

REQUEST FOR PROPOSALS

6th CYCLE HOUSING ELEMENT UPDATE



**CITY OF BLYTHE
Development Services Department
235 N. Broadway
Blythe, CA 92225**

KEY REP DATES:

Issue Date:	December 1, 2021
Deadline for RFI/Questions:	December 23, 2021
Proposal Due Date:	January 20, 2022

NOTICE IS HEREBY GIVEN that proposals for the **6th Cycle Housing Element Update** will be received from qualified firms to provide planning services related to the City's Housing Element Update. Responses to this Request for Proposal (RFP) will be received at the City of Blythe, Office of the City Clerk, 235 N. Broadway, Blythe, CA 92225 **until 2:00pm on Thursday, January 20, 2022.**

The City will receive questions concerning the Request for Proposal via email to City Clerk Mallory Crecelius at msutterfield@cityofblythe.ca.gov until Wednesday, December 29, 2021 at 4:00pm. The City will respond to questions by Thursday, January 6, 2022.

Sole responsibility rests with the bidder to ensure that their proposal is received on time at the stated location, either in person, or via mail or express delivery. Proposals received after the established date and time will not be considered, and any proposals so received shall be deemed non-responsive and returned to the bidder.

Proposals shall conform to the specification of the Invitation for Proposal. The City reserves the right to accept or reject any or all proposals or any combination thereof, to waive any informality or irregularity in the proposal and evaluation process and make award in the best interest of the City. Bidder(s) may bid any one section or multiple sections or all sections.

Proposal Forms: Proposals shall include the total cost and be signed by an authorized company representative. The proposals shall be submitted by the deadline in one sealed envelope entitled: **6th Cycle Housing Element Update.**

Project Award: The contract will be awarded based on lowest price from a responsive and responsible bidder. The City may make separate awards for any item or category/group of items.

The City reserves the right to reject any or all bids or any parts thereof and to waive any irregularities or informalities in any bid or in the bidding process and to make a contract award in the best interest of the City.

No bidder may withdraw their bid for a period of sixty (60) calendar days after the date set for the opening of bids.

CITY OF BLYTHE, Dated December 1, 2021

Published by: Mallory Crecelius, City Clerk

Published on: December 1, 2021

CITY OF BLYTHE

HOUSING ELEMENT UPDATE

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CITY OF BLYTHE
RFP FOR 6th CYCLE HOUSING ELEMENT UPDATE

I. INTRODUCTION

The City of Blythe (the “City”) is soliciting proposals for a comprehensive Housing Element Update. Any proposals must not only meet the requirements set forth in this Request for Proposal (RFP) but must also be flexible and scalable to meet the City’s future housing needs.

The purpose of the RFP is to provide interested consultants with sufficient information to enable them to propose and submit proposals for the scope outlined within the RFP.

The City seeks proposals from interested consultants that have proven experience in residential land use and zoning designations where local governments (City, County, etc.) of similar size to the City of Blythe, can comply with the RHNA sixth cycle as approved by SCAG.

II. PERIOD OF CONTRACT

Unless earlier terminated as allowed for in the agreement, contract term shall be for a period of one (1) year. The contract term is anticipated to commence after City Council award of this contract and upon receipt and approval of all required bonds and insurance documents.

III. SCOPE OF WORK/SERVICES

The scope of work may include any and all work efforts related to the **HOUSING ELEMENT UPDATE** as set forth in **EXHIBIT A - SCOPE OF SERVICES**.

The selected consultant shall be an independent contractor (“Contractor”) capable of providing experienced, knowledgeable and professional staff. The contractor shall be responsive and maintain excellent working relationships with city residents, businesses, government officials and City staff. The contractor shall provide adequate staffing levels at all times and adhere to established schedules.

The contractor shall comply with all federal, state and local laws, rules, regulations, ordinances, and statutes.

IV. GENERAL INFORMATION

- A. The term of the contract will begin after the contract award by the City Council and approval of required bonds.

- B. When determined appropriate, the City will provide information in its possession relevant to preparation of required information in RFP. The City will provide only the staff assistance and documentation specifically referred to herein.
- C. The proposer shall be responsible for retaining data, records and documentation for the preparation of the required information. These materials shall be made available to the City as requested by the City.
- D. This RFP does not commit the City to pay costs incurred in preparation of a response to this RFP. All costs incurred in the preparation of the proposal, the submission of additional information, attendance at preproposal conference, negotiations with City, and/or any other aspect of a proposal prior to award of a written contract will be borne by the proposer. The City reserves the right to accept or reject the combined or separate components of this proposal in part or in its entirety or to waive any informality or technical defect in the proposal.
- E. All data, documents and other products used, developed, or produced during response preparation of the RFP will become property of the City. All responses to the RFP shall become property of the City. Proposer information identified as proprietary information shall be maintained confidential, to the extent allowed under the California Public Records Act.
- F. The City reserves the right to reject, replace and approve any and all subcontractors. All subcontractor(s) shall be identified in the response to the RFP and the City reserves the right to reject any subcontractor(s). Subcontractors shall be the responsibility of the prime contractor and the City shall assume no liability of such subcontractors.

V. PROPOSER RESPONSIBILITIES

The selected proposer will assume responsibilities for all services in its proposal. The selected proposer shall identify a sole point of contact with the greatest knowledge in regard to the required service operations and contractual matters, including payment of any and all charges resulting from the Agreement.

VI. INITIATION/KICK OFF MEETING

The successful proposer will be required to meet with City staff prior to commencement of services or at any time as required by the City, to discuss and agree on operational issues including transition of services and scheduling.

VII. CITY BUSINESS LICENSE

The selected proposer shall be required to obtain a City of Blythe Business license prior to commencing any work in Blythe.

VIII. ADDENDA

Any subsequent changes in RFP from the date of preparation to date of submittal will result in an addendum or amendment. Notification of such addendum or amendment shall sent via email.

IX. RULES FOR PROPOSALS

The signer of the RFP must declare in writing that the only person, persons, company, or parties interested in the proposal as principals are named therein; that the proposal is made without collusion with any other person, persons, company, or parties submitting a proposal; that it is in all respects fair and in good faith without collusion or fraud, and that the signer of the proposal has full authority to bind the proposer (Exhibit G).

X. REQUESTS FOR INFORMATION (RFI) - CLARIFICATIONS DEADLINE

Every request for information or clarifications must be submitted in writing. **Please submit all inquiries via email to msutterfield@cityofblythe.ca.gov by December 29, 2021.** All proposers will receive a copy of the responses to an RFI, and any significant interpretation will be made by an addendum to this RFP. Addenda may become part of the agreement documents.

XI. SUBMITTAL INFORMATION AND DEADLINE

Proposals are due to the City of Blythe, at the date and time set forth on the Notice Inviting Proposals. Faxed, emailed or postmarks will **not** be accepted.

XII. SUBMITTAL REQUIREMENTS

The RFP is intended to assess and evaluate each firm’s capabilities as they apply to the proposed project.

Submittal of Proposal

The City requires a submittal of bid responses to facilitate group review and document distribution.

The submittal is mailed to the office of the City Clerk by the RFP due date and time deadline.

- a. The proposal shall be sealed in an envelope entitled: “Housing Element Update”.
- b. Structure your proposal to include the Scope of Services response, general time implementation schedule, fees/contract price, and exhibits.

Each firm must address each of the following items in its response to the RFP:

- A. Statement of Qualifications - The following information is required:

1. Cover Letter – A letter signed by a principal or authorized representative who can make legally binding commitments for the entity.
2. Firm and Personnel Experience: A profile of the firm’s experience, including the names and experience of personnel and sub consultants who will be providing services. At a minimum, this should include the project manager/principal agent, associates in charge when project manager/principal agent is unavailable, key personnel, and an organization chart identifying only those who will perform work for the proposed project and the percentage of each individual’s time devoted to this project. The project manager/principal agent shall be the primary contact person to represent your firm and will be the person to conduct the presentation, if invited for an interview.
3. Implementation Plan: Proposer shall submit a general description of the deliverables and timelines to complete the project.

B. EXHIBIT C – PROPOSERS STATEMENT AND PROPOSAL ITEM PRICING

Consultants must provide detailed fixed prices, including out-of-pocket expenses, for all costs associated with the responsibilities and related services indicated herein. Clearly specify the nature of expenses anticipated and the amount of each category for out-of-pocket expenses.

Proposers must include an accurate estimate of the number of hours of service to be provided for completion of the contract, an hourly rate for personnel, and a total fixed-price for the project budget.

- C. EXHIBIT D –REFERENCES – The Proposer shall submit a list of agencies, past and present, for whom you have provided work similar to that identified in this RFP (Exhibit A) for the last 3 years.

D. EXHIBIT E – PROPOSER’S STATEMENT

E. EXHIBIT F – SAMPLE ADDITIONAL INSURED ENDORSEMENT FOR COMMERCIALGENERAL LIABILITY POLICY

- F. The **proposal must be completely responsive to the RFP**. Any exceptions to the requirements of this RFP must be included in the proposal. Such exceptions must be included as a separate element of the proposal entitled “Exceptions and Deviations.” The City Manager, in her sole and absolute discretion, may authorize or deny any exceptions.

- G. The City reserves the right to reject any or all proposals submitted, and no representation is made hereby that any contract will be awarded pursuant to

this RFP or otherwise. The City reserves the right to waive minor inconsistencies in submitted Proposals.

XIII. CONSULTANT SELECTION – PROPOSAL AND EVALUATION

The criteria for evaluating the proposals submitted will take the following items into consideration:

- Demonstrated competence;
- Experience in performance of comparable engagements;
- Reasonableness of cost;
- Expertise and availability of key personnel;
- Conformance with the terms of this RFP.

The proposals will be reviewed by a committee of City team members. The committee will evaluate proposers based on the response to the RFP and the City evaluation criteria set forth above. A final ranking will be determined based on entirety of the submitted proposals. The committee may interview the top tier of proposers and recommend award of the contract to the proposer who will provide the best quality service at minimum cost to the City. The City reserves the right to negotiate pricing and for additional terms. City reserves the right to begin negotiations and enter into a contract without interview or further discussions.

XIV. PUBLIC RECORDS

Proposals will become public record after award of contract. Proposer information identified as proprietary information shall be maintained confidential, to the extent allowed under the California Public Records Act.

EXHIBIT A

SCOPE OF SERVICES

PERFORM HOUSING ELEMENT UPDATE

December 2021

Proposals Requested By:

City of Blythe

I. INTRODUCTION

The Development Services Department of the City of Blythe is requesting proposals from consultants who are qualified to prepare the 6th cycle update to the City of Blythe's ("City" or "the City")'s Housing Element of the General Plan for the 2021-2029 planning period consistent with SB 375 regulations. The selected consultant will review the existing Housing Element and will revise the document to reflect current conditions, city policies, and methods to meet the housing requirements mandated by the State of California.

The City is seeking a qualified consultant with experience in the preparation of Housing Elements and with an established working relationship with the California Department of Housing and Community Development ("HCD"). The consultant must have familiarity with State housing law and applicable statutes; including Southern California Association of Government's Regional Transportation Plan ("RTP"). The consultant must be proactive in maintaining communication with City staff, keeping staff informed with project status updates, meeting deadlines and ultimately meeting the requirements of HCD for the streamline update of the Housing Element.

II. SETTING

The City of Blythe is a general law City, incorporated in 1916. The City of Blythe is located in eastern Riverside County on the California/Arizona border along the Colorado River. The main industries in the area are tourism and farming. The City's population is 19,682. Two State prisons are located within Blythe's City limits and their population is factored into Census data for the City.

The City adopted its 2025 General Plan 2007.

III. PROJECT DESCRIPTION

The City's Housing Element was last revised and adopted in 2014 and is deemed in compliance with State housing element law by HCD.

The purpose of this project is to update the Housing Element to be in compliance with State statutes to achieve approval by the City Council. The update will reassess the community's

existing and projected housing needs and update existing or set forth new policies and schedules in a cooperative effort that promote improvement and development of diverse types and costs of housing throughout the City, while maintaining a responsibility toward economic, environmental and fiscal factors. The update will ensure compliance with new State statutes applicable to Housing Elements, in particular to Senate Bill 375.

The proposed update will build upon the existing Housing Element and through citizen participation and consultation with City staff and HCD, propose, modify, or set forth feasible housing goals, objectives, policies and programs that meet or exceed statute requirements.

V. SCOPE OF WORK AND PROPOSAL REQUIREMENTS

Task 1- Assessment

a) **Evaluation of 2021 Housing Element:** The consultant will be required to review and evaluate the current Housing Element and its programs, including:

- An assessment of the City’s progress in meeting existing Housing Element goals, re-zoning programs, and objectives, including RHNA goals;
- A discussion of the effectiveness of the housing program and policies;
- A comparison of projected results from the adopted Housing Element to actual accomplishments;
- A summary of how these results are important to a revision of the Housing Element; and
- An evaluation of the existing Housing Element’s compliance with applicable statutes and current State Housing Law.

b) **Type of housing allocation:** Analysis of the housing units assigned to the City by adoption of the RHNA allocation by SCAG’S Regional Council as described below:

• Total RHNA	402 units
• Very-low Income	91
• Low-income	64
• Moderate income	75

- Above moderate income 172
(Assigned allocation as of December 31, 2020)

- c) **Analysis of “Disadvantaged Communities”:** The Housing Consultant shall use the Land Use Element and general plan policies that provide specific information on potential “disadvantaged communities” within the City’s sphere of influence areas for compliance with SB 244 prior to completion of the draft Housing Element.
- d) **Document Review:** The consultant will review City documents to aid in understanding local conditions and the community’s housing needs. Documents included but are not limited to the 2014 Housing Element Update documents and administrative record, all written communication with HCD, the 2014 Housing conditions and Vacant Land Survey, the City’s Zoning Ordinance (Title 17 of the Blythe Municipal Code), the City’s Subdivision Ordinance (Title 16 of the Blythe Municipal Code) and all housing programs and ordinances currently in place. In addition, the consultant will need to evaluate existing City resources and funding mechanisms for the development of housing.

Task 2 – Housing Element Preparation

- a) **Needs Analysis:** The consultant will complete an assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs in conformance with Government Code section 65582(a). The consultant will evaluate housing conditions using State-approved criteria. Where necessary to complete this task, the consultant will obtain and analyze the most current data available on demographics and housing in the City, including resources from the U.S. Census Bureau and the California Department of Finance. The gathered data will be used to draft a housing needs assessment that will identify:
 - Population, demographics, employment trends and projections of the locality’s existing and projected housing needs. These existing and projected needs shall include the locality’s share of the regional housing needs;
 - Household characteristics;
 - An analysis of potential and actual governmental and non-governmental constraints on the improvement, maintenance and development of housing for all income levels.
 - An analysis of special housing needs; and
 - An analysis for energy conservation.
- b) **Housing Resources and Opportunities:** The consultant will identify housing resources, including programmatic, physical, and financial. Existing development policies will be assessed and sites adequate for the development of housing will be identified to meet RHNA requirements. This will require a vacant land inventory

program to show capacity for housing development to accommodate the 6th Cycle RHNA during the planning period. The consultant will build upon previously identified vacant land inventory sites from the existing Housing Element.

- c) **Housing Goals and Policies:** The consultant must build on the existing Housing Element, public input, and the needs and constraints analyses to formulate an implementation plan with appropriate and feasible housing policies. This work will need to satisfy the requirements of Government Code section 65583(b) and (c), as noted below.
- Ensure that housing opportunities are available for all persons in the City;
 - Preserve and improve the existing stock of affordable housing, including at-risk unit;
 - Facilitate development of adequate housing to meet the needs of low and moderate income households, meeting regional share of goals;
 - Mitigate any governmental constraints to housing production, improvement and /or maintenance;
 - Ensure consistency with other General Plan elements and community goals; and
 - Identify necessary changes to other General Plan elements and/or to the City Code to achieve comprehensive compliance with State Housing Law and to provide the City with necessary legislative framework to meet its housing needs and goals.

Task 3 – Prepare and Finalize Housing Element

- a) **Administrative Draft Housing Element:** The consultant will be required to prepare and submit one reproducible copy and one electronic copy in Microsoft Word format of the Administrative Draft Housing Element for City staff to review and comment upon by May 2022.
- b) **Draft Housing Element:** Upon completion of City staff’s review of the Administrative Draft Housing Element, the consultant will modify the Administrative Draft as directed. The consultant will then prepare and submit one reproducible copy and one electronic copy in Microsoft Word format, and one electronic copy in Adobe Portable Document Format of the Draft Housing Element for City staff distribution to HCD, the City Council and the general public for review and comment by June 2021.
- c) **Final Draft Housing Element:** In response to comments from HCD, responsible agencies, City staff, the City Council, and the public, the consultant will amend the Draft Housing Element accordingly. Upon a determination of compliance by HCD of the Final Draft Housing Element, the consultant will submit 7 copies of the Final Draft Housing Element for distribution to the City Council for final adoption at public hearings by October 2022.

Proposal Requirements

- Identify the budget for each of these tasks; the budget does not need to be detailed but should include the total estimated cost to perform the tasks described above, including a breakdown of the cost for each task.
- Identify the key personnel that will be performing each of the tasks requested and an organizational chart identifying chain of command.

Applicants are also expected to provide a statement of qualifications that provides the following:

- The applicant's experience updating housing elements; of particular significance, the applicant should identify the number of updates that their firm has successfully navigated through the HCD approval process.
- The applicant's experience either working with the City of Blythe and/or with other municipalities within Riverside County.
- The specific qualifications and experience of key personnel that will be performing the requested tasks.

EXHIBIT B

PROPOSERS 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 A) 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 fixed-price basis **for services described in Exhibit A**. 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 Contact or designee in writing.

Please attach proposed cost and payment schedule, and hourly rates for assigned personnel.

LEGAL NAME OF COMPANY PHONE AND FAX NUMBERS

BUSINESS ADDRESS

PRINTED NAME OF AUTHORIZED AGENT TITLE

SIGNATURE OF AUTHORIZED AGENT DATE E-MAIL ADDRESS

FEDERAL ID NUMBER (IF APPLICABLE) CONTRACTOR LICENSE NUMBER (IF APPLICABLE)

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

EXHIBIT C

REFERENCES

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

Reference

Customer Name: _____ Contact Individual: _____

Address: _____ Phone Number: _____

_____ E-mail Address: _____

Contract Amount: _____ Year: _____

Description of services and deliverables provided:

Reference

Customer Name: _____ Contact Individual: _____

Address: _____ Phone Number: _____

_____ E-mail Address: _____

Contract Amount: _____ Year: _____

Description of services and deliverables provided:

Reference

Customer Name: _____ Contact Individual: _____

Address: _____ Phone Number: _____

_____ E-mail Address: _____

Contract Amount: _____ Year: _____

Description of services and deliverables provided:

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

EXHIBIT D

PROPOSER'S STATEMENT

Proposer understands and agrees that this written RFP (or any part thereof specifically designated and accepted by the City of Blythe, hereinafter City) shall constitute the entire agreement between proposer and the City only after it has been accepted by the City Council, endorsed by the City Clerk with her signature and official seal noting hereon the action of approval of the Council, signed by the City Manager or her duly authorized agent, and signed by the City Attorney, denoting her approval of the form of this document, and its execution, and when it or an exact copy of it has been either delivered to proposer or deposited with the United States Postal Service properly addressed to the proposer with the correct postage affixed thereto.

Proposer further agrees that upon delivery (as defined above) of the accepted agreement he/she will furnish City all required bonds and certificate of liability insurance within ten (10) days (excluding Saturdays, Sundays and City's legal holidays), or the funds, check, draft, or proposer's bond substituted in lieu thereof accompanying this proposal shall become the property of the City and shall be considered as payment of damages due to the delay and other causes suffered by City because of the failure to furnish the necessary bonds and because it is distinctly agreed that the proof of damages actually suffered by City is difficult to ascertain; otherwise said funds, check drafts, or proposer's bond substituted in lieu thereof shall be returned to the undersigned.

Proposer understands that a proposal is required for the entire work, that the estimated quantities set forth in the RFP schedule are solely for the purpose of comparing proposals, and that final compensation under the contract will be based upon the actual quantities of work satisfactorily completed.

All terms contained in the specifications, the certification of nondiscrimination by contractors, and the required insurance certificates are to be incorporated by reference into this agreement and are made specifically as part of this RFP.

Firm _____

and Printed Name: _____

Title _____

Date _____

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

EXHIBIT E

SAMPLE PROFESSIONAL SERVICE AGREEMENT

SAMPLE

**CITY OF BLYTHE
PROFESSIONAL SERVICES AGREEMENT
WITH**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 20__ ("Effective Date"), by and between the CITY OF BLYTHE, a municipal corporation ("City"), and _____, a [state] [type of entity] ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to _____, as more fully described herein; and

B. WHEREAS, 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; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, 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 Proposals ("RFP"), 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 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 complete satisfaction of the City. Evaluations of the work will be done by the City Manager or his or her 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 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, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, 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 "C," attached hereto and made a part of this Agreement by this reference (the "Fee Schedule"). Consultant's total compensation shall not exceed _____ Dollars (\$ _____.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City Manager or designee, 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 monthly basis. 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 thirty (30) 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 until three (3) years after termination or expiration of this Agreement.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit "D," attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. 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 _____ months, ending on _____, 20____, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. [Optional extension language: This Agreement may be extended by [] additional [] year periods upon mutual written agreement of both parties.]

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. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed

to include contractual liability. If the policy is written as a “claims made” policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: “The City of Blythe and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant.”
- (b) Notice: “Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.”
- (c) Other insurance: “The Consultant’s insurance coverage shall be primary insurance as respects the City of Blythe, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Blythe shall be excess and not contributing with the insurance provided by this policy.”
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Blythe, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

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 or her 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 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, and (b) 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:

Tel: _____
Attn: _____

IF TO CITY:

City of Blythe
235 N. Broadway
Blythe, CA 92225
Tel: (760) 922-6161
Attn: Mallory Crecelius

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 Riverside 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. Consultant agrees to defend, with counsel of City's choosing, indemnify, and hold harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all 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 work 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 the 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 the Consultant, its employees, and/or authorized subcontractors under this Agreement, 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 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 agents 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, 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 and results 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, then 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.

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. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.20. 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.

6.21. 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.

6.22. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. 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.

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

6.24. 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.

6.25. 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.

6.26. 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.

6.28. 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.

[Signatures appear on following page.]

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.

CONSULTANT

Signature

Date: _____

[Name and Title]

CITY OF BLYTHE

[Name]
[Mayor or City Manager]

Date: _____

ATTEST:

Mallory Crecelius
City Clerk

SAMPLE

APPROVED AS TO FORM:

Brittany E. Roberto
City Attorney

Date: _____