




CITY COUNCIL AGENDA

1200

MEETING DATE: MARCH 21, 2017
TO: CITY COUNCIL/CITY MANAGER
FROM: PUBLIC WORKS DEPARTMENT
SUBJECT: AWARD OF CITY TREE SERVICES CONTRACT

Approved for Agenda:


City Manager's Office

APPROVED

SUMMARY

Proposed award of City tree services contract to West Coast Arborists (WCA) in an annual amount not to exceed \$1,183,170.

RECOMMENDATION

1. Authorize the Public Works Director to execute agreements with West Coast Arborists in an amount not to exceed \$1,183,170 for City tree services, in a form approved by the City Attorney. There will be two agreements: the first will be in effect April 1, 2017 through June 30, 2017 for the provision of tree services through the remainder of the fiscal year; the second will be effective July 1, 2017 through June 30, 2022 and may be extended for five one-year terms. The five-year contract will be synchronized with the City's budget process.
2. Approve a budget transfer of \$33,000 from the Sanitation Fund balance to fund the remaining three months of services for fiscal year 2016-2017, and increase the fiscal year 2016-2017 appropriation in Object 23424-6319 from \$1,140,260 to \$1,173,260. The fiscal year 2017-2018 proposed budget will reflect the full cost of the contract of \$1,183,170.

FISCAL IMPACT

The new annual contract amount is not to exceed \$1,183,170. Funding for this work is provided through the City's Sanitation fund and a transfer from the Sanitation Fund

SCANNED

balance of \$33,000 will be required to fund the increase in contract costs through the end of the fiscal year.

DISCUSSION

In mid-2015, the City's tree services contractor, West Coast Arborists (WCA) notified staff that a significant increase in the contract would be required due to wage regulations approved by the California Department of Industrial Relations. Because of increased labor costs, WCA was asking its 220 contract agencies for increases of about 35 percent at renewal, or from \$47.00 per trim to \$63.45. Other services, like tree removal, incurred similar increases.

Staff prepared a Request for Proposals (RFP) that was released on November 7, 2016, with a submission date of December 12, 2016. The RFP was advertised on the City's "Bids and RFP's" web page and electronically distributed via Planwell, a well-known RFP distribution service. Four companies attended the mandatory pre-proposal conference and two companies submitted proposals: WCA and Great Scott. The initial responses did not adequately address the City's needs, so staff released a revised RFP on February 13, 2017, with a due date of February 27, 2017. Specifically, the revised RFP more precisely defined light pruning as opposed to regular grid pruning. It also clarified that cost proposals would be evaluated on the basic trim services shown in the table below. Again, only West Coast Arborists and Great Scott responded.

The table below summarizes both companies' RFP responses:

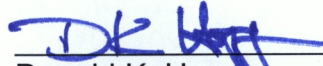
Table One: Fullerton RFP Proposal Results

Prune Type	No. of Trees	Great Scott		WCA	
		Cost per Tree	Total	Cost per Tree	Total
Grid Prune	7,867	\$73	\$574,291	\$59	\$464,153
Light Prune	4,700	\$23	\$108,100	\$22	\$103,400
Palm Prune	1,433	\$53	\$75,949	\$37	\$53,021
Total	14,000		\$758,340		\$620,574

WCA's proposal is \$137,766 less than Great Scott's for basic trim services. In addition to the basic services, staff anticipates removing 600 trees and stumps and planting 250 new trees. The effects of the prolonged drought have led to many more trees being killed or damaged than would normally need to be removed. Other services, such as trimming by request, emergency response, and other non-scheduled work would add \$562,600 for a total of \$1,183,170 per year.

WCA has almost 20 years of institutional knowledge invested in Fullerton and its large and diverse urban forest. WCA is the largest contract tree service provider in the state, with more than 220 municipal customers and provides an excellent business model. The

company closely monitors its crews' activities and can adjust staffing to ensure maximum production. It maintains its own large fleet of trimming vehicles and equipment at its Anaheim headquarters, so replacements are readily available. Trim quality is consistently high, and its managers meet with City staff regularly to review past performance and plan for future needs. For all the reasons set forth above, staff recommends that the City Council authorize agreements with West Coast Arborists for annual tree trimming services.



Donald K. Hoppe
Director of Public Works

Attachments:

Attachment 1 - Proposed Contract Cost Analysis

Attachment 2 - RFP response summaries from WCA and Great Scott

Attachment 3 - Draft Agreement

Proposed Contract Cost Analysis

Description	No. of Trees	Proposed Cost	
Grid Prune	7,867	\$59	\$464,153
Light Prune	4,700	\$22	\$103,400
Palm Prune	1,433	\$37	\$53,021
Trim Total	14,000		\$620,574
Tree & Stump Removals*	600	\$646	\$387,600
Planting—24" box	250	\$300	\$75,000
Sub-Total Scheduled Services			\$1,083,170
Demand Trims; After-Hours and Emergency Services			100,000
Total Contract Cost			\$1,183,170
* Based on typical tree and stump removal			

EXHIBIT F

**CITY OF FULLERTON
REQUEST FOR PROPOSAL FOR CITY TREE MAINTENANCE SERVICES**

PROPOSER'S CERTIFICATION and PROPOSAL ITEM PRICING

Certification - I certify that I have read, understand and agree to the terms and conditions of this Request for Proposals. I have examined the Scope of Services (Exhibit B) and am familiar with the scope of work locations. I am familiar with all the existing conditions and limitation that may impact work requests. I understand and agree that I am responsible for reporting any errors, omissions or discrepancies to the City for clarification prior to the submission of my proposal.

Proposal Item Price - Pricing shall be based on a unit cost for services described in Exhibit B. Fee must be inclusive of all costs, including but not limited to, direct and indirect costs for labor, overhead, incidental supplies, travel, mileage, and fuel. Any special materials will be purchased by the contractor only after discussed and authorized by the City Project manager or designee in writing.

Bid proposal fee will be based on Pruning Section Grand Total Price.

PRUNING SECTION		1	2	3
Description	Unit	UNIT PRICE	Estimated Annual Units	COLUMN 1 x 2 = C TOTAL PRICE
Light Prune	Each	\$23.00	4,700	\$108,100.00 A
Grid Prune	Each	\$73.00	7,867	\$574,291.00 B
Palm Prune (Various Species)	Each	\$53.00	1,433	\$75,949.00 C

GRAND TOTAL PRICE ~ PRUNING SECTION ONLY (A+B+C) \$758,340.00

Payment: Payment shall be made based on the unit prices quoted above. Payment will be made monthly in arrears for the actual number of trees pruned and extra work authorized by the City's Contract Manager. Contractors' Invoices will include a detailed accounting of all work and the City's purchase order number.

GPS Tree Inventory cost only applies to new trees planted after completion of initial Tree inventory.

REMOVALS		
Description	Unit	UNIT PRICE
Palm Skinning	Per Foot	\$15.00
Tree & Stump Removal	Diameter Standard Height Per Inch	\$29.00
Tree Only Removal	Diameter Standard Height Per Inch	\$22.00
Stump Only Removal	Diameter Standard Height Per Inch	\$9.00
INSPECTIONS		
Inspection Report (Including Risk Assessment)	Per Tree	\$175.00
Consultant Arborist Inspection (Level 1, 2 or 3)	Per Hour	\$125.00
PLANTING - DESIGNATED SPECIES		
Plant 15 Gallon with root barrier	Each	\$165.00
Plant 24 inch Box with root barrier	Each	\$285.00
Plant 36 inch Box with root barrier	Each	\$995.00
Plant 48 inch Box with root barrier	Each	\$1,995.00
Plant 60 inch Box with root barrier	Each	\$2,795.00
PLANTING - SPECIAL VARIETY TREES *		
Plant 15 Gallon with root barrier	Each	\$195.00
Plant 24 inch Box with root barrier	Each	\$395.00
Plant 36 inch Box with root barrier	Each	\$1,195.00
Plant 48 inch Box with root barrier	Each	\$2,195.00
Plant 60 inch Box with root barrier	Each	\$3,295.00

SPECIALTY SERVICES		
Service Request Prune	Each	\$ 169.00
Large Scale Prune	Each	\$ 295.00
Root Pruning with 12" barrier	Foot	\$ 19.00
Root Pruning with 18" barrier	Foot	\$ 24.00
Watering of young trees, water truck & operator	Day	\$ 595.00
CREW RENTALS		
Crew Rental (3 men) (Minimum 3 Hours)	Per Hour	\$ 270.00
Emergency Crew Rental (3 men) (Minimum 3 hours)	Per Hour	\$ 360.00
TECHNICAL		
GPS Tree Inventory of Existing Trees (Approx. 40,000 trees)	Lump Sum	\$ N/A
Global Positioning System (GPS) Tree Inventory Cost**	Per Tree Site	\$4.00

Cooperative Purchasing

It is intended that any other public agency (e.g., city, county, school district, public authority, public agency, municipality, and other political subdivision or public corporation) shall have the option to participate in any award made as a result of this solicitation at the same prices. The City of Fullerton shall incur no financial responsibility in connection with any purchase by other public agency. The public agency shall accept sole responsibility for placing orders and making payments to the vendor.

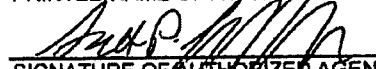
Labor Classification

The work performed on this contract is routine, recurring, and usual. The work includes watering, trimming, pruning, planting, removal and replacement of trees and plants, and servicing of irrigation. The rates included in the Cost Proposal are based on prevailing wage determination "Landscape Maintenance Laborer".

Great Scott Tree Service, Inc. 714.826.1750 714.908.2044
LEGAL NAME OF COMPANY PHONE AND FAX NUMBERS

10761 Court Ave., Stanton, CA 90680
BUSINESS ADDRESS

Scott Griffiths President
PRINTED NAME OF AUTHORIZED AGENT TITLE

 2-24-2017 sgriffiths@gstsincc.com
SIGNATURE OF AUTHORIZED AGENT DATE E-MAIL ADDRESS

33-0328537 556832
FEDERAL ID NUMBER CONTRACTOR LICENSE NUMBER

EXHIBIT F

**CITY OF FULLERTON
REQUEST FOR PROPOSAL FOR CITY TREE MAINTENANCE SERVICES**

PROPOSER'S CERTIFICATION and PROPOSAL ITEM PRICING

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Palm Prune (Various Species)	Each	\$ 37.00	1,433	\$ 53,021.00 C

GRAND TOTAL PRICE – PRUNING SECTION ONLY (A+B+C) \$ 620,574.00

Payment: Payment shall be made based on the unit prices quoted above. Payment will be made monthly in arrears for the actual number of trees pruned and extra work authorized by the City's Contract Manager. Contractors' Invoices will include a detailed accounting of all work and the City's purchase order number.

GPS Tree Inventory cost only applies to new trees planted after completion of initial Tree Inventory.

REMOVALS		
Description	Unit	UNIT PRICE
Palm Skinning	Per Foot	\$ 13.00
Tree & Stump Removal	Diameter Standard Height Per Inch	\$ 38.00
Tree Only Removal	Diameter Standard Height Per Inch	\$ 28.00
Stump Only Removal	Diameter Standard Height Per Inch	\$ 10.00
INSPECTIONS		
Inspection Report (Including Risk Assessment)	Per Tree	\$ 200.00
Consultant Arborist Inspection (Level 1, 2 or 3)	Per Hour	\$ 175.00
PLANTING – DESIGNATED SPECIES		
Plant 15 Gallon with root barrier	Each	\$ 150.00
Plant 24 inch Box with root barrier	Each	\$ 300.00
Plant 36 inch Box with root barrier	Each	\$ 900.00
Plant 48 inch Box with root barrier	Each	\$ 2,400.00
Plant 60 inch Box with root barrier	Each	\$ 4,000.00
PLANTING - SPECIAL VARIETY TREES *		
Plant 15 Gallon with root barrier	Each	\$ 200.00
Plant 24 inch Box with root barrier	Each	\$ 400.00
Plant 36 inch Box with root barrier	Each	\$ 1,000.00
Plant 48 inch Box with root barrier	Each	\$ 2,500.00
Plant 60 inch Box with root barrier	Each	\$ 4,200.00

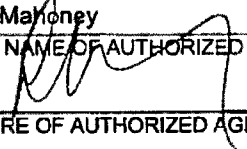
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Watering of young trees, water truck & operator	Day	\$ 640.00
CREW RENTALS		
Crew Rental (3 men) (Minimum 3 Hours)	Per Hour	\$ 240.00
Emergency Crew Rental (3 men) (Minimum 3 hours)	Per Hour	\$ 360.00
TECHNICAL		
GPS Tree Inventory of Existing Trees (Approx. 40,000 trees)	Lump Sum	\$ 0.00
Global Positioning System (GPS) Tree Inventory Cost**	Per Tree Site	\$ 6.00

Cooperative Purchasing

It is intended that any other public agency (e.g., city, county, school district, public authority, public agency, municipality, and other political subdivision or public corporation) shall have the option to participate in any award made as a result of this solicitation at the same prices. The City of Fullerton shall incur no financial responsibility in connection with any purchase by other public agency. The public agency shall accept sole responsibility for placing orders and making payments to the vendor.

Labor Classification

The work performed on this contract is routine, recurring, and usual. The work includes watering, trimming, pruning, planting, removal and replacement of trees and plants, and servicing of irrigation. The rates included in the Cost Proposal are based on prevailing wage determination "Landscape Maintenance Laborer".

West Coast Arborists, Inc.		(714) 991-1900/ (714) 956-3745
LEGAL NAME OF COMPANY		PHONE AND FAX NUMBERS
2200 E. Via Burton, Anaheim, CA 92806		
BUSINESS ADDRESS		
Patrick Mahoney	President	
PRINTED NAME OF AUTHORIZED AGENT	TITLE	
	2/24/17	vgonzalez@wcainc.com
SIGNATURE OF AUTHORIZED AGENT	DATE	E-MAIL ADDRESS
95-3250682	366764	
FEDERAL ID NUMBER	CONTRACTOR LICENSE NUMBER	

**CITY OF FULLERTON
REQUEST FOR PROPOSAL FOR CITY TREE MAINTENANCE SERVICES**

AGREEMENT

THIS AGREEMENT, made and entered into this X day of XXX, XXXX by and between X (hereinafter "Contractor"), and the City of Fullerton, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter "City").

RECITALS

1. The City desires to retain a Contractor having special skill and knowledge in the field of Street Tree Maintenance Services.
2. Contractor represents that Contractor is able and willing to provide such services to the City and is licensed by the State of California to provide Street Tree Maintenance Services.
3. In undertaking the performance of this Agreement, Contractor represents that it is knowledgeable in its field and that any services performed by Contractor under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional Tree Maintenance firm.

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:

I. DEFINITIONS (if any)

II. TERMS AND CONDITIONS

A. TERM

The term of this contract shall commence the date of City Council award and approval of all insurance and bonds, and terminate MONTH, DAY, YEAR, unless earlier terminated as set forth in Section H, below. City is hereby granted an option to renew for up to 2 (two) additional 2 (two) - year periods on the terms and conditions set forth herein. Said options shall be exercised in writing at least thirty (30) days prior to the end of the initial term or any extension thereof.

B. CONTINUED FUNDING

In the event funding is not allocated for parking control enforcement services during the annual budget approval process, the City shall notify the provider of such occurrence in writing at least thirty (30) days before the end of the current fiscal period, and contract shall terminate on the last day of current fiscal period without penalty or expense to the City.

C. COMPENSATION

1. City agrees to pay and contractor agrees to accept as total payment for its services, the rates and charges set forth in contractor's proposal, attached hereto

and incorporated by reference. The amount to be expended for services shall not exceed (dollar amount) (\$_____) annually during the term of this agreement.

2. Invoices

- a. The contractor shall submit a monthly invoice by the fifteenth of the month to the City for the services rendered in the prior month.
- b. All invoices for work performed under this contract shall be submitted in a format approved by the City. Invoices shall include the following information at a minimum:
 - i. Contractor's invoice number
 - ii. Beginning and ending dates for services
 - iii. City project number and/or name (if applicable)
 - iv. Work site address/location (if applicable)
 - v. Unit cost, subtotals and total for invoice

3. Payment by City shall be made within sixty (60) days following receipt of proper invoice, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance of a professional parking control enforcement services.

4. Extra Work

No new work of any kind shall be considered an extra unless a separate estimate is given for said work and the estimate is approved by the City in writing before the work is commenced. The contractor will be required to provide detailed information of such extra work. Documentation of contract compliance may be required on some occasions. Work performed prior to obtaining written approval of the City shall not be included within the Scope of Work and may not be paid.

D. INDEPENDENT CONTRACTOR

Contractor shall during the entire term of this contract, be construed to be an independent contractor and not an employee of the City. This contract 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 manner in which contractor performs the services required by this contract. However, the services to be provided by contractor shall be provided in a manner consistent with all applicable standards and regulations governing such services. Contractor 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.

E. INSURANCE

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

1. Commercial General Liability Insurance. Contractor shall maintain commercial general liability insurance which shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting

there from and damage to property, resulting from any act or occurrence arising out of contractor'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 One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$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 and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions. A sample additional insured endorsement is attached hereto as Exhibit H.

2. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for owned, hired and nonowned automobiles.
3. Worker's Compensation Insurance. In accordance with the provisions of Section 3300 of the Labor Code, contractor is required to be insured against liability for Workers' Compensation or to undertake self-insurance. Prior to commencing the performance of the work under this contract, contractor agrees to obtain and maintain any employer's liability insurance with limits not less than One Million Dollars (\$1,000,000) per accident.
4. If contractor 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 One Million Dollars (\$1,000,000) per claim.
5. The following requirements apply to the insurance to be provided by contractor pursuant to this section:
 - a. Contractor shall maintain all insurance required above in full force and effect for the entire period covered by this agreement.
 - b. Certificates of insurance shall be furnished to the City upon execution of this contract and shall be approved in form by the City Attorney.
 - c. Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.
6. If contractor 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 contract. Such termination shall not affect contractor's right to be paid for its time and materials expended prior to notification of termination. Contractor waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

F. HOLD HARMLESS/ INDEMNIFICATION

To the fullest extent permitted by law, contractor shall indemnify, defend and hold harmless City, its officers, agents and employees (collectively, the "indemnified parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a claim; collectively, "claims"), which may arise from or in any manner related (directly or indirectly) to any work performed or services provided under this contract (including, without limitation, defects in workmanship and/or materials) or contractor's presence or activities conducted performing the work (including the negligent and/or willful acts, errors and/or omissions of contractor, its principals, officers, agents, employees, vendors, suppliers, contractors, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them). Notwithstanding the foregoing, nothing herein shall be construed to require contractor to indemnify the indemnified parties from any claim arising from the sole negligence or willful misconduct of the indemnified parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this contract. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the contractor.

G. NOTICE

Any notice, tender, demand, delivery or other communication pursuant to this agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, sent by tele facsimile communication, or via e-mail to the following persons:

To City: Dennis Quinlivan, Deputy Director Public Works Department
City of Fullerton
1580 W. Commonwealth Ave.
Fullerton, CA 92833

To Contractor:

H. TERMINATION

The City reserves the right to terminate the contract as follows:

1. In the event contractor fails or refuses to timely perform any of the provisions of this agreement in the manner required, or if contractor violates any provision of this agreement, contractor shall be deemed in default. City shall provide written notice of such default to contractor's project manager. Contractor shall cure said default within a period of two (2) working days. If such cure is not completed in a timely manner, City may assess liquidated damages or terminate the agreement forthwith by giving written notice to contractor's project manager. City may, in addition to the other remedies provided in this agreement or authorized by law, terminate this agreement by giving written notice of termination. Contractor shall

be responsible for all costs incurred by City, including replacement costs of equipment and labor required to provide service during contractor's default. In the event of such termination for cause, City shall pay contractor that portion of compensation specified in the agreement that is earned and unpaid prior to the effective date of termination. Contractor shall not be entitled to any compensation for lost profits if terminated for cause.

2. This agreement may be terminated without cause by City upon thirty (30) days written notice delivered to the contractor either personally or by mail. Upon termination, City shall pay to contractor that portion of compensation specified in the agreement that is earned and unpaid prior to the effective date of termination.
3. In addition to, or in lieu of, remedies provided in this agreement or pursuant to law, City shall have the right to withhold all or a portion of contractor's compensation for contract services if, in the judgment of the Project manager or designee, the level of service falls below appropriate standards and/or contractor fails to satisfactorily perform contract services. City shall have the right to retain funds withheld until the Project manager or designee determines that contract services are performed as well and as frequently as required by this agreement.

I. CONTRACTOR OPTION FOR TERMINATION

The contractor may request termination of the contract when conditions during the contract make it impossible to perform or when prevented from proceeding with the contract by act of God, by law or official action of a public authority or in the event of nonpayment by the City. Such request will require one-hundred eighty (180) days written notice prior to contract termination date requested. In the event of nonpayment of undisputed sums by the City, contractor shall give the City thirty (30) working days to cure the alleged breach.

J. LIQUIDATED DAMAGES

If the City determines that the contractor breaches its promise to provide services in compliance with the Terms and Conditions of applicable laws and regulations, and the specifications set forth above, it would be impracticable and extremely difficult to determine the damage to City arising from such breach. Therefore, in the event of contractor's breach, contractor shall pay to City the sum of \$XXX per hour / per occurrence **(see narrative)** for such breach, in addition to any cost, fines, etc. levied against the City.

K. EMPLOYMENT OPPORTUNITIES FOR FULLERTON RESIDENTS

Contractor shall solicit and advertise employment opportunities to Fullerton residents. The City shall inform the contractor of areas to publicize recruitment opportunities, such as work centers and community centers. Such effort and procedure will be provided to the City for review.

L. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

1. Contractor shall perform all requirements under this contract in strict observance of and in compliance with all applicable environmental, traffic, safety and any other laws, regulations, ordinances, codes and any other legislative or statutory requirements.

2. Contractor warrants that the performance of services under this contract shall be compliant with the current requirements of the (*particular relevant statutes and/or regulations*) and as it may be amended or updated throughout the term of this contract.

M. ASSIGNMENT

Inasmuch as this contract is intended to secure the specialized services of contractor, contractor may not assign, transfer, delegate or subcontract any interest herein without the prior written consent of City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void.

N. JURISDICTION – VENUE

This contract has been executed and delivered in the State of California and the validity, interpretation, performance and enforcement of any of the clauses of this contract 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 contract.

O. FINES

The contractor shall be liable for all violation fines levied against the City by federal, state, or local agencies with regulatory authority related to contractor provided services.

P. MISCELLANEOUS PROVISIONS

a. Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

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

ATTEST:

CITY OF FULLERTON

Lucinda Williams
City Clerk

Donald K. Hoppe
Public Works Director

APPROVED AS TO FORM:

City Attorney

By: _____
XXXX
Assistant City Attorney

CONTRACTOR

Tax ID# _____