



**REQUEST FOR PROPOSALS (RFP)  
FOR  
HILLSIDE NATURAL AREA FIRE RESILIENCE AND  
FOREST CONSERVATION MANAGEMENT PLAN**



**CITY OF EL CERRITO  
PUBLIC WORKS DEPARTMENT  
10890 SAN PABLO AVENUE  
EL CERRITO, CA 94530  
(510) 215-4369**

**RFP RELEASE DATE: Thursday, March 30, 2023  
SUBMITTALS DUE: Thursday, April 27, 2023 at 2:00 PM**



**The City of El Cerrito is requesting proposals from qualified firms or individuals to provide professional services to assist the City in developing the Hillside Natural Area (HNA) Fire Resilience and Forest Conservation Management Plan. This document outlines the scope of work for consulting services. Electronic proposals will be accepted until April 27, 2023 at 2:00 PM. Proposals shall be submitted by email\* to:**

**Karineh Samkian  
City of El Cerrito, Public Works Department  
[ksamkian@ci.el-cerrito.ca.us](mailto:ksamkian@ci.el-cerrito.ca.us)**

(\* ) An email reply will be sent confirming the City’s receipt of the proposal. Contact the City immediately if you do not receive a confirmation email.

### **INTRODUCTION**

The City of El Cerrito (City) is inviting Proposals from qualified firms for preparation and adoption of the HNA Fire Resilience and Forest Conservation Management Plan (Plan).

The selected firm to lead this effort will be expected to thoughtfully consider how to ensure that the document can be implemented by City staff, used by all community members, and incorporate features that encourage use and understanding of the document at all levels and across all sectors. The final document should be extremely reader friendly and contain high quality graphics. The El Cerrito community is very involved and will require a high touch approach to community engagement. As such, the consultant or associated subcontractor should also have demonstrated success with developing and implementing community engagement campaigns.

### **BACKGROUND**

The City of El Cerrito is a Charter City that incorporated as a General Law City on August 23, 1917 and one hundred years later became a Charter City in November 2018. El Cerrito is located in western Contra Costa County and forms part of the highly urbanized area along the eastern shore of San Francisco Bay. El Cerrito has a population of approximately 25,500 and covers an area of 3.9 square miles. It is a community of highly educated residents due primarily to the proximity to UC Berkeley and the San Francisco Bay Area high-tech economy. It is known for its temperate climate and breathtaking views of San Francisco Bay and the Golden Gate Bridge from the hillside areas.

Over the last few years, community concerns regarding fire risk in the City’s HNA and surrounding residential communities have significantly increased. The City has responded with ongoing and increased vegetation maintenance activities, completing work largely based on planning efforts that were completed many years ago, including the 1994 City of El Cerrito Hillside Natural Area Fire Hazard Reduction Plan. However, the need for more robust, comprehensive, and balanced vegetation management practices became increasingly evident and was identified in the City’s 2015 Urban Greening Plan. Additionally, in 2019, the El Cerrito Parks and Recreation Facilities Master Plan specifically called for action to “support the El Cerrito-Kensington Wildfire Action

Plan goals and policies by creating defensible spaces, increasing weed abatement, and managing dead or diseased trees and other vegetation, especially in the Hillside Natural Area”. El Cerrito voters passed a measure (Measure H) to further fund park maintenance activities that same year and the City has since increased its fire fuel reduction and vegetation management activities, in part with these park maintenance funds. Given the ongoing and historic drought, rising global temperatures and community concerns regarding the risk of wildfire, an updated plan with the required environmental site analysis is needed now to guide the City in performing and budgeting for the most effective, sustainable, and cost-efficient fuel reduction and forest conservation activities.

The City of El Cerrito was awarded a \$145,000 State Coastal Conservancy grant in September 2022 to complete the Plan by September, 2024. The Coastal Conservancy is a California state agency, established in 1976 to protect and improve natural lands and waterways, to help people get to and enjoy the outdoors, and to sustain local economies along California’s coast. It acts with others to protect and restore, and increase public access to California’s coast, ocean, coastal watersheds and the San Francisco Bay Area. Its vision is of a beautiful, restored, and accessible coast for current and future generations of Californians.

### **PROJECT GOALS AND OBJECTIVES**

The purpose of this project is to establish and adopt a comprehensive fire hazard reduction and vegetation management plan for the City’s HNA. This Plan will:

- identify and protect critical resource areas,
- guide the City’s fire fuel reduction, native forest conservation, and maintenance activities, and
- evaluate access improvements, connectivity and enhancements to the trail network that links natural features, schools and community assets.

The project will also include California Environmental Quality Act (CEQA) review and determination. The City will use this Plan and CEQA documents to guide the future maintenance and stewardship activities in the HNA.

### **SCOPE OF WORK**

Proposals shall include the following structure for the scope of work, which has been approved by the State Coastal Conservancy, consisting of the following tasks. The City may modify the scope in collaboration with the selected Consultant and all activities will be undertaken in close coordination with the City. The City reserves the right to negotiate a modified scope of work with the selected Consultant that consists of fewer tasks to ensure that the project fits within the City’s available budget and/or to add additional tasks to the scope based on needs that are identified.

The State Coastal Conservancy requires that the grantee publicly acknowledge the Conservancy’s funding in all of its project-related press releases, contacts with the media, and social media

postings and on its website. All public materials generated by the project will adhere to the Conservancy's Logo and Signage Guidelines.

## **Task 1 - Project Site Assessment and Draft Plan Preparation**

### Task 1.1 – Project Initiation

- Meet with relevant City staff to review scope and timeline.
- Review existing documents and current maintenance practices.

### Task 1.2 – Analysis

- Conduct site assessment including:
  - site review,
  - biological resources field assessment,
  - wetland delineation,
  - fuels and fire hazard assessment,
  - assessment of cultural and social value of project area, trails, access and infrastructure.

### Task 1.3 – Community Engagement

- In coordination with City staff, lead a stakeholder meeting where representatives from various City committees, commissions, and groups will be invited to provide input.
- In coordination with City staff, conduct a public workshop to identify relevant issues. There will be a total of two public workshops as part of this project (See Task 3.1) and one can be held virtually.
- The selected firm will:
  - develop a flyer to advertise the event (City staff will advertise),
  - prepare workshop agenda, signs, and all other materials,
  - prepare and deliver presentation, and
  - gather input.

### Task 1.4 – Develop Draft Plan

- Develop a Draft Plan that incorporates staff and community comments as appropriate.

*Task Deliverable(s):* Draft Plan

*Estimated Completion Date:* September 19, 2023

## **Task 2 - CEQA Document Preparation**

### Task 2.1 – Draft Initial Study

- Draft an Initial Study to determine if a Mitigated Negative Declaration (MND) or Environmental Impact Report (EIR) will be needed based on the activities outlined in the Draft Plan. City staff anticipate the project will qualify for an MND.
- Prepare Draft MND if appropriate.

### Task 2.2 – Staff Review

- CEQA documents will be reviewed by City staff.
- Incorporate comments.

*Task Deliverable(s):* Draft CEQA Documents  
*Estimated Completion Date:* January 18, 2024

### **Task 3 - Stakeholder Outreach and Review**

#### Task 3.1 – Community Engagement

- Release a public draft of the Plan and CEQA documents on the City’s website.
- In coordination with City staff, lead a second stakeholder meeting where representatives from the various City committees, commissions, and groups will be invited to provide comments on the Draft Plan.
- In coordination with City staff, conduct a second public workshop to solicit comments on the Draft Plan.
- The selected firm will:
  - develop a flyer to advertise the event (City staff will advertise),
  - prepare workshop agenda, signs, and all other materials,
  - prepare and deliver presentation, and
  - receive and incorporate comments as appropriate.
- Present the Draft Plan and CEQA documents to the Planning Commission, Environmental Quality Committee, and the Urban Forest Committee to solicit comments.

#### Task 3.2 – Finalize Plan and CEQA Documents

- Finalize the Draft Plan and CEQA documents that incorporates staff and community comments as appropriate.

*Task Deliverable(s):* Final Plan and CEQA Documents  
*Estimated Completion Date:* May 21, 2024

### **Task 4 Adoption by City Council**

The selected firm will prepare an agenda item and a presentation for City Council consideration to adopt the Plan and adopt CEQA Documents.

*Task Deliverable(s):* Final Approved Plan and adopted CEQA Documents  
*Estimated Completion Date:* August 20, 2024

### **PROPOSAL SUBMITTAL REQUIREMENTS**

Responses to the RFP should be submitted according to the instructions outlined herein. Proposal content and completeness are most important. Although no page limitation will be imposed, clarity and conciseness are essential. Each proposal should include, at a minimum, the following items:

1. Cover Letter – Provide a concise cover letter signed by an authorized representative of the Consultant giving an overview of the Consultant’s general ability to perform the scope of services described in this RFP.

## 2. General Information

- Name
- Address
- Website
- Number of Years in Business
- Primary & Secondary Contacts (Name, Address, Phone, Email of each)

## 3. Statement of Experience and Qualifications

- Present the qualifications and experience of the proposed key staff and any support staff and subcontractors for the scope of work.
- Provide a list of Fire Resilience and Forest Conservation Management Plans (or similar) your firm has conducted that are similar in nature to the scope of this scope of work. Substantial recent experience is preferred in developing Fire Resilience and Forest Conservation Management Plans for public or private sector organizations.
- Describe your firm's ability and approach for conducting Fire Resilience and Forest Conservation Management Plans, please note where the approach differs.

## 4. Cost Proposal – Provide your firm's estimated fee for providing the consultant's work. Provide a breakdown of your fee by task, identifying project team members, billing rates and estimated hours per task. Include hour and fee total by subtask and information of any other incidental cost, such as mileage, etc. Indicate the proposed compensation rate and structure for the described services. Provide the price of each component including optional services. The City intends for the contract costs not to exceed **\$145,000**, which is the amount awarded by the State Coastal Conservancy grant to develop the plan.

## 5. Approach, Scope, and Timelines – Provide a proposed approach and projected timeline to conduct and complete the steps in the Scope of Services. Briefly describe the methodology and organizational approach the firm would use to assist the City, including critical elements and special methodologies that would be used to ensure that City objectives are satisfied.

## 6. References – Provide three (3) recent references from public agencies in which the firm completed successful Fire Resilience and Forest Conservation Management Plans or similar; include names, addresses, email addresses, and telephone numbers.

## 7. Consulting Services Agreement – A statement that the Consulting Services Agreement has been read, that the firm will meet the prerequisite insurance requirements, and the firm, if selected, agrees to enter into such agreement.

## 8. Other Information (Optional) – Provide additional relevant information that may be helpful in the selection process (not to exceed two pages).

### **PROPOSAL SUBMITTAL, TIMELINE, AND SELECTION INFORMATION**

- **Request for Proposals Issued:** Thursday, March 30, 2023

- **Proposers Statement of Interest:** In order to ensure inclusion on the City’s notification list for this RFP, proposers are strongly encouraged to submit a letter of interest via email to [ksamkian@ci.el-cerrito.ca.us](mailto:ksamkian@ci.el-cerrito.ca.us).
- **Final Questions Concerning the RFP:** Consultant questions pertaining to this RFP should be submitted to [ksamkian@ci.el-cerrito.ca.us](mailto:ksamkian@ci.el-cerrito.ca.us) no later than **5:00 p.m. on Thursday, April 13, 2023**. Responses to questions will be answered and distributed to all consultants that have submitted a timely Statement of Interest to the City.
- **Proposal Submittal:** Proposals shall be addressed to the Senior Program Manager Karineh Samkian and submitted electronically no later than **2:00 PM on Thursday, April 27, 2023** to [ksamkian@ci.el-cerrito.ca.us](mailto:ksamkian@ci.el-cerrito.ca.us). Consultant shall identify receipt of all addenda in their Transmittal Letter.

Proposals will not be accepted after the deadline. Consultants submitting proposals assume the risk of their selected method of delivery. If there is an issue submitting the proposal electronically, the Consultant can mail four (4) copies of their response or send a USB drive with the electronic proposal to the following address, postmarked by the due date:

City of El Cerrito, Public Works Department  
 ATTN: Karineh Samkian, Senior Program Manager  
 10890 San Pablo Avenue  
 El Cerrito, CA 94530

The proposal shall be electronically signed by an officer of the firm who is authorized to bind the firm to contract and shall contain a statement to this effect. Costs incurred by consultants in preparing and submitting their proposals for consideration by the City shall not be reimbursed.

**SELECTION PROCESS**

Each proposal will be reviewed to determine if it meets the submittal requirements contained within this RFP. Failure to meet the requirements for the RFP can be cause for rejection of the proposal. The City may reject any proposal if it is conditional, incomplete, or contains irregularities. The City may waive an immaterial deviation in a proposal, but this shall in no way modify the proposal document or excuse the consultant from compliance with the contract requirements if the consultant is awarded a contract.

Proposals will be evaluated based upon the following factors, but may not be limited to just these factors:

- 1) Presentation, completeness, clarity, organization, and conformance to the RFP content and format requirements.
- 2) Qualifications of the firm and the experts assigned, including education, experience, and professional expertise in this type of work.
- 3) Experience in conducting successful similar studies.
- 4) Client experience on similar studies.
- 5) Reasonableness of cost for services.

**TENTATIVE RFP TIMELINE**

It is the City's intent to follow the process and timetable as set forth below. At the City's discretion, estimated dates and process are subject to change as necessary.

RFP Issued	03/30/2023
Deadline for Final Questions, Clarifications	04/13/2023 5:00 PM
Final Answers Provided to Questions	04/19/2023 5:00 PM
Proposals Due	04/27/2023 2:00 PM
Finalists Identified	Week of 05/01/23
Interviews (if needed)	Week of 05/08/23
Consultant Selection and Contract Preparation	Week of 05/15/2023
Contract Awarded	06/06/2023
Work Commences	06/07/2023

### **CONTRACTUAL ISSUES**

A sample of the City Consultant Services Agreement is provided in Appendix A for the review of all proposing consultants. The successful consultant will be required to execute a Consultant Services Agreement with the City and meet the insurance requirements and the requirement for an El Cerrito Business License therein. Please carefully review all sections and pay special attention to the indemnity portions of the contract. The City does not ordinarily allow modifications to the standard agreement when contracting for services from outside firms.



**APPENDIX A:  
SAMPLE Agreement for Consultant Services**

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF \_\_\_\_\_ AND  
[NAME OF DESIGN PROFESSIONAL CONSULTANT]**

THIS AGREEMENT for consulting services is made by and between the City Of \_\_\_\_\_ ("City") and \_\_\_\_\_ ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 20\_\_ (the "Effective Date").

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on \_\_\_\_\_, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a sum not to exceed \_\_\_\_\_, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically

authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and City, if applicable.

2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 **Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.

2.6 **Reimbursable Expenses.** Reimbursable expenses are specified below, and shall not exceed \$ \_\_\_\_\_. Expenses not listed below are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and

amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$\_\_\_\_\_ [dollar amount to be determined based on nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required] per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 **Commercial General and Automobile Liability Insurance.**

4.2.1 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$\_\_\_\_\_ [dollar amount to be determined based on nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required] per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

#### 4.3 **Professional Liability Insurance.**

4.3.1 **General requirements.** Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$ \_\_\_\_\_ [dollar amount to be determined based on the nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required] covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3.3 **Additional Requirements.** A certified endorsement to include contractual liability shall be included in the policy

4.4 **All Policies Requirements.**

4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any

loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.

**4.4.6 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

**5.1 General Requirement.** To the fullest extent permitted by law, Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers (collectively, "Indemnitees") from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees, costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services under this Agreement, or its failure to comply with any of its obligations contained in this Agreement, or its failure to comply with any applicable law or regulation, except such Liability caused by the sole negligence or willful misconduct of City.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and

indemnity by the City, unless this time has been extended by the City in writing. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damage or claims for damages whether or not such insurance policies shall have been determined to apply.

**5.2 PERS Indemnification.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement 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 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.

**5.3 Design Professionals.** Notwithstanding Sections 5.1 and 5.2, to the extent that the services under this Agreement include design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by California Civil Code Section 2782.8.

**5.4 Construction Contracts.** Notwithstanding Sections 5.1 and 5.2, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

## **Section 6. STATUS OF CONSULTANT.**

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3;



however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

**Section 7. LEGAL REQUIREMENTS.**

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's Failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant

in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

**Section 8. TERMINATION AND MODIFICATION.**

**8.1 Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon \_\_\_\_\_ days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

**8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

**8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

**8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall included, but not be limited to, the following:
- 8.6.1 Immediately terminate the Agreement;
  - 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
  - 8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
  - 8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

**Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of

the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

**Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
  
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County \_\_\_\_\_ or in the United States District Court for the \_\_\_\_\_ District of California.
  
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
  
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
  
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
  
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
  
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by \_\_\_\_\_ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

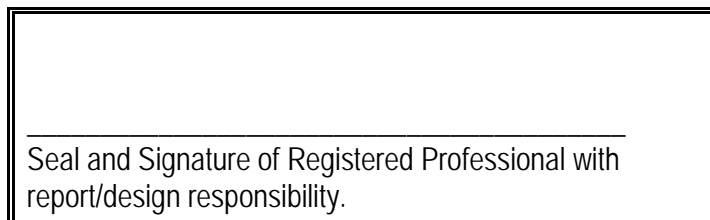
10.10 **Notices.** Any written notice to Consultant shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any written notice to City shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10.11 **Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



10.12 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B, represents the entire and integrated agreement

between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A      Scope of Services  
Exhibit B      Payment Schedule

10.13 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

CITY OF \_\_\_\_\_

CONSULTANT

\_\_\_\_\_  
[NAME, TITLE]

\_\_\_\_\_  
[NAME, TITLE]

Attest:

\_\_\_\_\_  
[NAME], City Clerk

Approved as to Form:

\_\_\_\_\_  
[NAME], City Attorney

1011035\_1.DOC

EXHIBIT A  
SCOPE OF SERVICES



EXHIBIT B  
COMPENSATION SCHEDULE

