



**REQUEST FOR PROPOSALS (RFP)
FOR
SAFETY ELEMENT UPDATE**

**CITY OF EL CERRITO
PLANNING DIVISION
10890 SAN PABLO AVENUE
EL CERRITO, CA 94530
(510) 215-4330**

RFP RELEASE DATE: Tuesday August 29, 2023

SUBMITTALS DUE: Tuesday, September 26, 2023 at 5:00 PM

The City of El Cerrito is requesting proposals from qualified firms or individuals to provide professional services to work with the City in developing a Safety Element that revises the City's existing General Plan Safety Element (1999), based on current and future conditions and applicable regulatory requirements. This document outlines the scope of work for consulting services. Electronic proposals will be accepted until September 26, 2023 at 5:00 PM. Proposals shall be submitted by email* to:

Sean Moss
City of El Cerrito, Planning Division
smoss@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 an updated Safety Element and applicable environmental documentation. Proposals for this project will be due by 5:00 P.M. on Tuesday, September 26, 2023 and must include all the requirements listed under the Scope of Work, Required Tasks, and Submittal Requirements.

This Request for Proposal ("RFP") contains additional information regarding the selection process, tentative schedule, and general terms and conditions. The project will be managed by the Planning Division of the Community Development Department. Staff from additional departments will also provide input throughout the process. The City anticipates that work will commence on November 9, 2023.

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.

El Cerrito's current General Plan was adopted in 1999, with a series of General Plan Amendments adopted since then. Most amendments have been minor. The most notable General Plan amendments are Housing Element updates and the 2014 amendment that facilitated the adoption of the San Pablo Avenue Specific Plan (SPASP). The SPASP focuses much of the city's growth in the transit-rich San Pablo Avenue corridor and in proximity to two BART stations. The General Plan is organized into eight chapters. The State-mandated general plan elements are

woven throughout these chapters, rather than being organized as stand-alone elements. The current “Safety Element” exists within portions of Chapter 6: Public Facilities and Services and Chapter 7: Resources and Hazards, as described in the introduction to each chapter.

El Cerrito’s unique geography presents many issues related to public safety. The Hayward Fault runs through the city, and accordingly, a portion of the city lies within the Alquist-Priolo Earthquake Fault Zone. The city’s adjacency to the undeveloped Wildcat Canyon Regional Park and other undeveloped lands presents risk of wildfire. Approximately 1/3 of the city lies within the Very High Fire Hazard Severity Zone (VHFHSZ). A small low-lying portion of the city is within the 100-year flood zone (FEMA Zone A). The City has mapped multiple active landslide areas, which are included on the City’s Special Study Hazard Map along with the Alquist-Priolo Earthquake Fault Zone, the flood zone, and the VHFHSZ.

The El Cerrito Fire Department maintains several hazard mitigation programs, including vegetation management and an annual weed abatement program.

In 2009, the El Cerrito City Council adopted a Seismic Hazards Identification and Mitigation Program to identify and mitigate the risks of unreinforced masonry (URM) buildings. At the current time, all identified URM buildings have been retrofitted or demolished. In 2021, the City began an analysis of structures with wood frame target stories (often referred to as “soft stories”) in El Cerrito. The effort resulted in a series of recommendations that were presented to the City Council in February 2023. The City’s 2023-2031 Housing Element was adopted by the City Council on August 15, 2023.

In 2018, the City Council adopted the Contra Costa County Local Hazard Mitigation Plan, which was developed by a coalition of local agencies in Contra Costa County. This plan includes El Cerrito-specific annexes in Volume 2.

The City Council adopted the City’s Climate Action Plan (CAP) in 2013. In 2022, the City commenced an update of the plan which is currently ongoing.

In April 2022, the City Council adopted the City’s current Emergency Operations Plan.

The documents referenced above are available at:

[El Cerrito General Plan](#)

[Special Study Hazards Map](#)

[Contra Costa County Local Hazard Mitigation Plan](#)

[2013 Climate Action Plan and information on Climate Action and Adaptation Plan update](#)

[El Cerrito Emergency Operations Plan](#)

[San Pablo Avenue Specific Plan](#)

PROJECT GOALS AND OBJECTIVES

A Safety Element that fulfills all mandated State requirements and addresses all applicable safety risks to the El Cerrito community.

SCOPE OF WORK

The City is seeking proposals that generally reflect the following scope. Consultants are strongly encouraged to suggest refinements that achieve the work products described below. The City invites consultants to utilize elements which incorporate innovation and creativity to delivering a top value Safety Element.

The consultant will include robust community engagement to develop the Safety Element in cooperation with staff, City Council, the Planning Commission, and members of the public. The City is seeking a consultant to prepare an element that meets regulatory requirements while being implementable by staff, and easy to understand for the community.

The project should begin with a review of existing documentation, including the following:

- City of El Cerrito General Plan
- Contra Costa County Hazard Mitigation Plan (including Volume 2 El Cerrito Annex)
- Special Study Hazards Map
- 2013 Climate Action Plan and the updated Climate Action and Adaptation Plan (Adoption expected in early 2024)
 - The CAAP, currently in progress, will include a vulnerability assessment and section on Climate Resiliency and Adaptation, in compliance with SB 379
- San Pablo Avenue Specific Plan

The Safety Element should identify all applicable risks to the safety of the El Cerrito community. The element should identify the local setting and existing conditions related to each risk. The element should discuss the roles of other regional, state, and federal agencies and their jurisdiction with regard to addressing safety risks. The element should outline ongoing and new policies and programs that can be implemented to address the identified safety risks.

Consistent with SB 99, AB 747, and AB 1409, the City expects the Safety Element to contain a robust analysis of emergency evacuation routes and procedures. Certain existing conditions (topography, road widths, etc.) pose challenges for efficient and safe emergency evacuation and response. Since emergency evacuation and response are issues that impact various safety risks, the City expects the Safety Element to analyze these topics and propose policy recommendations to maximize safe and efficient evacuation procedures in the event of a major emergency.

Senate Bill 379 requires that cities address climate change adaptation and resilience. The ongoing update to the City's Climate Action and Adaptation Plan (CAAP) will provide much, if not all, of the required analysis and planning, once adopted. The City expects the consultant to review the requirements of SB 379 and the work products completed as part of the CAAP, and to

identify any additional analysis and planning that should be included in the Safety Element to ensure compliance.

The draft element will be reviewed internally by staff and shared with City advisory bodies and members of the public. The project schedule should include adequate time for public comment on the draft element.

Staff recommends the following structure for the scope of work consisting of the following tasks, which the City may modify in collaboration with the selected Consultant. 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.

Task 1. Data Collection/Research

This task consists of review of existing documents and policies related to the Safety Element. These documents include, but are not limited to, the El Cerrito General Plan, the Contra Costa County Hazard Mitigation Plan, the El Cerrito Special Study Hazards Map, and the El Cerrito Municipal Code.

The consultant should review available materials and perform an assessment of existing conditions.

The City's General Plan is divided into chapters that do not precisely coincide with the State-mandated elements. The required components of the Safety Element lie within portions of Chapter 6: Public Facilities and Safety and Chapter 7: Resources and Hazards. This task will include an assessment of specifically which portions of the existing General Plan constitute the mandatory Safety Element.

The ongoing Climate Action and Adaptation Plan update, that is underway, will address many of the climate change adaptation and resiliency requirements of SB 379. The consultant will review available materials from the current CAAP update to gain an understanding of what requirements will be addressed in the CAAP update and what requirements remain to be addressed in the Safety Element update. City staff will facilitate communication between the consultant and the City's consultant for the CAAP update to facilitate a common understanding of the SB 379 approach between the two documents.

Task 2. Community Engagement

The consultant will prepare a community engagement strategy. Community engagement should occur throughout the Safety Element development process (i.e. this task will likely overlap with other tasks outlined here.) . Community engagement should focus on listening to and gathering information about existing conditions and existing safety risks, and hearing and understanding the policy values and ideas of the public with regard safety risks. The consultant's response

should detail the anticipated timing of various community engagement efforts within the overall project timeline. The response should also include examples of community engagement strategies the consultant has utilized for other safety element updates or similar projects.

Task 3. Policy Development

The consultant will work with City staff of various City departments to develop the guiding policies of the Safety Element, incorporating input from public engagement efforts. Consultant will convene meetings with relevant staff to gather information and discuss policy objectives for the Safety Element. This task may also include a study session with the Planning Commission to review and provide feedback on policy proposals. In the response, the consultant should propose strategy for policy development based on the success of other safety element updates or similar projects.

Task 4. Prepare Draft Safety Element

The consultant shall prepare a draft Safety Element that complies with all applicable legislation and guidance published by OPR. The draft Safety Element should be a stand-alone document, but should specifically identify which portions of the current General Plan are proposed to be replaced by the revised Safety Element. The consultant will produce a document that clearly outlines which text in the current General Plan is proposed for deletion and/or modification.

Task 5. CEQA Documentation

The City has not predetermined the outcome of the environmental analysis and will exercise its independent judgment when making any final determination as to the appropriate level of environmental review. Responses to the RFP should detail assumptions regarding the type of CEQA document that the Consultant anticipates preparing, based on professional judgement.

As part of this task, consultant shall prepare the type of CEQA document that has been identified in the response and agreed to by City staff. Consultant will prepare an administrative draft for review by City staff and a final public draft for review by the public. The consultant will prepare all required forms and public notices. Consultant will coordinate any required circulation and posting with assistance from City staff.

Task 6. Safety Element Adoption/CEQA Document Certification Process

Consultant will assist in preparation of reports and materials for a minimum of one Planning Commission meeting and one City Council meeting. Consultant will attend meetings and assist with presentations to decision makers.

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 and weblinks to Safety Elements (or similar) your firm has prepared that are similar in nature to the scope of this scope of work.
 - Describe your firm’s ability and approach for preparing Safety Elements and other general plan updates. Please note where the approach is unique or innovative.
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.
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 Safety Element updates, General Plan updates or similar projects; 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: Tuesday, August 29, 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 smoss@ci.el-cerrito.ca.us.
- **Final Questions Concerning the RFP:** Consultant questions pertaining to this RFP should be submitted to smoss@ci.el-cerrito.ca.us no later than **5:00 p.m. on Tuesday, September 12, 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 Planning Manager and submitted electronically no later than **5:00 PM on Tuesday, September 26, 2023** to smoss@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, Planning Division
 Attn: Sean Moss, Planning 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	August 29, 2023
Deadline for Final Questions, Clarifications	September 12, 2023
Final Answers Provided to Questions	September 19, 2023
Proposals Due	September 26, 2023
Finalists Identified	Week of September 26, 2023
Interviews (if needed)	Week of October 2, 2023
Consultant Selection and Contract Preparation	Week of October 9, 2023
Contract Awarded	November 7, 2023
Work Commences	November 8, 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 EL CERRITO AND
[NAME OF PROFESSIONAL CONSULTANT]**

THIS AGREEMENT for consulting services is made by and between the City Of El Cerrito (“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.

[NOTE TO STAFF: IF NECESSARY, THE EXPENSES MAY BE INCLUDED IN OR ATTACHED AS EXHIBIT [C or D], AND THE PRECEDING LANGUAGE MODIFIED APPROPRIATELY.]

- 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 \$ **\$1,000,000** 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 \$ **\$1,000,000** 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 **\$1,000,000** 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. Consultant shall, to the fullest extent allowed by law, with respect to all Services performed in connection with this Agreement, defend with counsel acceptable to City, indemnify, and hold City, its officers, employees, agents, and volunteers, harmless from and against any and all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, ("Claims"). Consultant will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liability"). Such obligations to defend, hold harmless and indemnify the City shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the City.

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

Notwithstanding the forgoing, to the extent this Agreement is a “construction contract” as defined by California Civil Code section 2783, 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 60 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 include, 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.

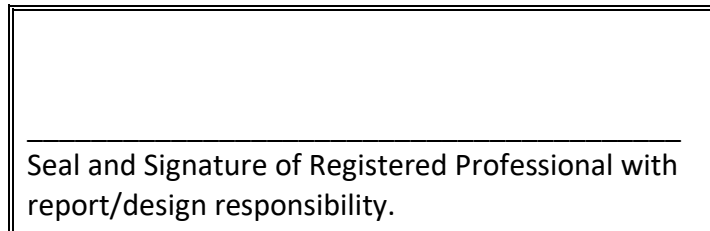
10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

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, B, ~~[[and]C], and D]~~ **[ENSURE THAT THE CORRECT EXHIBITS ARE LISTED]** 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

Exhibit [C or D] Expenses **[DELETE IF NOT APPLICABLE]**

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 EL CERRITO

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