



REQUEST FOR PROPOSALS

August 6, 2021

FOR

2023 HOUSING ELEMENT UPDATE CONSULTANT SERVICES

SUBMITTAL:

Five (5) hard copies and one (1) electronic copy must be received on or before 3:00 p.m. September 3, 2021

ADDRESSED TO:

City of Buellton
Attn: Andrea Keefer, Planning Director
107 West Highway 246
P.O. Box 1819
Buellton, CA 93427

MARK ENVELOPE:

"PROPOSAL – HOUSING ELEMENT UPDATE CONSULTANT SERVICES"

**PROPOSALS RECEIVED AFTER THE TIME AND DATE STATED ABOVE
SHALL BE RETURNED UNOPENED TO THE SENDER**

GENERAL INFORMATION

CITY CONTACT

All questions regarding this Request for Proposal ("RFP") are to be submitted in writing via U.S. mail or e-mail to:

CITY OF BUELLTON
Attn: Andrea Keefer
SUBJECT: HOUSING ELEMENT UPDATE CONSULTANT SERVICES
107 West Highway 246
P.O. Box 1819
Buellton, California 93427
Email: andrea@cityofbuellton.com

RFP Schedule

Event	Date
RFP Issued	August 6, 2021
Written Questions Due	August 20, 2021
Proposals Due	September 3, 2021
Tentative Award Date	* September 23, 2021
Tentative Contract Start Date	* September 27, 2021

* Award and start dates are approximate

Respondent Responsibilities

- It is the responsibility of each Respondent to be familiar with all of the specifications, Contract terms and conditions and Site conditions.
- The Respondent agrees and acknowledges all RFP specifications, terms, and conditions and indicates the ability to perform by submission of a proposal.
- By the submission of a proposal, the Respondent certifies that if awarded a contract it will make no claim against the City based upon ignorance of conditions or misunderstanding of the specifications.

STATEMENT OF WORK

I. INTRODUCTION

The City of Buellton ("City") is submitting this Request for Proposals (RFP) from qualified respondents to provide consulting services for the comprehensive update of the City's Housing Element. The City must update its Housing Element as mandated by State law for the 2023-2031 planning cycle, with completed certification by the State Department of Housing and Community Development (HCD) by no later than February 15, 2023. This effort will require close coordination with the City of Buellton and community interest groups. This document includes background information, outlines the scope of work for the project, details the submission requirements in response to this RFP, and explains the consultant selection process.

II. BACKGROUND

- **Location.** The City of Buellton ("City") is located in the Santa Ynez Valley in Santa Barbara County, approximately 20 miles from the City of Lompoc to the west and approximately 3 miles from the City of Solvang to the east. The City is semi-rural in character and encompasses approximately 1.6 square miles of territory with a population of approximately 5,400. There are two highways that run through the City; US Highway 101, which bisects the City in a north-south direction, and Highway 246 in an east-west direction.
- **Description.** The character of the City's built environment consists of Low density residential as the predominant residential designation and accounts for approximately 33% of the City's total land area. Medium density residential accounts for 5% and multi-family residential approximately 2%. The remaining land consists of the following uses: commercial (just under 30%), industrial (just under 12%), open space (12%), public/quasi/public (approximately 4%). The Buellton General Plan was adopted in 2005. Since adoption, several of the elements have been updated; including the Housing Element in 2015. The City is currently updating the Land Use and Circulation elements, with an anticipated final adoption of the updates in early 2022. The land use element update is a focused update, which will consist of a clean-up of the existing element, and changes to ensure consistency with the comprehensive circulation element update.
- **Buellton General Plan.** The latest Buellton General Plan was adopted in 2005. The plan consists of nine elements: Land Use, Circulation, Conservation and Open Space, Economic Development, Housing, Noise, Parks and Recreation, Public Facilities and Services, and Safety. These elements together satisfy State general plan law requirements for content. The State Department of Housing and Community Development (HCD) certified that the City's Housing Element 2015-2023 is in full compliance with State Housing Element law. The City's current General Plan is available for view on the City website at <https://cityofbuellton.com/departments/planning/>.
- **Specific Plans.** The City has two adopted Specific Plans; The Village Specific Plan, adopted in 2007, and amended in 2013; and the Avenue of Flags Specific Plan, adopted in 2017. These plans can be found on the City website at <https://cityofbuellton.com/departments/planning/>.
- **Project Background.** Each California city is required to include a Housing Element in its General Plan that establishes housing objectives, policies and programs in response to community housing conditions and needs. Jurisdictions within Santa Barbara County are required to prepare Housing Elements for the 6th planning cycle, covering the 2023-2031 planning period. The "Sixth Cycle" refers to the 6 state-mandated updates since housing element law was comprehensively amended in 1980. The Housing Element includes an analysis of housing needs, resources and constraints, and articulates the City's official policies and objectives for development, preservation, and improvement of housing for all economic segments of the community.

The last update to the Housing Element was in 2015. An important issue that was addressed as part of the last update was the adequacy of potential development sites to accommodate the Regional Housing Needs

Allocation (RHNA). The RHNA process assigns each jurisdiction in California with a share of the need for new housing to accommodate the state's project population growth. For the current Housing Element cycle (5th cycle), the City's portion of the regional housing need is 275 units. The adopted Housing element accommodates this need consistent with the requirements of State housing element law.

The City is preparing for the upcoming 6th Housing element cycle for the 2023-2031 planning period. Addressing recent state law changes are anticipated to be a significant challenge in this effort. Buellton has been assigned a total RHNA of 165 units for the upcoming 6th cycle. The City expects this project to result in an HCD-certified Housing Element for the 2023-2031 planning cycle. As part of this project, it is anticipated that changes to Title 19 of the Buellton Municipal Code and changes to other elements of the General Plan may be necessary to address the RHNA and other requirements of State law.

It is anticipated that a Mitigated Negative Declaration (MND) will be prepared in compliance with CEQA. The City will contract separately with an environmental consultant who will work with the selected Housing Element consultant to compile information necessary for the preparation of environmental documentation.

Primary Objectives of the Housing Element Update

1. Comprehensive update to address recent changes in State law and RHNA.
2. Consistency with regional plans (Including, but not limited to the Regional Transportation Plan/Sustainable Communities Strategy)
3. Zoning Ordinance consistency
 - a. Identify where Housing update would affect land use regulations, development standards, public improvement standards, and other applicable Zoning Code regulations
4. Compliance with State requirements
 - a. General plan guidelines (OPR)
 - b. Legislative mandates (e.g. Housing Bills, Environmental Justice, etc.)

III. CONSULTANT SCOPE OF WORK

The City of Buellton is seeking professional consulting services to update the City's adopted and certified Housing Element. The City envisions that the Housing Element Update will include the following components, which must be addressed in proposals. Please note however, that these tasks may be modified as the Consultant may deem appropriate upon mutual agreement from the City.

Task 1. Project Administration

Task 1.1: Project Kick-Off Meeting. Consultant will schedule a kick-off meeting with City staff and the City's environmental consultant (if needed) to discuss project expectations regarding coordination, reporting, deliverables and all relevant project information. Consultant will prepare a meeting summary with project goals, objectives and action items.

Deliverable: Meeting Summary

Task 1.2 City Tour. This can be combined or separate from the Kick-Off Meeting. Conduct an in-person city tour to gain additional insight related to community character and recent development projects.

Task 1.3: Project Schedule Development

Consultant will work with City staff to finalize a project schedule within ten (10) working days after the kick-off meeting that includes tasks and milestones for certification of the Housing Element by HCD no later than February 15, 2023. The schedule shall:

- Identify project milestones (tasks) with time for staff review of work products throughout the project
- Include public outreach timeline with public meetings and anticipated Planning Commission and City Council hearings
- Include tribal outreach in compliance with SB 18 and AB 52 regulations
- Include estimated environmental review timeline – at most, an MND is anticipated
- Include timelines for response to HCD review and certification of the Housing Element Update and City staff review times

The project schedule will be confirmed and/or modified by the Consultant and submitted to the City's project manager on or before the 30th day of each month during the course of the project. In the event project schedule delays are anticipated, Consultant shall advise the City's project manager on the strategies to correct and mitigate.

Deliverables: Initial Project Schedule, Monthly Updated Schedules

Task 1.4: Project Coordination

Consultant will meet with City staff for a minimum of 1 monthly progress meeting over the course of the project to review status to ensure objectives and milestones are being achieved. These meetings may be conducted via Zoom or in person at the City's Planning office. Consultant will prepare a meeting summary, including action items, for each meeting. Consultant will coordinate with staff to create and make presentations to the City and/or stakeholders as necessary.

Deliverable: Meeting Summaries

Task 1.5 Outside Agency Coordination

HCD. Obtain a finding of substantial compliance ("certification") by HCD. Maintain a working relationship with HCD throughout the review of the Housing Element, which includes communication with HCD in advance of and following the submission of the Housing Element, and responding to questions and comments in coordination with City staff.

Environmental Consultant. The City will hire an environmental consultant under a separate contract to conduct the appropriate environmental review of the project in compliance with CEQA. The environmental consultant will conduct all required outreach, noticing, filing of notices, and documents for the environmental review of the Housing Element Update. Consultant will provide the environmental consultant with the necessary data and analysis to complete the environmental review and coordinate with the environmental consultant to ensure that all legal requirements for public participation through CEQA are accounted for in the project schedule and are satisfied, including consultation with other public agencies and Native American tribes. If needed, Consultant will also review project specific (non-CEQA-related) public comments and assist in the development of the Response to Comments in the environmental document.

Task 2. Public Outreach

Task 2.1: General Visioning Survey.

Formulate survey questions to be distributed in an electronic format (such as Survey Monkey) to the general public as part of the visioning process. City staff will provide the digital platform for the survey and distribute the survey through various social media and email lists. A Spanish version of the survey is to be provided, and the cost of translation, if any should be included in the proposal. Analysis of the survey data is required as part of the Public Input Report described below.

Deliverables: Survey Questions, Section of the Summary of Input and Analysis in the Public Input Report

Task 2.2: Targeted Outreach

Conduct targeted outreach to special needs populations; especially relevant for Buellton are residents of the single-room occupancy (SRO) units along the Avenue of Flags, mobile home park residents, Spanish-speakers, and persons with disabilities. An important component of the Housing Element Update will be to provide for the housing needs of SRO residents while implementing the goals of the Avenue of Flags Specific Plan. Consultant will determine the method of outreach needed to be most effective to reach these populations.

Deliverable: Section of the Summary of Input and Analysis in the Public Input Report

Task 2.3: Input from Key Stakeholders

Obtain input from key stakeholders identified by City staff, including but not limited to the Buellton Union School District, Housing Authority of Santa Barbara County, People Helping People, the Buellton Senior Center, other non-profits, and housing developers. Plan for at least 1 public workshop.

Deliverable: Section of the Summary of Input and Analysis in the Public Input Report

Task 2.4: Planning Commission

With assistance from City staff, conduct a minimum 2 public meetings with the Planning Commission.

Deliverable: Section of the Summary of Input and Analysis in the Public Input Report

Task 2.5: City Council

With assistance from City staff, conduct a minimum 2 public meetings with the City Council, to include a possible joint Planning Commission/City Council meeting.

Deliverable: Section of the Summary of Input and Analysis in the Public Input Report

Deliverables: Public Input Report. Description of the outreach efforts made to include all economic segments of the community and/or their representatives, and a compilation of the summaries of public input received and its analysis, with a description of how it will be considered and incorporated into the Housing Element Update.

Task 3. Housing Element Update

Update all sections of the City's Housing Element, in compliance with the requirements of State Housing Element law and HCD within the schedule required by state law. It is anticipated that City Staff will be conducting the review of the 2015 Housing Element in terms of describing progress in implementation, effectiveness of the element, and how past programs addressed special needs populations.

Task 3.1: Recommend Format

Review format of existing Housing Element and recommend a suggested format for the updated Housing Element that is easily readable and understandable to the layperson.

Deliverables: Draft Template, Final Format

Task 3.2 Housing Element Update Sections

As work progresses, Consultant will provide drafts of each Housing Element section for review. Consultant is expected to coordinate with City staff to provide adequate time for review and discussion of revisions for each section.

Deliverables: Electronic Draft Sections in Microsoft Word, redlined and clean versions of draft sections if revisions are needed after City staff review.

Task 3.3 First Draft of Housing Element Update

Consultant will work with City staff to review comments/suggestions on previous versions. Consultant will incorporate revisions and prepare final drafts of the Housing Element Amendments using Microsoft Word, in the established format, for public review and comment and will submit draft to HCD as required for review. Consultant will facilitate ongoing consultations with HCD to ensure compliance with applicable State guidelines and requirements. This will include conducting the proper public outreach and notifying interested parties and agencies.

Deliverables: Redlined and Clean Versions of the First Draft in Microsoft Word

Task 3.4 Final Draft of Housing Element Update

Following public review and comment period, consultant will prepare Final Draft Housing Element Amendments in response to comments from HCD, responsible agencies, City staff, the Planning Commission, City Council, and the public.

Deliverables: Redlined and Clean Versions of the Final Draft in Microsoft Word

Task 3.5 State Certification and City Adoption

Consultant will facilitate state review and certification of the Housing Element. Upon adoption of the Final Draft Housing Element Update by the City Council, the Consultant will prepare a final version of the documents for inclusion in the General Plan. Consultant will prepare and submit required filings with State agencies and County Recorder's Offices.

Task 4. Draft Zoning Ordinance Amendments.

Recommend amendments to relevant regulations in Title 19 (Zoning) of the Buellton Municipal Code (and other sections, if appropriate), as needed, to ensure compliance with any amendments to the Housing Element.

Deliverable: Draft recommended Zoning Ordinance Amendments in redlined Microsoft Word format

IV. FORMAT AND CONTENT OF PROPOSAL

Each proposal must include, at a minimum, the following information:

1. Organization, Credentials and Experience

- a. Provide a summary of your company's qualifications, credentials and experience related to the project.
- b. Describe the size of your company, and indicate the principal, company official(s), and other personnel who will be assigned to do the work.
- c. Provide a list of three of the company's prior clients with contact information (names, titles, addresses, phone numbers and email addresses) for the appropriate person(s) at the client organization that the City can contact.

2. Understanding the Scope of Work

Provide a narrative reflecting the company's understanding of the Scope of Work and detailed proposal to implement the Project.

3. Tasks & Timeline

Provide a schedule identifying all tasks and subtasks to be performed. Indicate the total time required to complete the overall Project. The selected company will need to coordinate the timing of work with

City departments to accommodate meetings, events and other outreach efforts, and outside agency review (to include HCD), as applicable.

4. Standard Professional Services Agreement

The selected company shall use and comply with the terms and conditions of the City's Standard Professional Services Agreement as provided in Attachment 1 of this RFP. Please identify any exceptions or alterations to the agreement that you would potentially request.

5. Cost

Provide a cost indicating budget by task, for the completion of the proposed scope of work.

V. SELECTION PROCEDURES

Listed below is the City of Buellton's selection procedure for selecting firms to provide professional services.

1. Review proposals that satisfy the City's requirements
2. Evaluate and rank the proposals per the following criteria:
 - a. Completeness of proposal
 - b. Consultants knowledge and understanding of the Project
 - c. Past experience in preparing similar documents, including recent updates to Housing Elements in other jurisdictions
 - d. Adequacy of professional staff and depth of firm
 - e. (Optional) The top consultants may be invited for an interview with representatives of the City of Buellton.
3. Perform reference checks.
4. Enter negotiations with the top-ranked consultant. If the City and the Consultant are unable to reach agreement, the City will enter negotiations with the next highest ranked Consultant. The process continues until agreement is reached with a qualified consultant, or the City decides to re-issue the Request for Proposals.
5. The Consultant will be required to sign the City's standard contract for professional services (Attachment 1).
6. Recommend Consultant for contract award at a City Council Meeting.

VI. PROPOSAL PROCEDURES

Submittal: Interested firms shall submit five (5) copies of their proposal to the City of Buellton Planning Department, P.O. Box 1819, 107 W. Highway 246, Buellton, CA 93427, attention: Andrea Keefer, Planning Director and one (1) electronic copy to andrea@cityofbuellton.com. Proposal must be received and date-stamped by the Planning Department no later than **3:00 p.m. on Friday, September 3, 2021**. Postmarks are not accepted.

Clarifications: The City will respond to requests for clarification to the RFP in written Addendum(s) as needed. Inquiries should be directed by email only to andrea@cityofbuellton.com. No verbal requests will be accepted. All requests for clarification must be received by Friday, August 20, 2021.

ATTACHMENT 1: Standard Professional Services Agreement

ATTACHMENT 1

Standard Professional Services Agreement

**AGREEMENT FOR PROFESSIONAL CONTRACT SERVICES
BETWEEN
THE CITY OF BUELLTON
AND
CONSULTANT**

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**AGREEMENT FOR PROFESSIONAL CONTRACT SERVICES
BETWEEN
THE CITY OF BUELLTON
AND
CONSULTANT**

This AGREEMENT FOR **PROFESSIONAL CONTRACT SERVICES** BETWEEN THE CITY OF BUELLTON AND **CONSULTANT** ("AGREEMENT"), is made and entered into this XXth day of XX 20XX, by and among the City of BUELLTON a municipal corporation ("CITY") and **CONSULTANT**. ("CONTRACTOR").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of SECTION 19 "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period of XoneX (X) year from the date of execution of this AGREEMENT, as first shown above. Such term may be extended upon written agreement of both parties to this AGREEMENT.

SECTION 2. SCOPE OF SERVICES.

(CONTRACTOR) agrees to perform the services set forth in EXHIBIT "A", "SCOPE OF SERVICES/PROPOSAL" and made a part of this AGREEMENT.

SECTION 3. ADDITIONAL SERVICES.

(CONTRACTOR) shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in EXHIBIT "A" unless such additional services are authorized in advance and in writing by the City Council or City Manager of CITY. (CONTRACTOR) shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Manager.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

(a) Subject to any limitations set forth in this AGREEMENT, CITY agrees to pay (CONTRACTOR) the amounts specified in EXHIBIT "A" and made a part of this AGREEMENT. The total compensation, including reimbursement for actual expenses, shall not exceed XXX DOLLARS (\$_XXXX_), unless additional compensation is approved in writing by the City Manager.

(b) Each month (CONTRACTOR) shall furnish to CITY an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, sub-consultant contracts and miscellaneous expenses. CITY shall independently review each invoice submitted by the (CONTRACTOR) to determine whether the work performed and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event that no charges or expenses are disputed, the invoice shall be approved and paid

according to the terms set forth in subsection (c). In the event CITY disputes any charges or expenses, the original invoice shall be returned by CITY to (CONTRACTOR) for correction and resubmission.

(c) Except as to any charges for work performed or expenses incurred by (CONTRACTOR) which are disputed by CITY, CITY will use its best efforts to cause (CONTRACTOR) to be paid within thirty (30) days of receipt of (CONTRACTOR) invoice.

(d) Payment to (CONTRACTOR) for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by (CONTRACTOR).

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

CITY may inspect and accept or reject any of (CONTRACTOR)'s work under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept (CONTRACTOR)'s work within sixty (60) days after submitted to CITY. CITY shall reject work by a timely written explanation, otherwise (CONTRACTOR)'s work shall be deemed to have been accepted. CITY's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of (CONTRACTOR)'s work by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, sections 15 and 16, pertaining to indemnification and insurance, respectively.

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by (CONTRACTOR) in the course of providing any services pursuant to this AGREEMENT shall become the sole property of CITY and may be used, reused or otherwise disposed of by CITY without the permission of the (CONTRACTOR). Upon completion, expiration or termination of this AGREEMENT, (CONTRACTOR) shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

SECTION 7. CONSULTANTS BOOKS AND RECORDS.

(a) (CONTRACTOR) shall maintain any and all documents and records demonstrating or relating to (CONTRACTOR)'s performance of services pursuant to this AGREEMENT. (CONTRACTOR) shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by (CONTRACTOR) pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for three years from the date of execution of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular

business hours, upon written request by CITY or its designated representative. Copies of such documents or records shall be provided directly to the CITY for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at (CONTRACTOR) 's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of (CONTRACTOR)'s business, CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to CITY, as well as to its successors-in-interest and authorized representatives.

SECTION 8. STATUS OF CONSULTANT.

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of CITY. (CONTRACTOR) shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY; whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY.

(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under (CONTRACTOR)'s exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall have control over the conduct of (CONTRACTOR) or any of (CONTRACTOR)'s officers, employees or agents, except as set forth in this AGREEMENT. (CONTRACTOR) shall not at any time or in any manner represent that (CONTRACTOR) or any of (CONTRACTOR)'s officers, employees or agents are in any manner officials, officers, employees or agents of CITY.

(c) Neither (CONTRACTOR), nor any of (CONTRACTOR) 's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY's employees. (CONTRACTOR) expressly waives any claim (CONTRACTOR) may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE.

(CONTRACTOR) represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. (CONTRACTOR) shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, (CONTRACTOR) shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of (CONTRACTOR) under this AGREEMENT.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND LICENSES.

(CONTRACTOR) shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during

the term of this AGREEMENT. (*CONTRACTOR*) shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, as a result of any failure of (*CONTRACTOR*) to comply with this section.

SECTION 11. NONDISCRIMINATION.

Basic Provisions. In performing the Work, (*CONTRACTOR*) agrees as follows:

(1) (*CONTRACTOR*) will not discriminate against any employee or applicant from employment because of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act—Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. (*CONTRACTOR*) will take positive action or ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act—Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. Such action shall include but not be limited to the following: Employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. (*CONTRACTOR*) agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by CITY setting forth the provisions of this nondiscrimination clause.

(2) (*CONTRACTOR*) will, in all solicitations or advertisements for employees placed by or on behalf of (*CONTRACTOR*), state that all qualified applicants will receive consideration for employment without regard to race creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act—Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.

SECTION 12. UNAUTHORIZED ALIENS.

(*CONTRACTOR*) hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §1101, *et seq.* as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should (*CONTRACTOR*) so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should any liability or sanctions be imposed against CITY for such use of unauthorized aliens, (*CONTRACTOR*) hereby agrees to and shall reimburse CITY for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by CITY.

SECTION 13. CONFLICTS OF INTEREST.

(a) (*CONTRACTOR*) covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder (*CONTRACTOR*)'s performance of

services under this AGREEMENT. (*CONTRACTOR*) further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. (*CONTRACTOR*) agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT.

(b) CITY understands and acknowledges that (*CONTRACTOR*) is, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. (*CONTRACTOR*) is unaware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 14. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

(a) All information gained or work product produced by (*CONTRACTOR*) in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to (*CONTRACTOR*). (*CONTRACTOR*) shall not release or disclose any such information or work product to persons or entities other than CITY without prior written authorization from the City Manager, except as may be required by law.

(b) (*CONTRACTOR*), its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided (*CONTRACTOR*) gives CITY notice of such court order or subpoena.

(c) If (*CONTRACTOR*), or any officer, employee, agent or subcontractor of (*CONTRACTOR*), provides any information or work product in violation of this AGREEMENT, then CITY shall have the right to reimbursement and indemnity from (*CONTRACTOR*) for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of (*CONTRACTOR*)'s conduct.

(d) (*CONTRACTOR*) shall promptly notify CITY should (*CONTRACTOR*), its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. CITY retains the right, but has no obligation, to represent (*CONTRACTOR*) or be present at any deposition, hearing or similar proceeding. (*CONTRACTOR*) agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by (*CONTRACTOR*). However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

SECTION 15. INDEMNIFICATION.

INDEMNITY FOR PROFESSIONAL LIABILITY: When the law establishes a professional standard of care for (*CONTRACTOR*)'s services, to the fullest extent permitted by law, (*CONTRACTOR*) shall indemnify, defend and hold harmless CITY and any and all of its boards, officials, employees, and agents ("Indemnified Parties") from and against all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same

are caused in whole or in part by any negligent or wrongful act, error or omission of (*CONTRACTOR*), its officers, agents, employees or subconsultants (or any entity or individual for which (*CONTRACTOR*) shall bear legal liability) in the performance of professional services under this agreement.

INDEMNITY FOR OTHER THAN PROFESSIONAL LIABILITY: Other than in the performance of professional services and to the full extent permitted by law, (*CONTRACTOR*) shall indemnify, defend and hold harmless CITY, and any and all of its boards, employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this AGREEMENT by (*CONTRACTOR*) or by any individual or entity for which (*CONTRACTOR*) is legally liable, including but not limited to officers, agents, employees or subcontractors of (*CONTRACTOR*).

SECTION 16. INSURANCE.

(*CONTRACTOR*) agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "B" "INSURANCE" and made a part of this AGREEMENT. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. (*CONTRACTOR*) agrees to provide CITY with copies of required policies upon request.

SECTION 17. ASSIGNMENT.

The expertise and experience of (*CONTRACTOR*) are material considerations for this AGREEMENT. CITY has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon (*CONTRACTOR*) under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer this Agreement or any portion of this AGREEMENT or the performance of any of (*CONTRACTOR*)'s duties or obligations under this AGREEMENT without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that (*CONTRACTOR*), in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

SECTION 18. CONTINUITY OF PERSONNEL.

(*CONTRACTOR*) shall make every reasonable effort to maintain the stability and continuity of (*CONTRACTOR*)'s staff assigned to perform the services required under this AGREEMENT. (*CONTRACTOR*) shall notify CITY of any changes in (*CONTRACTOR*)'s staff assigned to perform the services required under this AGREEMENT, prior to any such performance.

SECTION 19. TERMINATION OF AGREEMENT.

(a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to (CONTRACTOR). In the event such notice is given, (CONTRACTOR) shall cease immediately all work in progress.

(b) (CONTRACTOR) may terminate this AGREEMENT at any time upon thirty-(30) days written notice of termination to CITY.

(c) If either (CONTRACTOR) or CITY fail to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either (CONTRACTOR), or CITY may terminate this AGREEMENT immediately upon written notice.

(d) Upon termination of this AGREEMENT by either (CONTRACTOR) or CITY, all property belonging exclusively to CITY, which is in (CONTRACTOR)'s possession, shall be returned to CITY. (CONTRACTOR) shall furnish to CITY a final invoice for work performed and expenses incurred by (CONTRACTOR), prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

SECTION 20. DEFAULT.

In the event that (CONTRACTOR) is in default under the terms of this AGREEMENT, the CITY shall not have any obligation or duty to continue compensating (CONTRACTOR) for any work performed after the date of default and may terminate this AGREEMENT immediately by written notice to the (CONTRACTOR).

SECTION 21. EXCUSABLE DELAYS.

(CONTRACTOR) shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of (CONTRACTOR). Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of CITY, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

SECTION 22. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES/PROPOSAL", shall be furnished to (CONTRACTOR) in every reasonable way to facilitate, without undue delay, the work to be performed under this AGREEMENT.

SECTION 23. NOTICES.

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To CITY: City of Buellton
Attn:
P.O. Box 1819
107 W. Highway 246
Buellton, CA 93427

To: XXX
XXX
XXX

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 24. AUTHORITY TO EXECUTE.

The person or persons executing this AGREEMENT on behalf of (CONTRACTOR) represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind (CONTRACTOR) to the performance of its obligations hereunder.

SECTION 25. BINDING EFFECT.

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 26. MODIFICATION OF AGREEMENT.

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the (CONTRACTOR) and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void. In the event of any conflict between the terms and conditions of this AGREEMENT and attached Exhibit "A", the terms and conditions of this AGREEMENT shall control. In the event of any conflict between the terms and conditions of this AGREEMENT and any attached exhibits, the terms and conditions of this AGREEMENT will control.

SECTION 27. WAIVER.

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by (CONTRACTOR) shall not constitute a waiver of any of the provisions of this AGREEMENT.

SECTION 28. LAW TO GOVERN; VENUE.

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Santa Barbara. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

SECTION 29. ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 30. ENTIRE AGREEMENT.

This AGREEMENT, including the attached EXHIBITS "A" and "B", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between (CONTRACTOR) and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 31. SEVERABILITY.

If a term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CONSULTANT

By: _____

By: _____

Title: _____

Title: _____

CITY OF BUELLTON

APPROVED AS TO FORM:

By: _____
Scott Wolf, City Manager

Greg Murphy, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES/PROPOSAL

[NOTE: Scope of Services and (CONTRACTOR) Compensation is set forth in the proposal from xxx - dated xxxx, attached hereto and incorporated herein by this reference. Total compensation shall not exceed \$ xxx.]

EXHIBIT "B"

INSURANCE

A. Insurance Requirements. (*CONTRACTOR*) shall provide and maintain insurance, acceptable to the City Manager or City Council, in full force and effect throughout the term of this AGREEMENT, 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 (*CONTRACTOR*), its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII. (*CONTRACTOR*) shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.

(3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of the (*CONTRACTOR*) and all risks to such persons under this AGREEMENT.

(4) Errors and omissions liability insurance appropriate to the (*CONTRACTOR*)'s profession.

2. Minimum Limits of Insurance. (*CONTRACTOR*) shall maintain limits of insurance no less than:

(1) General Liability: \$1,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

(4) Errors and omissions Liability: \$1,000,000 per occurrence.

B. Other Provisions. Insurance policies required by this AGREEMENT shall contain the following provisions:

1. All Policies. Each insurance policy required by this paragraph 5 shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either party to this AGREEMENT, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to the CITY FINANCE DIRECTOR.

2. General Liability Accident -- Mobile Liability Rates.

(1) CITY and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities (*CONTRACTOR*) performs; products and completed operations of (*CONTRACTOR*); premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by (*CONTRACTOR*). The coverage shall contain no special limitations on the scope of protection afforded to CITY, and their respective elected and appointed officers, officials, or employees.

(2) (*CONTRACTOR*)'s insurance coverage shall be primary insurance with respect to CITY, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, (*CONTRACTOR*) 's insurance.

(3) (*CONTRACTOR*)'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.

(4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation and Employer's Liability Coverage. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against CITY, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by (*CONTRACTOR*).

C. Other Requirements. (*CONTRACTOR*) agrees to deposit with CITY, at or before the effective date of this contract, certificates of insurance necessary to satisfy CITY that the insurance provisions of this contract have been complied with. The City Attorney may require that (*CONTRACTOR*) furnish CITY with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. CITY reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. (*CONTRACTOR*) shall furnish certificates and endorsements from each subcontractor identical to those CONSULTANT provides.

2. Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY or its respective elected or appointed officers, officials, employees and volunteers or the (*CONTRACTOR*) shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit (*CONTRACTOR*)'s liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT.