

**CITY OF FULLERTON
PROFESSIONAL SERVICES AGREEMENT
WITH
WOODRUFF, SPRADLIN & SMART, APC**

THIS AGREEMENT is made and entered into this ____ day of _____, _____ ("Effective Date"), by and between the CITY OF FULLERTON, a California municipal corporation ("City"), and Woodruff, Spradlin & Smart, APC, a California Corporation ("Consultant").

W I T N E S S E T H :

A. City proposes to utilize the services of Consultant as an independent contractor to provide certain on call independent investigative services, 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 Services & Fees Schedule attached hereto as Exhibit "A" and incorporated herein by this reference, as it relates to safety and nonsafety investigative services.

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 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 "A".

2.2. Additional Services. Consultant may perform the additional services described in Exhibit "B" attached hereto and incorporated herein by this reference if specifically engaged to do so by City. Consultant shall not receive compensation for any services provided outside the scope of services specified in Exhibit "A" 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, to be attached hereto as Exhibit "D." It is the Consultant's responsibility to provide to the City any revised or updated W-9 form.

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 for a period of three (3) years with the City having the option to extend under the same terms and conditions for a maximum of three (3) one (1) year options

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 Consultant, its agents, representatives, employees or subcontractors. Consultant shall provide current evidence of the required insurance in a form acceptable to 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 \$1,000,000 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 \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.

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. 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.

E. Cyber Liability Insurance. Consultant shall maintain cyber liability insurance coverage with a limit of not less than \$2,000,000 per claim and \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Agreement and shall include but not be limited to claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines, penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

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. 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 21 such work or operations. Such coverage as an additional insured shall not be limited to the period of time during which Consultant is conducting ongoing operations for City but rather, shall continue after the completion of such operations. The coverage shall contain no special limitations on the scope of its protection afforded to City, its officers, employees and volunteers.

B. Commercial General Liability. This insurance shall be primary insurance as respects City, its officers, employees and volunteers 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 City, its officers, employees and volunteers shall be excess of this insurance and shall not contribute with it..

C. Professional Liability. If the Professional Liability policy is written on a "claims made" form, Consultant shall maintain similar coverage for three consecutive years following completion of the project and shall thereafter, submit annual evidence of coverage. Additionally, Consultant shall provide certified copies of the claims reporting requirements contained within the policies.

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.

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. 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:

Woodruff, Spradlin & Smart, APC
555 Anton Blvd., Suite 1200
Costa Mesa, CA 92626-7670
Attn: Barbara Raileanu, Esq.

IF TO CITY:

City of Fullerton
303 W. Commonwealth Ave.
Fullerton, CA 92832
Attn: Ellis Chang

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, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents, and employees, at Consultant's sole expense, from and against claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents, and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the professional services undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by 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, errors, omissions or 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 officials, officers, agents, and employees based upon the work performed by Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not 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 or active negligence or willful misconduct of the City. 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.

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

Kenneth A. Domer, City Manager

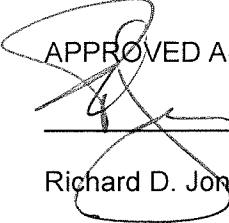
Date: _____

CONSULTANT

Barbara Raileanu, Esq (Director)

Date: _____

Social Security or Taxpayer ID Number

 APPROVED AS TO FORM:

Richard D. Jones, City Attorney

Date: 1. 25-21

EXHIBIT A
SERVICES & FEES



WOODRUFF, SPRADLIN & SMART
A Professional Corporation

**RESPONSE TO REQUEST FOR QUALIFICATIONS FOR
ON-CALL INDEPENDENT INVESTIGATIVE SERVICES**

CITY OF FULLERTON

NOVEMBER 12, 2020

PRESENTED TO:
City of Fullerton - Purchasing
Attn: Jimmy Armenta, Buyer
303 W. Commonwealth Ave.
Fullerton, CA 92832-1775

Section 1: Qualifications, Related Experience and References

As requested, this Section will provide a brief profile of the Firm, a general description of the Firm's Financial Condition, the Firm's experience in providing services of a similar nature, experience in working with similar government agencies as those who will be making a decision regarding this Request for Qualifications ("RFQ") and references. This Section will not address the component pertaining to subcontractors because the Firm does not subcontract any portion of its investigative services.

A. Brief Profile of Firm

Woodruff, Spradlin & Smart is engaged almost exclusively in the representation of public agencies, both as advisor and in matters of litigation. Martindale-Hubbell rates the quality of the Firm as A-V (the highest possible rating).

Woodruff, Spradlin & Smart was organized in 1976. The Firm has only one location in the City of Costa Mesa: 555 Anton Blvd., Suite 1200, Costa Mesa, California 92626. The Firm includes 40 attorneys in two, nearly equally staffed, departments, four paralegals, as well as client billing and accounting and general law office support staff for a total of 72 employees.

The Public Law Department attorneys act as city attorneys, general counsel, and special counsel to public agencies. Our Public Law Department attorneys possess specialized skills in public contracts, land use and planning, redevelopment and franchises, code enforcement, environmental, employment and labor, intergovernmental relations, finance and fiscal issues, public safety, legislative, election, and tort liability matters.

The Litigation Department headed by Daniel K. Spradlin, specializes in the representation of public agencies involved in litigation and the members of the Firm have extensive litigation experience in all areas of public law litigation in both state and federal courts at the trial and appellate levels. We believe that this variety of experiences is a unique asset offered to our clients. Our familiarity with public law litigation has enabled us to obtain outstanding trial results. In more than 100 cases brought to trial or arbitration in the last 10 years, the Firm has obtained either an outright defense verdict, or in cases where liability exists, a substantial reduction in the ultimate award of damages.

Litigation attorneys work in concert with the advisory attorneys to provide our public agency clients with the best possible legal representation. As public agency attorneys we often wear two hats. As legal advisors, our goal is to give accurate legal advice to assist the client in implementing its policy objectives with minimal conflict and with a view towards avoiding litigation. As litigators, when litigation is necessary, our goal is to achieve the best possible result for our clients while maintaining reasonable fees.

In our advisory role, we counsel our clients on the applicable law and its impact on a proposed course of action. As counselor to a local agency, we strive to define legal paths to accomplish the agency's desired objectives. We are also creative and innovative in exploring and devising solutions and approaches that assist our clients in achieving their goals. We also have the resolve to give our clients an undesired answer when it is the only legal answer.

Conduct of the public's business, is strictly regulated by Constitutional, statutory and case law; it is our responsibility to keep elected officials and staff fully informed about changes and developments in the law that affect the conduct of the agency's activities.

Our extensive representation of public agencies enables our clients to receive the benefit of attorneys who devote their entire practice to advising public entities. The breadth of the Firm's collective public agency legal knowledge is extensive because of the diverse experience and expertise possessed by each of the Firm's public agency attorneys.

B. General Description of the Firm's Financial Condition

The Firm's current condition is excellent. There are no pending court or financial actions against the Firm. We anticipate no financial impediments to being able to provide the services requested.

C. Firm's Experience In Providing Services of a Similar Nature

Barbara Raileanu and Keith Dobyns, who comprise the Firm's employment law department, are consistently retained to conduct workplace investigations for public agencies throughout Southern California. We receive referrals from other law firms, receive repeat work from clients for whom we have done investigations in the past, and we assist our captive clients with investigations on occasion. Ms. Raileanu and Mr. Dobyns have conducted investigations into potential rule violations such as dishonesty, theft, bullying, misuse of agency resources, falsification of timecards, and threats of workplace violence. In addition, we have conducted investigations relating to First Amendment rights and posting comments on social media which negatively impact the workplace. Of course, in addition to these more unusual matters, we both routinely conduct investigations into allegations of workplace harassment and discrimination.

We are well-versed in the EEOC guidelines on conducting investigations including the factors to be used for making credibility determinations. We have conducted investigations involving high level officials in public organizations and have attended closed sessions with the governing boards to discuss those findings. Additionally, since we both are actively involved in arbitration and civil litigation, we are even better poised to understand the importance of a thorough and impartial investigation and how weaknesses in the investigation process can impact subsequent litigation.

D. Experience In Working with Similar Government Agencies

The Firm represents the Orange County Fire Authority ("OCFA") and the Tustin and Garden Grove Police Departments and, in the past, we have represented the Palm Springs Police and Fire Departments. In that capacity, we have successfully defended these agencies in arbitration and litigation, including in a key Supreme Court case involving OCFA regarding the interpretation of the term "personnel file" as used in the Firefighters Procedural Bill of Rights Act ("FBOR") (Poole v. OCFA). We also assist these clients when they conduct internal affairs investigations or retain outside investigators to ensure that those investigations are proceeding in compliance with the Public Safety Officers Procedural Bill of Rights Act ("PBOR") and the FBOR, particularly with the notice provided to the subjects, responding to requests for

documents, and conducting follow-up interviews and the rights those follow-up interviews trigger.

In addition, we have conducted workplace investigations for the Ontario Police Department involving claims of gender discrimination and sexual harassment and we routinely defend the Orange County Sheriff's Department and the City of Torrance Police Department in employment litigation matters. For the City of Palm Springs Fire Department, we conducted investigations into allegations of dishonesty with respect to workers' compensation claims and firefighters not performing work while on-duty.

We are well-versed in the PBOR and FBOR in that we both provide training to our public safety clients on both topics, which we update frequently based on new caselaw.

E. Three References

References Relating to Investigations

Cynthia O'Neill
Supervising Deputy County Counsel
San Bernardino County Counsel
385 N Arrowhead Avenue
San Bernardino, CA 92415
Tel: (909) 387-5397
Email: COneill@cc.sbcounty.gov

Angela C. Lopez
Executive Director of Human Resources
Human Resources Department
City of Ontario
200 North Cherry Avenue
Ontario, CA 91764
Tel: (909) 395-2442
Email: ACLopez@ontarioca.gov

Gretchen R. Beatty
Deputy Human Resources Director
City of Anaheim
Human Resources Department
201 S. Anaheim Boulevard, Suite 501
Anaheim, CA 92805
Tel: (714) 765-4467
Email: GBeatty@anaheim.net

References Relating to All Employment / Labor Work

Derick Yasuda
Human Resources Director
City of Tustin
300 Centennial Way
Tustin, CA 92780
Tel: (714) 573-3044
Email: dyasuda@tustinca.org

Laura Camacho
Chief Administrative Services Officer
Riverside Transit Agency
1825 Third Street
Riverside, CA 92507
Tel: (951) 565-5080
Email: lcamacho@riversidetransit.com

Diana Hoffman
Deputy Chief Counsel
CalOptima
505 City Parkway West
Orange, CA 92868
Tel: (714) 246-8671
Email: dhoffman@caloptima.org

Section 2: Proposed Staffing and Organization

The Firm proposes that Barbara Raileanu serve as lead attorney to provide investigative services to the City. Keith Dobyns would also provide assistance if Ms. Raileanu were unavailable. We anticipate that Mr. Dobyns would provide assistance no more than twenty-five percent of the time.

Ms. Raileanu has devoted her professional career to public employment law and the representation of government agencies. Ms. Raileanu obtained her juris doctorate degree in 1999 from the University of California at Davis and joined Woodruff, Spradlin & Smart in 2001 as an associate. She became a Director of the Firm in 2009. Ms. Raileanu is an experienced municipal law attorney, whose practice has focused on labor and employment matters, including routinely conducting workplace investigations.

Since beginning her employment with the Firm, Ms. Raileanu has conducted over one hundred workplace investigations of harassment, discrimination, retaliation and other alleged workplace misconduct for the majority of the Firm's public entity clients as well as for clients with whom the Firm has contracts for investigative services. She is extremely well-versed in harassment and discrimination laws in that she has presented over three hundred seminars on the topic and has successfully defended the Firm's clients against numerous wrongful termination, harassment, discrimination, retaliation and failure to accommodate claims. Her experience as a litigator gives her an edge when conducting investigations, understanding the need for timeliness, thoroughness, and impartiality; all while ensuring that costs do not become excessive.

Her expertise in employment law, attention to detail, educational background, approachability, and goal-oriented focus, make Ms. Raileanu an effective and tremendous investigator who is able to obtain information from witnesses that other investigators typically cannot. Her experience helps her effectively anticipate and address potential legal concerns in advance of employees, their representative associations or legal counsel from raising them. She has conducted investigations involving department heads, rank and file employees, firefighters, police officers, and Board members. Her experience spans every profession within a public agency and she is adept at learning the complexities of a particular department quickly enabling her to ask detailed and meaningful questions of witnesses. The reports she prepares are thorough, legally compliant and well-reasoned. Clients routinely express satisfaction with her professionalism in conducting the interviews and her timely and thorough reports and have routinely recommended her to other clients.

In addition to her vast experience as an investigator, she has assisted a significant number of public agencies, cities, and special districts with all aspects of public employment law, providing clients with day-to-day advice and representation on a wide range of issues, including: the hiring process; conducting background investigations that comply with the California Investigative Consumer Reporting Act; overtime and wage issues arising out of the Fair Labor Standards Act; leaves of absence and other forms of reasonable accommodations, including the interactive process, under the Family Medical Leave Act, the Americans with Disability Act and the Fair Employment and Housing Act; workplace harassment and discrimination matters arising out of Title VII of the Civil Rights Act; labor negotiations; interpretation of the Meyers-Milias-

Brown Act; interpretation of memoranda of understanding; disciplinary matters including progressive discipline; service and disability retirement issues arising out of Public Employee Retirement Laws; the interpretation and application of the Public Safety Officers' Procedural Bill of Rights Act and the Firefighters Bill of Rights Act; and the interpretation and general application of other employment and constitutional laws.

Ms. Raileanu has also conducted close to one hundred administrative disciplinary hearings with an almost impeccable success rate involving such matters as insubordination, dishonesty, theft, FMLA compliance, poor performance, attendance, harassment, workplace violence, violations of work rules, stewards undermining management authority, and abuse of authority.

Given her experience in public employment law over the past twenty years, Ms. Raileanu would serve the City well as an investigator.

RESUME OF BARBARA RAILEANU

EDUCATION

UNIVERSITY OF CALIFORNIA AT DAVIS, KING HALL
J.D. 1999; *UC Davis Law Review*, Member

UNIVERSITY OF CALIFORNIA AT LOS ANGELES
B.A. 1995

EXPERIENCE

WOODRUFF SPRADLIN & SMART
2001 – present; Director/ Shareholder

Transactional / Advisory Experience

- Serves as General Counsel to the Riverside Transit Agency;
- Serves as agency counsel to the Human Resources Committee of the Orange County Fire Authority;
- Heads the Firm's Employment and Labor Law Department;
- Serves as lead employment law advisory counsel to all of the Firm's public agency clients including the Cities of Rancho Santa Margarita, Laguna Hills, Tustin, and Garden Grove, and special districts such as the Orange County Sanitation District, the Orange County Transportation Authority and the Orange County Fire Authority;
- Routinely conducts investigations involving matters of employee misconduct, discrimination, harassment, bullying, and workplace violence;
- Has successfully defended public agency clients (including police and fire departments) in approximately one hundred administrative appeal hearings before hearing officers and Personnel Boards and final and binding arbitrations;
- Advises clients on daily basis regarding labor and employment issues including the Meyers-Milias-Brown Act, disciplinary matters, constitutional privacy and due process issues, disability (including interactive process and reasonable accommodation), retirement (including CalPERS and OCERS), harassment, discrimination, minimum wage and overtime laws, military leave, personnel policies, and medical leaves of absence involving ADA, FEHA, FMLA, and CFRA;
- Advises clients on the Brown Act and Public Records Act issues involving personnel matters;
- Has presented over two hundred seminars on topics including harassment, diversity in the workplace, discrimination, workplace violence, guidelines for supervisors, Family and Medical Leave Act, and the Americans with Disabilities Act to clients and at CalPELRA and PELRAC conferences; and

- Provides guidance in closed session to governing boards of various public agencies on labor and personnel issues.

Hearing Officer Experience

- Served as hearing officer on cases involving employee disciplinary suspensions and makes recommendation to the Long Beach Civil Service Commission

Litigation Experience

- Defended the firm's clients in numerous litigation matters alleging wrongful termination based on various protected classes, discrimination, harassment (sexual and based on other protected classes), medical leaves of absence, and failure to engage in the interactive process and to provide reasonable accommodations.
- Has written and argued demurrers, motions for summary judgment, motions in limine;
- Has drafted trial briefs and jury instructions.
- Filed petitions for writ of mandate to reverse decisions of OCERS Board on disability retirement matters and prepared oppositions to petitions for writ of mandate in which petitioner's seek reversal of terminations and reinstatement.

KRING & BROWN
2000 -2001; Associate

- Participated in all stages of litigation involving employment and construction defect matters.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
1999; Clerk

- Researched all aspects of the Fair Employment and Housing Act, interviewed complainants and employers, and made recommendations regarding filing of accusations against employers.

PROFESSIONAL AFFILIATIONS

- State Bar of California, admitted December 1999
- Orange County Bar Association
- American Bar Association

RESUME OF KEITH R. DOBYNS

EDUCATION

UNIVERSITY OF CALIFORNIA AT LOS ANGELES
J.D. 2007

CHAPMAN UNIVERSITY
B.A. 2002

EXPERIENCE

WOODRUFF SPRADLIN & SMART
2013 – present; Associate

- Conducts disciplinary hearings and arbitrations regarding just cause discipline and compliance with CBA and MOU provisions.
- Conducts workplace investigations involving alleged violation of state and federal law, including Title VII, ADA, and FEHA, as well as internal policies, procedures, MOUs, and CBAs.
- Counsels public and private clients on legal compliance with Labor Code, Fair Employment and Housing Act, Affordable Care Act, Meyers-Milius-Brown Act, Title VII of the Civil Rights Act, Americans with Disabilities Act, Public Employees Retirement Law, County Employees Retirement Law, and other state and federal labor and employment laws and regulations.
- Provides defense of public entities in arbitrations, DFEH investigations, and state and federal employment-related litigation alleging discrimination, harassment, and retaliation.
- Provides training to public employees as seminar presenter on discrimination and harassment prevention and ongoing changes to state and federal labor laws.
- Attends Mandatory Continuing Legal Education, Orange County Bar Association Employment Law section meetings and City Attorney Luncheons.

CERTIFICATES/LICENSES

- Admitted to the California State Bar in December 2007
- Admitted to the U.S. District Court (Central District of California)
- Admitted to U.S. Ninth Circuit Court of Appeals

PROFESSIONAL BACKGROUND AND ASSOCIATIONS

- Orange County Bar Association – Employment Law Section
- Orange County City Attorneys Association (OCCAA)

Key Personnel Proposed to Perform Work on Specified Tasks / Organization Chart

1. **Barbara Raileanu, Shareholder / Director** – will conduct and oversee all investigation work performed for the City.
2. **Keith Dobyns, Associate** – will assist from time to time with conducting investigations with oversight from Ms. Raileanu.
3. **Juliet Hyung, Legal Assistant to Ms. Raileanu and Mr. Dobyns** – will assist with transcribing interviews and finalizing investigation reports.

Statement re Availability of Key Personnel

Key personnel will be available to the extent proposed for the duration of the contract, and we acknowledge that no person designated as “key” to the Contract shall be removed or replaced without the prior written concurrence of the City.

Section 3: Detailed Work Plan

The procedure for conducting investigations ordinarily used is to meet with the client and discuss the scope of the investigation. Then, we proceed with gathering all of the relevant written documentation from the client such as policies, memoranda of understanding, organization charts, performance evaluations, discipline, emails, and applicable memos. Once the documentation has been reviewed, meetings with all percipient witnesses are scheduled. If these individuals offer others who may have knowledge of the subject matter being investigated, such individuals are then interviewed. The accused individual is typically interviewed last, unless there is a reason to interview them first. All interviews are audio-recorded.

Based on the interview of the accused, additional interviews with those previously interviewed or new individuals with information not previously interviewed, may be scheduled. Once the interviews are complete, they are either transcribed and summarized by the investigator and incorporated into the Investigative Report which also consists of factual findings and analysis of the facts based on relevant statutory and case law. Where there is a dispute on a key issue between witnesses, we will make findings based on credibility including the factors set forth in the EEOC guidance on conducting workplace investigations. Investigative Reports typically do not contain recommendations regarding actions or discipline to be taken. If the client requests such recommendations, those are provided under separate cover. In addition, for lengthy or complex reports, an Executive Summary is provided to highlight the conclusions and key evidence in a brief format.

On an exceptional basis, deviations from the above outlined procedure may be necessary. For example, where there is concern that employees interviewed ahead of the accused may provide information to the accused which may compromise the investigation, and if sufficient information exists to conduct a meaningful interview, the accused may be interviewed first. In addition, at times, pursuant to a client's request, reports may be provided orally rather than in the written format specified above.

The Firm's resources will be managed as follows: unless unavailable, Ms. Raileanu will conduct investigations needed by the City. If Ms. Raileanu is unavailable or needs assistance to conduct interviews when an investigation involves a significant number of witnesses, Mr. Dobyms will be assigned. All investigations conducted by Mr. Dobyms will be supervised and reviewed by Ms. Raileanu.

Section 4: Fee Proposal

Barbara Raileanu	\$300/hr.
Keith Dobyns	\$250/hr.
Transcriptions	\$2.00/per recorded minute

EXHIBIT B
ADDITIONAL SERVICES

EXHIBIT C
CERTIFICATES OF INSURANCE

EXHIBIT D

W-9 FORM