and is capable of performing quality work to achieve the City's objectives.

Addenda

Any changes to the requirements will be made by written addendum to this RFQ and will be posted on Public Purchase website and City of Fullerton Bid Webpage. Any written addenda issued pertaining to this RFQ shall be incorporated into the terms and conditions of any resulting Agreement. City will not be bound to any modifications to or deviations from the requirements set forth in this RFQ as the result of oral instructions. Firms shall acknowledge receipt of addenda in their proposals.

If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFQ, the proposer should immediately provide the City written notice of the problem and request that the RFQ be clarified or modified. Without disclosing the source of the request, the City may modify the documents prior to the date fixed for submission of proposals by issuing an addendum.

If prior to the date fixed for submissions, a firm(s) knows of or should have known of an error in the RFQ but fails to notify the City of the error, the firm shall submit a proposal at their own risk, and if awarded a contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.

Request for Information

Submitting Questions

All questions must be submitted and received by the City no later than 4:00 P.M. PST on Monday, September 23, 2024.

Request for clarifications, questions and comments must be submitted through the City's eProcurement Portal via Public Purchase (www.publicpurchase.com), a third-party website that hosts the City's eProcurement's. Registration is free and interested firms can select to receive automatic bid notifications on this RFQ from the City.

City Responses

Responses from the City will be posted as an Addendum to this RFQ on the City's Bid Webpage and the City's eProcurement Portal, Public Purchase, tentatively scheduled to be posted on September 30, 2024.

City's Bid Webpage: www.cityoffullerton.com/business/bids-rfps
City's eProcurement Portal – Public Purchase: www.publicpurchase.com

CITY CONTACT

General questions regarding this RFQ are to be directed to the following:

Jose Gonzalez, Purchasing Supervisor
Email: jose.a.gonzalez@cityoffullerton.com

****Any contact outside of the City staff/representative shall be cause for disqualification****

Submission of Proposals

Date and Time

Proposals must be submitted at or before 4:00 PM on Monday, October 14, 2024.

Proposals received after the above specified date and time will not be accepted by the City and will not be considered evaluation.

How to Submit

Firm shall submit one (1) complete electronic copy for each applicable category through the City's eProcurement Portal via Public Purchase (www.publicpurchase.com). The cover page of the proposal must bear the firm's name and address with the following clearly marked as follows:

RFQ #2425-02 NUTWOOD AVENUE BICYCLE & PEDESTRIAN MOBILITY IMPROVEMENTS
City of Fullerton – Purchasing
Attn: Jose Gonzalez, Purchasing Supervisor

Proposer shall ensure that proposals are received by the City on or before the specified date and time. Failure to adhere to the deadline will result in automatic disqualification.

California Public Records Act (CPRA)

All proposals submitted in response of this RFQ become the property of the City and under the Public Records Act (Government Code Section 7920.000 et. Seq.) are public record, and as such, may be subject to public review. However, the proposals shall not be disclosed until negotiations are complete and/or recommendation for action is made to the City Manager and/or City Council.

If a proposer claims a privilege against public disclosure for trade secret or other proprietary information, such information must be clearly identified in the proposal. Note that under California Law, price proposal to a public agency is not a trade secret.

Acceptance of Proposals

1. City reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
2. City reserves the right to withdraw or cancel this RFQ at any time without prior notice, and the City makes no representations that any contract will be awarded to any proposer responding to this RFQ.
3. City reserves the right to postpone proposal openings for its own convenience.
4. Submitted proposals are not to be copyrighted.

Pre-Contractual Expenses

City shall not, in any event, be liable for any pre-contractual expenses incurred by firm in the preparation of its proposal. Firm shall not include any such expenses as part of its proposal.

Pre-contractual expenses are defined as expenses incurred by firm(s) in:

1. Preparing its proposal in response to this RFQ;
2. Submitting that proposal to the City;
3. Negotiating with the City any matter related to this proposal; or any other expenses incurred by firm prior to date of award, if any, of the Agreement.

Joint Offers

Where two or more firms desire to submit a single proposal in response to this RFQ, they should do so on a prime-sub-consultant basis rather than as a joint venture. City intends to contract with a single firm and not with multiple firms doing business as a joint venture.

Exceptions and Deviations

The awarded firm shall enter into a Professional Services Agreement with the City based upon the contents of the RFQ and the firm's proposal. The City's standard form of professional services agreement is included in **Section VI**. The interested firms shall carefully review the agreement, especially with regard to the indemnity and insurance provisions, and include with the proposal a description of any exceptions, technical or contractual, requested to the standard contract. **If there are exceptions or if there are no exceptions, a statement to the effect shall be included in the proposal as well. See the exceptions attachment included in Section VIII that must be included with your proposal.**

Insurance Requirements

The Consultant shall procure and maintain throughout the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the consultant, his agents, representatives, employees or subcontractors. Consultant shall provide current evidence of the required insurance in a form acceptable to the City and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this Agreement. **See attached sample Professional Services Agreement for insurance requirements as outlined in Section VI.**

City Business License

The successful Consultant and sub-Consultants are required to obtain and maintain a City of Fullerton business license. The license shall be maintained for the duration of the Agreement. A current business license is not a prerequisite for submittal of the qualifications.

Professional Services Agreement

The successful Consultant shall execute a Professional Service Agreement (PSA) with the City of Fullerton. The City shall not accept any changes, modifications, or waivers of any provision of this Agreement. **See Template Professional Services Agreement in Section VI.**

SECTION IV

REQUIRED PROPOSAL CONTENT

Proposal Format and Content

This section provides the requirements which the City will look for and expect to be included in the proposal.

Electronic proposals shall be submitted electronically in a format that will print on 8 ½" x 11" size paper. Charts and schedules must adhere to this requirement as well. Offers should not include any unnecessary elaborate or promotional material. Lengthy narrative is discouraged, and presentations should be brief and concise. There is no page limitation, however, excessive or irrelevant material will not be favorably received. Links to sample work should be clearly labeled and identified in the proposal.

The proposal should be in the order shown and include the following:

Letter of Transmittal

The Letter of Transmittal will be submitted via a **"Transmittal Form"** for all Proposers for this RFQ. The Transmittal Form will have the following requirements and contain the following information:

- (1) Identification of Proposer that will have contractual responsibility with the City. Identification shall include legal name of company, corporate address, telephone and email address. Include name, title, address, email and telephone number of the contact person identified during period of proposal evaluation.
- (2) Identification of all proposed sub-consultants/sub-contractors (if known) including legal name of company, contact person's name and address, phone number and email address. Relationship between proposer and sub-consultant/sub-contractor if applicable.
- (3) Acknowledgment of receipt of all RFQ addenda, if any.
- (4) Proposal shall remain valid for a period *of no less than 120 days* from the date of submittal.
- (5) Attests that all information submitted with the Proposal is true and correct.
- (6) All licensed professionals in "responsible charge" working on City projects are required to disclose all disciplinary actions against them, including any future actions. Provide a copy of the actions with submittal of proposal. Please provide statement if there are no disciplinary actions.
- (7) Signature of a person authorized to bind proposer to the terms of the proposal.

The Transmittal Form shall be completed and submitted with the proposals on Company Letterhead and is provided on the following page.

{Insert on Consultant Letterhead}

2425-02 Nutwood Avenue and Pedestrian Mobility Improvements – ATP Cycle 6 Engineering Design Services

Organization and Contact Person's Information:

Provide the information of the business and individual that will have contractual responsibility with the City of Fullerton:	
Company Name:	
Company Address:	
Contact Name:	
Job Title:	
Contact Address:	
Contact Phone Number:	
Contact Email Address:	

Identification of All Proposed Sub-Consultants (repeat information for all sub-consultants):

Sub-consultant	
Company Name:	
Contact Address:	
Contact Name:	
Contact Phone Number:	
Contact Email Address:	
Work to be performed:	

Note - All licensed professionals in “responsible charge” working on City projects (Engineer and/or surveyor) are required to disclose all disciplinary actions against them, including any future actions. Provide a copy of the actions with submittal of proposal. Please provide statement if there are no disciplinary actions.

- ☐ I understand that submitted proposal shall remain valid for a period of no less than 120 days from the date of submittal.
- ☐ I acknowledge the receipt of all RFQ addenda, if any.
- ☐ I attest that all information submitted with the proposal is true and correct.

<hr/>	<hr/>
Signature	Date
<hr/>	
Name and Title	

Technical Proposal

Qualifications & Experience

This section of the proposal should establish the ability of the firm(s) to satisfactorily perform the required work by reasons of: experience in performing work of the same or similar nature; demonstrated experience working with other public agencies; strength and stability of the firm(s); staffing capability; work load; record of meeting schedules on similar contracts; and supportive client references. Most recent references preferred.

Proposer to:

- (1) Provide a brief description of your firm's background, size, office locations in California, and relevant experience history as it may be relevant to the services required. Include subconsultants as applicable.
- (2) Describe your key staff's experience providing similar services for other public agencies and authorities, with an emphasis on local area jurisdictions and agencies.
- (3) Similar Projects/Contracts – Provide a brief description of the project scope, personnel involved and their roles, plus agency and contact information for agency Project Manager. Indicate firm's role in project (prime or sub).
- (4) References – Please provide at least three (3) current client references for whom your firm has performed similar work to that requested in this RFQ during the past five (5) years. For each client, please provide the name, street address, telephone number, and email address.
- (5) Other Services – Please provide list of other services that your firm provides which are not identified in the Scope of Work but could be beneficial to the City.

Project Understanding and Approach

Provide a detailed project understanding and approach based on the specifics identified in the ATP application and this RFQ. Include anticipated challenges and how the project team will address and surpass those challenges. Include any unique approach to various design elements. Describe how the project team will deliver the project within schedule and budget.

Detailed Work Plan

Proposer shall provide a written narrative of proposed Work Plan that addresses the Scope of Services and shows Proposer's understanding of City's needs and requirements.

- (1) Describe firm's approach to the project scope of work, including how your firm produces deliverables free of errors and how you will address errors if they occur.
- (2) Identify all task deliverables.
- (3) Project a preliminary project schedule

- (4) Provide any unique attributes or distinguishing characteristics which would be of value to the City.

Proposed Staffing and Organization

This section of the proposal should establish the method that will be used by the firm to manage the contract as well as identify key personnel assigned. Proposed staffing and organization are to be presented by firm identified in the Scope of Work.

Proposer to:

- (1) Provide current position, education, experience and applicable professional credentials of contract staff. Include applicable professional credentials of "key" contract staff only and how long each person has been with the firm.
- (2) Furnish brief resumes (no more than one page each) for key personnel.
- (3) Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, and proposed position for this project, and how long each person has been with the firm.
- (4) Include an organization chart that clearly delineates communication/reporting relationships among the staff, including sub-consultants.
- (5) Include a statement that key personnel will be available to the extent proposed for the duration of the project, acknowledging that no person designated as "key" to the contract shall be removed or replaced without the prior written concurrence of the City.

Cost Proposal / Fee Schedule

Cost proposals are NOT requested at this time and should not be submitted with your Statement of Qualifications proposal. Upon City's evaluation of proposals, which may include a possible interview, the top-ranked firm will be asked to provide project Cost Proposal for consideration.

Appendices

Information considered by proposer to be pertinent to this contract and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Please note that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief.

Status of Past and Present Contracts Form

Firm(s) are required to complete and sign the form entitled "Status of Past and Present Contracts" provided in this RFQ and submit as part of the proposal. The firm shall list the status of past and present contracts where either the firm has provided services as a prime contractor or a sub-consultant during the past five (5) years and the contract has ended or will end in termination,

settlement or litigation. A separate form shall be completed for each contract. If the contract was terminated, list the reason for termination. Firm must also identify and state the status of any litigation, claims or settlement agreements related to any of the identified contracts. Each form must be signed by the firm confirming that the information provided is true and accurate. The firm(s) are required to submit a copy of the completed form(s) as part of the proposal.

SECTION V

EVALUATION AND AWARD

Evaluation Criteria

City will evaluate the proposals received based on the following criteria outlined below and may use different weighting factors and percentages for different criteria or sub-criteria. Respondents who are not actively engaged in providing services of the nature proposed in their response to this request and/or who cannot clearly demonstrate to the satisfaction of the City their ability to satisfactorily perform the work in accordance with the requirements set forth in this request will not be considered. The City shall be the sole judge of the qualifications and services and its decision shall be final. Discussions may be conducted with respondents who submit qualifications determined to be reasonably acceptable of being selected for award.

City will evaluate the proposals received and potential interview(s) based on the following criteria:

1. **Adherence to RFQ Instructions** - Presentation, completeness, clarity, organization, and conformance to the RFQ content.
2. **Qualifications of the Firm** - Technical experience in performing work of a similar nature; experience working with public agencies; strength and stability of the firm; and assessment by client references.
3. **Project Management Approach** - Qualifications of proposed key personnel; logic of organization; and adequacy of labor and resources to satisfactorily perform the requested services for its Project and meet the City's needs.
4. **Work Plan** - Understanding of the City's requirements, objectives, and approach.
5. **Firm Interview** - The top-ranked firms, upon successfully possessing the desired qualifications, will be invited to an oral, in-person Interview. The Interview will be evaluated and considered among all other qualified criterion to select top firm.

The City will select firm(s) based upon the completeness and adherence to RFQ instructions, responding firms' qualifications and experience, project management approach and work plan or implementation plan, as well as responses to any requests for information as set forth herein to this RFQ. If any addenda are made to the RFQ, the information provided will be considered as well. It should be noted that none of these factors in and of themselves are determinative, and the City reserves the right to select a firm on any basis or weighted criteria that is in the best interests of the City.

The City may contact firms in response to questions raised in their proposals and the City reserves the right to cancel this solicitation without selecting any firms.

Evaluation Procedure

An Evaluation Committee will be formed to review and evaluate all proposals. The Evaluation Committee will be comprised of City staff and may include outside consultants. The City of Fullerton reserves the right to request clarification of additional information from any firm at any time. After the proposals are evaluated; the City, at its sole discretion, may elect to interview all, some, or none of the firms for clarification of additional information at any time. Firms may be asked to submit additional documentation at or after the interview stage.

Based upon evaluation of the proposals and any interviews (if requested), the top-ranked Consultant will be identified and requested to provide a Cost Proposal for the scope of work identified in their qualifications proposal. The City's Public Works Engineering Staff will review Cost Proposal and Project Scope. If negotiations on the Project Scope and Fees are to the Committee's satisfaction, Staff will recommend project award to the City Manager for consideration. If required, the City Manager will then forward its recommendation to the City Council for final action. If negotiations fail with the top-ranked consultant, the City can enter into negotiations with the second-rank consultant, and repeat the process until a firm and cost proposal is selected and recommended to award for this project.

The City reserves the right to select a firm without conducting interviews or abandon this RFQ. **Final selection of the awarded firm(s) and the authority of awarding the agreement to proceed with these services shall be at the sole discretion of the City and if required, City Council.**

Award

After conclusion of the evaluation period and Cost Proposal(s), a **"Notice of Intent to Award"** will be sent to all proposers identifying the winning firm for this RFQ. Award to any firm(s) selected is *contingent upon* the successful negotiation of final agreement terms and the approval of City. The City of Fullerton may negotiate agreement terms with the selected firm(s) prior to award, and expressly reserves the right to negotiate with several firms simultaneously. However, since the selection and award may be made without discussion with any firm, the proposal(s) and cost proposals submitted should contain firm's most favorable terms and conditions.

Negotiations shall be confidential and not subject to disclosure to competing Proposers until an agreement is reached. If contract negotiations cannot be concluded successfully, the City may negotiate an agreement with the next best qualified Proposer or withdraw the RFQ. *In the event the City does not approve the recommendation to award, the RFQ may be cancelled without any cost or obligation of City.*

City Manager and/or City Council action will be requested by City staff to award agreement to the selected firm.

Notification of Award

Proposers who submit a proposal in response to this RFQ shall be notified regarding the winning firm being awarded an agreement. Such notification shall be made within seven (7) days of the date the agreement is awarded. **Notice of Intent to Award** will be sent to all firms who submitted a proposal via Public Purchase, the City's eProcurement platform, and will also be available on the City's bid webpage www.cityoffullerton.com/business/bids-rfps.

SECTION VI
SAMPLE PROFESSIONAL SERVICES AGREEMENT

**CITY OF FULLERTON
PROFESSIONAL SERVICES AGREEMENT
WITH
VENDOR/CONSULTANT BUSINESS NAME**

THIS AGREEMENT is made and entered into this ___ day of **MONTH, YEAR** ("Effective Date"), by and between the CITY OF FULLERTON, a California municipal corporation ("City"), and **VENDOR/CONSULTANT BUSINESS NAME**, a **California corporation** ("Consultant").

WITNESSETH:

A. City proposes to utilize the services of Consultant as an independent contractor to provide certain **BRIEF DESCRIPTION OF SCOPE OF SERVICE FOR INSERT PROJECT NAME & CIP # (as applicable)**, as more fully described herein.

B. Consultant represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated.

C. City and Consultant desire to contract for the specific services described herein, and desire to set forth their rights, duties and liabilities in connection with the services to be performed.

D. No official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in the City's Request for Qualifications ("RFQ"), attached hereto as Exhibit "A," and Consultant's Response to City's RFP ("Consultant's Proposal"), attached hereto as Exhibit "B," both incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws and regulations that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the reasonable satisfaction of the City, in accordance with the applicable professional standard of care and City specifications and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable and non conflicting Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the **fee schedule set forth in Exhibit "B"**.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in Consultant's Proposal set forth in **Exhibit "B"** unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date of this Agreement until three (3) years after the termination date.

2.5. W-9. Consultant must provide City with a current W-9 form prior to the commencement of work under this Agreement. It is the Consultant's responsibility to provide to the City any revised or updated W-9 form during the term of this Agreement.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue through **INSERT TERMINATION DATE (i.e. December 31, 2024 or 'for a period of one year')**, unless terminated as provided herein.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Insurance Required. Consultant shall procure and maintain throughout the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, employees or subcontractors subject to the limitations of Civil Code Section 2782.8. Consultant shall provide current evidence of the required insurance in a form acceptable to the City and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way, the Indemnification and Hold Harmless clause contained herein in Section 6.8 or the extent to which Consultant may be held responsible for payments of damages to persons or property.

5.2. Minimum Scope and Limits of Insurance.

A. Commercial General Liability Insurance. Consultant shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form #CG 00 01, with a limit of not less than \$2,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit.

B. Business Automobile Liability Insurance. Consultant shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form # CA 00 01, with a limit of not less than \$2,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles. (ENVIRONMENTAL CONTRACTS ONLY) If Consultant's subcontractors or suppliers haul hazardous material (including, without limitation, waste), they must carry Auto Liability insurance applicable to all hazardous waste hauling vehicles, and include MCS 90 and ISO Form CA 99 48 03 06 – Pollution Liability – Broadened Coverage for Covered Autos,

C. Workers' Compensation and Employers' Liability Insurance. Consultant shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than \$1,000,000 each accident.

D. Professional Liability Insurance. Consultant shall maintain professional liability insurance appropriate to Consultant's profession with a limit of not less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If policy is written as a "claims made" policy, the retro date of the policy shall be prior to the start of the contract work.

5.3. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by City.

5.4. Other Insurance Provisions. The required insurance policies shall contain or be endorsed to contain the following provisions:

A. Commercial General Liability. The City, its elected or appointed officials, officers, employees and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Consultant, including materials, parts or equipment furnished in connection with such work or operations. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Civil Code Section 2782.8. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms, if later revisions used). Such coverage as an additional insured shall not be limited to the period of time during which the Consultant is conducting ongoing operations for the CITY but rather, shall continue after the completion of such operations. The coverage shall contain no additional special limitations, outside standard coverage exclusions and coverage limits, on the scope of its protection afforded to the CITY, its officers, employees and volunteers.

B. Commercial General Liability. This insurance shall be primary insurance as respects the CITY, its officers, employees and volunteers at least as broad as ISO CG 20 01 04 13 and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by the City, its officers, employees and designated volunteers shall be excess of this insurance and shall not contribute with it.

C. Professional Liability and Pollution or Asbestos Pollution Liability (ENVIRONMENTAL CONTRACTS ONLY). If these policies are written on a "claims made" form, the Retroactive Date must be shown and must be before the date of the contract or beginning of contract work. The insurance must be maintained and evidence of insurance must be provided for at least (5) years after completion of the contract work. If the 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 Consultant must purchase "extended reporting coverage" for a minimum of five (5) years after completion of contract work. A copy of the claims reporting requirements must be submitted to the City for review. (ENVIRONMENTAL CONTRACTS ONLY: If the services involve lead-based paint or asbestos identification/remediation, the Pollution Liability shall not contain lead based paint or asbestos exclusions. If the services involve mold identification/remediation, the Pollution Liability shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.)

D. Workers' Compensation and Employers' Liability Insurance. Insurer shall waive their right of subrogation against City, its officers, employees and volunteers for work done on behalf of City and shall endorse the policy with a waiver of subrogation.

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

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

F. Subcontractors. Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein and Consultant shall ensure that City is an additional insured on insurance required from subconsultants.

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

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

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

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of

Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Vendor/Consultant Name
Mailing Address
Mailing Address
Attn: Name And Title

IF TO CITY:

City of Fullerton
303 W. Commonwealth Ave.
Fullerton, CA 92832
Attn: Public Works Director

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless. To the fullest extent of the law, and consistent with Civil Code section 2782.8, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings

brought against City, its elected and appointed officials, officers, agents, and employees to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in performing design professional services pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence, recklessness or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, recklessness, or willful misconduct of Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents, and employees based upon such negligence, recklessness, or willful misconduct, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole negligence, active negligence or willful misconduct of the City; and does not apply to any passive negligence of the City unless caused in part by the Consultant. Further, in no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault, unless otherwise specified in Civil Code section 2782.8. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors

providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.12. Ownership of Documents. All findings, reports, CAD drawings, documents, information and data, including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files, audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.13. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.15. Responsibility for Errors. Consultant shall be responsible for its work under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs,

without prejudice to any other remedy to which City may be entitled to at law or equity, Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction. In addition, Consultant shall reimburse City for any and all costs, expenses and/or damages, if any, that the City has incurred due to the aforementioned error or omission.

6.16. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending

provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

6.27. Executive Order N-6-22. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the City determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The City shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the City.

Contractor shall immediately notify City in writing upon being subjected to Economic Sanctions or upon being charged by an government agency of conducting prohibited transactions within the meaning of Executive Order N-6-22.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF FULLERTON

Eric J. Levitt, City Manager

Date: _____

CONSULTANT

Signature

Date: _____

Name and Title

On File
Social Security or Taxpayer ID Number

APPROVED AS TO FORM:

Richard D. Jones, City Attorney

SECTION VII

STATUS OF PAST AND PRESENT CONTRACT FORM

Firm is required to complete and sign the form entitled "Status of Past and Present Contracts" provided in this RFQ and submit as part of the proposal. Firm shall list the status of past and present contracts where either the firm has provided services as a prime contractor or a sub-consultant during the past five (5) years and the contract has ended or will end in termination, settlement or litigation. A separate form shall be completed for each contract. If the contract was terminated, list the reason for termination. Firm must also identify and state the status of any litigation, claims or settlement agreements related to any of the identified contracts. If no contract ended in termination, settlement or litigation, a statement to that effect shall be made on this form. Each form must be signed by the firm's confirming that the information provided is true and accurate. Firm is required to submit a copy of the completed form(s) as part of the electronic proposal in Public Purchase.

Public Agency city/county/other:	
Contact name:	Phone:
Project award date:	Original Contract Value:
Term of Contract:	
1) Status of contract:	
2) Identify claims/litigation or settlements associated with the contract:	

By signing this Form entitled "Status of Past and Present Contracts," I am affirming that all of the information provided is true and accurate.

Signature_____

Date_____

Name: _____

Title:_____

SECTION VIII
EXCEPTIONS FORM

If your company is taking exception to any of the specifications, terms or conditions (including insurance indemnification and/or proposed contract language) stated in this Request for Qualifications Proposal, please indicate below and describe details: (check any that apply).

- ☐ No exceptions taken
- ☐ Exception taken to the scope of work or specifications
- ☐ Exception taken to indemnification and insurance requirements
- ☐ Exception to proposed contract language
- ☐ Other

Please explain any of the checked items

PROPOSING FIRM _____ DATE _____

BUSINESS ADDRESS _____

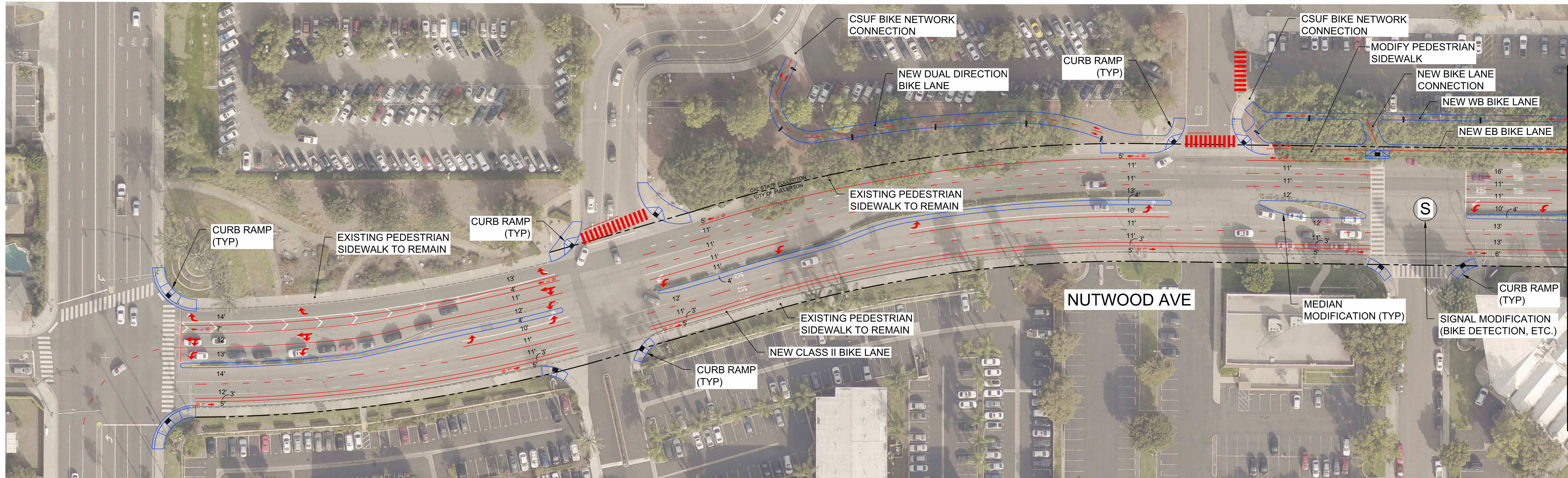
SIGNATURE OF REPRESENTATIVE: _____

BY: _____ TITLE _____

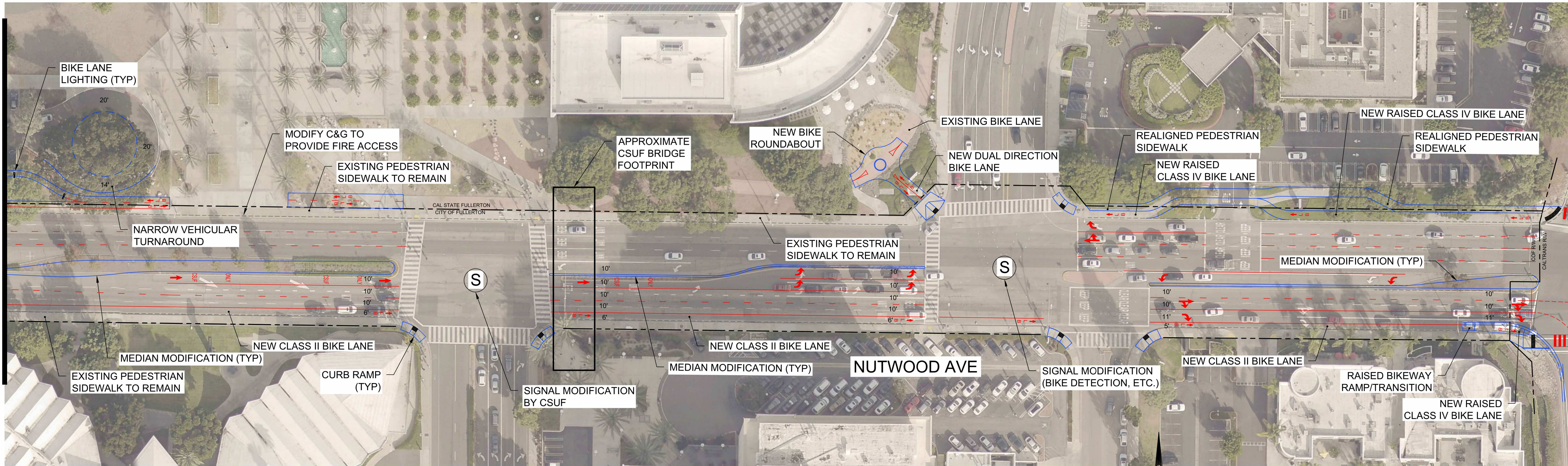
INSTRUCTION REGARDING SIGNATURE: If proposer is an individual, state "Sole Owner" after signature. If firm is a partnership, signature must be by a general partner, so stated after "Title". Names of all other partners and their business addresses must be shown below. If proposer is a corporation, signature must be by an authorized officer, so stated after "Title", and the names of the President and Secretary and their business addresses must be shown below:

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SECTION IX
CONCEPT EXHIBIT



MATCHLINE - SEE BELOW LEFT



MATCHLINE - SEE ABOVE RIGHT

SEE SHEET 2

