

# **REQUEST FOR STATEMENT OF QUALIFICATIONS**

## **City of Pacifica Calera Creek Water Recycling Plant and Collection System On-Call General Engineering Services**

### **City of Pacifica, California Public Works Department Wastewater Division**

**Pacifica, CA 94044**

June 30, 2016

The City of Pacifica invites consulting firms to submit a Statement of Qualifications (SOQ) to be considered for the short list of prequalified firms to provide general engineering services in support of the City's Wastewater and Collection System programs on an as-needed basis. All questions regarding this Request for Statement of Qualifications shall be directed to Maria Aguilar, Assistant Superintendent, at 415-336-4750.

SOQs shall be submitted by firms that have a capable and demonstrable background in the type of work described in Section II, "SCOPE OF WORK," of this notice. In addition, all interested firms shall have sufficient, readily available resources in the form of trained personnel, support services, specialized consultants and financial resources to carry out the work without delay or shortcomings.

The City intends to select two to three firms to short list for a time period of two (2) years. The City reserves the right to prequalify any number of firms. Due to the as-needed nature of the work, no work is guaranteed regardless of selection. The scope of work will vary and will be requested on a task order basis as the need arises. A detailed outline of the Consultant's potential services is given in Section II.

The SOQs shall be submitted to the Public Works Department, City of Pacifica, 170 Santa Maria Avenue, Pacifica, California, 94403, no later than:

**5:00 p.m. on July 21, 2016.**

Each proposer shall submit five (5) bound sets of the SOQ in accordance with Section IV, "SOQ REQUIREMENTS."

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**APPENDIX:**

- A. City of Pacifica Standard Agreement for Professional Consultant Services.**

## **I. INTRODUCTION**

### **A. BACKGROUND**

The City of Pacifica, hereafter referred to as the City, operates a Wastewater Treatment Plant (Calera Creek Water Recycling Plant, [CCWRP] and Collection System) which have multiple ongoing capital improvement projects being designed and implemented in addition to normal operation, maintenance, and replacement of process equipment, facilities, sewer lines and support systems.

Currently, the City is engaged in a variety of tasks to further the design and construction of capital improvement projects in an effort to rehabilitate and upgrade its existing facilities. The City was issued a Cease and Desist order (CDO) in 2011 by the San Francisco Regional Water Quality Control Board which set a deadline of January 1, 2019 to no longer have insufficient capacity which caused sanitary sewer overflows from the collection and conveyance system.

In order to rehabilitate and upgrade the facilities and provide efficient, cost effective operations, the City wishes to obtain consulting services from a prequalified short list of firms. These firms will be selected to provide on-call professional engineering services to support the City's sewer system rehabilitation and capacity improvement projects, as well as general operations and maintenance projects as part of the overall Clean Water Program. The following examples are the types of projects that may require engineering services in the future:

#### **Collection System Capacity Improvement Projects**

This project includes replacing sewer mainlines with insufficient capacity to larger diameter pipes.

#### **Collection System Rehabilitation and Replacement Projects**

This project involves the repair, rehabilitation and/or replacement of existing sewer pipes.

#### **CCWRP SCADA and PLC Upgrade**

This project involves the replacement of numerous programmable logic controllers (PLCs) throughout the Plant that are reaching the end of their useful lives and are no longer supported by the manufacturer.

#### **Digester (ATAD) Upgrades Phase 2**

This project involves the installation of two jet motive pumps, four expansion boots, two foam control splash plates, pressure transducers, actuated dilution air damper, PLC programming.

#### **Collection System Project 2016-2017**

This project involves repair of a 30" mainline at Linda Mar Pump Station and replacement of sewer mainlines along Lockhaven and Genevieve.

#### **Brighton Pump Station Upgrade**

This project involves the replacement of a wastewater centrifugal pump motor and emergency generator at the Brighton Pump Station.

## **II. SCOPE OF WORK**

The scope of work for the on-call general engineering services will vary as need arises and will be at the discretion of the City. The maximum contract value is \$300,000. The main categories of work will include but is not limited to:

- General Engineering Evaluations and Scope Development and Emergency Response
- Final Design & Bid Support
- RFI's During Construction
- Project Management
- Construction Support as needed

Typical tasks that may be required of the Consultant under these categories are detailed in the following sections.

The selection process seeks to identify the design consultants best suited to provide services for these projects. The City reserves the right to discontinue or postpone services at any time.

### **PART I – GENERAL ENGINEERING SERVICES**

The Consultant will be required to provide general consultation services on technical issues related to wastewater treatment facilities, which may include but is not limited to the investigations, development of recommendations, evaluative studies, and preparation of plans, specifications, and estimates.

#### **A. INVESTIGATIONS**

The Consultant may be required to perform investigations, which will involve evaluating and assessing the existing operations or physical condition of wastewater treatment plant facility components or parts of treatment process systems or of the collection system. Specific tasks may include but are not limited to:

- Conducting site visits and interviews with wastewater staff.
- Reviewing performance and maintenance records.
- Collecting data, analyzing data, and performing research.
- Documentation of observations.

Responding to emergency equipment or process failures.

#### **B. DEVELOPMENT OF RECOMMENDATIONS**

The Consultant may be required to prepare study reports evaluating portions of the Collection system, treatment plant components and/or processes and develop recommendations for modifying elements of treatment plant components and/or

processes that may be deficient or in need of repair under normal or emergency conditions. Specific tasks include but are not limited to:

- Evaluating existing portions of the collection system, pump stations, other collection system facilities and appurtenances.
- Evaluating existing treatment plant components and/or processes.
- Developing immediate action recommendations in response to emergencies.
- Developing design recommendations for solutions and improvements and preparing Technical Memoranda summarizing the basis for recommendations.
- Developing and preparing study reports for complete process analysis and design recommendations for optimizing facility process operations.
- Developing complete design recommendations for repairing and/or upgrading facility components. Designs must comply with all applicable codes and regulations.
- Developing opinions of estimated probable construction cost.
- Receiving and addressing comments from the Wastewater staff.
- Conducting meetings and workshops to review recommendations and plans for implementation. These meetings will include presentation and discussion of findings from investigations.

#### C. PREPARATION OF PLANS, SPECIFICATIONS AND ESTIMATE (PS&E)

The Consultant shall review and integrate City's standard construction contract format with technical specifications and drawings developed by Consultant for the project and provide input to the City on suggested modifications to the City's documents. Specifications shall be prepared in conventional CSI format with Division 1 requirements and all technical specifications.

Upon completion of the City review for each phase of the design submittal, the Consultant shall meet with the City to discuss and resolve City review comments. A letter report summarizing review comments, discussions and resolution of review comments shall be provided to the City.

## **PART II – FINAL DESIGN & BID SUPPORT**

The Consultant may be required to develop final designs and produce complete, detailed, and biddable plans and specifications that will be part of an overall set of documents to be compiled by the City.

#### A. PREPARATION OF FINAL CONSTRUCTION DOCUMENTS (BID PACKAGE)

The Consultant will be required to provide to the City, final plans, specifications, and estimates, which will incorporate all previous review comments and City requirements. The Consultant shall provide the City with original documents in both hardcopy and electronic (PDF) format.

**B. ASSIST IN ACQUIRING NECESSARY PERMITS**

The Consultant shall assist the City in acquiring all necessary permits, which may include assistance in responding to questions from the authorities having jurisdiction, providing multiple wet-stamped and signed copies of final design plans and related design calculations.

**C. RESPONSE TO DESIGN Q&A DURING BID PROCESS**

The Consultant shall be available and respond to questions concerning the plans, specifications and estimates prior to bid opening and assist the City in preparing addenda. The Consultant shall prepare answers to bidder's questions for distribution by the City on a weekly basis during the bid phase.

The Consultant will assist in reviewing construction bids received, including contractor qualifications and requests for information or clarification, and make a recommendation to the City for award of construction contract.

**PART III – CONSTRUCTION SUPPORT SERVICES**

The Consultant shall provide construction support services which will include but are not limited to the following:

- Providing technical/engineering support to aid in the construction effort. The Consultant shall confer with designated City personnel on matters pertaining to the design and construction effort.
- Reviewing and approving shop drawings and materials provided by the construction contractor.
- Preparing responses to Request for Information
- Preparing or reviewing change orders
- Perform site visits during construction for partial construction observation for the purposes of assessing compliance with the technical provisions of the plans and specifications and working with the City staff to address construction issues that arise.
- Provide facility startup assistance services to observe the start-up and testing of facilities in accordance with the plans and specifications. Start-up assistance shall be performed in coordination with the City staff.
- Preparation of record drawings

**PART IV – PROJECT MANAGEMENT SERVICES**

In order to ensure that project are successfully completed in a timely manner and to the satisfaction of the City, the following project management items shall be included in the scope of work for any task assigned:

A. PROJECT MANAGEMENT AND COORDINATION

The Consultant shall coordinate the management of the General Engineering Services contract and assigned task orders. The Consultant shall develop and provide the City with a scope of work and fee estimate for every task order issued.

B. PROJECT MEETINGS

The Consultant's Project Manager shall meet with select City personnel monthly or as agreed to review the progress of assigned task orders, and to discuss any outstanding issues and potential problems. The Consultant shall be responsible for preparing and providing the City with meeting minutes.

C. MONTHLY STATUS REPORTS

The Consultant shall prepare a monthly project summary detailing the following items:

- a. A listing of work performed during the month and a listing of anticipated work during the next month. Information shall be broken down by tasks and subtasks.
- b. Consultant man-hours utilized to date, along with total man-hours allocated. This shall be done for each task and subtasks.
- c. Consultant's direct labor, indirect costs, other direct costs and profit expended to date, along with current balances.

The monthly reports shall be delivered to the City on or before the 15<sup>th</sup> day of the following month.

D. MONTHLY INVOICES

During months when work is performed, the Consultant shall submit to the City monthly invoices detailing costs incurred for each individual contract. Each invoice shall cover a period of one calendar month (or a four-week time period) and shall be submitted to the City within thirty (30) days.

Invoices for the period covered in the report will not be paid until the monthly report is delivered to and approved by the City.

All deliverables shall be delivered to the City in hardcopy and electronic (PDF) format.

### **III. AUTHORIZATION OF TASK ORDERS**

Consultant services will be on an as-needed, on-call basis throughout the term of the Agreement. Consultant services will be authorized by task orders issued by the City, which may be in the form of a written or verbal request. The Consultant is responsible for acknowledging receipt of requests within two (2) working days.

Task orders may vary significantly in size and scope and will be determined in greater detail as each task order is assigned. The City will discuss the scope of services with the selected Consultant prior to issuing a task order. The Consultant will be responsible for preparing a detailed scope and fee estimate for each task order. The City may accept the Consultant's scope and fee or negotiate with the Consultant, as appropriate. The City reserves the right to not accept the Consultant's scope and fee.

### **IV. SOQ REQUIREMENTS:**

The consultant shall submit five (5) bound sets of his/her SOQs containing 8-1/2" x 11" sheet sizes for the text and 11" x 17" sheet sizes for any fold-out drawings. SOQs should be limited to ten (10) pages maximum, not including Appendices. It shall include:

- A. A summary of the consultant's understanding of the contract requirements as a whole and the unique capabilities to perform the services required.
- B. The consultant's experience and history in performing work on wastewater treatment and collection system and related projects. Include references of persons, firms, or agencies that the City may contact to verify the experience of the consultant. Include specific references for the project manager/key contact.
- C. The consultant's experience and history in providing general consultation services on technical issues related to wastewater treatment facilities. Include references of persons, firms, or agencies that the City may contact to verify the experience of the consultant.
- D. A table of organization setting forth the project manager, supporting staff, and sub-consultants.
- E. A statement of qualifications and experience for each licensed individual expected to perform work. Firms must be able to staff projects with qualified individuals who shall be committed to the work from inception through completion.
- G. Current fee schedule for a typical general engineering services contract.
- H. An identification of any modifications to the attached Professional Consulting Services Agreement (Appendix B) the consultant would require prior to entering into an agreement with the City.
- I. SOQs shall remain effective for ninety (90) days beyond the submittal date.

## CONSULTANT SELECTION PROCEDURE

### A. EVALUATION CRITERIA:

SOQs received by the City will be reviewed by the Selection Committee, which will make the final selection based on the following factors.

- **Quality:** The SOQ is concise, well written, and organized. The SOQ should address the items specified in Section IV, "SOQ Requirements".
- **Firm Qualifications:** Technical experience in performing work of a closely similar nature, experience working with public agencies, record of completing work on schedule, and strength and stability of the firm. Specific technical experience in wastewater treatment projects and experience with at least five projects applicable to the Scope to be considered.
- **Staff and Project Organization:** Qualifications of project staff, key personnel's level of involvement in performing related work, logic of project organization, adequacy of labor commitment; concurrence in the restriction on changes in key personnel.
- **List of Northern California References:** Only projects performed by personnel that may be available should be referenced as qualifying experience.

### B. EVALUATION PROCEDURE:

An oral interview with one or more of the firms submitting SOQs may be requested after written SOQs have been received by the City. The City will schedule the time and place for the interview if determined to be necessary. Each proposer should be prepared to clarify and elaborate on the details set forth in their SOQ.

The Selection Committee will review the SOQs submitted, establish a list of finalists based on pre-established review criteria, interview the finalist firms, if necessary, and determine the successful firms. The individual or composite rating and evaluation forms prepared by the Selection Committee will not be revealed.

Sixty minutes will be allowed for the oral interview, including the question and answer period. The Project Manager must lead the presentation before the Selection Committee. A tentative interview date is listed in Section V.

### C. AWARD:

The successful firms will be notified and placed on a short list of prequalified Wastewater on-call general services engineers. When services are required, the City will choose the firms best suited for the tasks from the short list and award via separate

contract with the City reflecting the terms and conditions of the SOQ in addition to the City's standard professional services agreement requirements. The short list will be valid for a period of two (2) calendar years from the date of the original selection. A copy of the City of Pacifica Department of Public Works Standard Agreement for Professional Consultant Services is attached in Appendix A.

The City reserves the right to modify the scope of work and reject any or all SOQs.

**V. ESTIMATED SCHEDULE FOR SELECTION**

**Schedule for Consultant Selection Process**

The following project timeline is provided for your scheduling information; however it is subject to change at the discretion of the City.

<b>Project Benchmarks</b>	<b>Date (No Later Than)</b>
Request for SOQs available	June 30, 2016
Deadline for inquires	July 12, 2016 5:00 p.m.
Inquiry Response Provided by	July 15, 2016
SOQs due at the City	July 21, 2016
Preliminary Evaluation	July 25, 2016
Consultant Interviews	August 10, 2016
Consultant Selection	August 15, 2016
Notification to Short-List	August 16, 2016
On-call Services Period	August 17, 2016 through August 17, 2018

**VI. Contact Person**

Prospective firms may contact Maria Aguilar, the City’s project manager, for further information regarding questions for this Request for SOQs. Deadline for inquires is at 5:00 p.m. on July 12, 2016. Inquires will be responded no later than July 15, 2016. All requests for interpretation or questions must be sent by facsimile or in writing and must clearly include the subject line “**SOQ: Inquiries for Wastewater On-Call General Engineering Services**”.

Inquiries and written correspondence may be directed to:

**MARIA AGUILAR, ASSISTANT SUPERINTENDENT**  
**PUBLIC WORKS DEPARTMENT - WASTEWATER DIVISION**  
**CITY OF PACIFICA**  
**170 SANTA MARIA AVENUE**  
**PACIFICA, CA 94044**  
**415-336-4450**  
**(650) 355-7256 (FAX)**

## **VII. Late SOQs Not Considered**

SOQs must be received by the time specified at the address listed above. Any SOQs received after the deadline will not be considered.

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**AGREEMENT FOR CONSULTANT SERVICES**

This Agreement for Consultant Services (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, by and between THE CITY OF PACIFICA, a municipal corporation (hereinafter referred to as "CITY") and \_\_\_\_\_ [a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation] (hereinafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, CITY requires \_\_\_\_\_ services in connection with the \_\_\_\_\_;

WHEREAS, CONSULTANT is qualified to perform such services; and

WHEREAS, CONSULTANT has agreed to provide CITY with such services on the terms and conditions set forth herein.

NOW, THEREFORE, for the considerations hereinafter set forth, CONSULTANT and CITY agree as follows:

**SCOPE OF SERVICES**

**Scope of Work.** CONSULTANT agrees to furnish the services set forth in Exhibit A, Scope of Work, which is attached hereto and incorporated herein (the "Services").

**Compliance with Law.** The Services shall be performed in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and orders.

**Time is of the Essence.** CONSULTANT agrees to diligently prosecute the Services. In the performance of this Agreement, time is of the essence.

**Professional Competence.** CONSULTANT represents that it has the professional skills necessary to perform the Services and that it will perform the Services in a skillful and professional manner. CONSULTANT represents that it has all the necessary licenses to perform the Services and shall maintain them throughout the term of this Agreement. CONSULTANT agrees that the Services shall be performed in a manner consistent with practices usual and customary to the \_\_\_\_\_ profession. CITY and CONSULTANT agree that CONSULTANT is in responsible charge of the Services. Acceptance by CITY of the Services does not operate as a release of CONSULTANT from professional responsibility for the Services performed.

**Independent Contractor.** CONSULTANT is an independent contractor and not an employee of CITY. CONSULTANT expressly warrants that it will not represent that it is an employee of CITY.

**Confidentiality.** CONSULTANT agrees to maintain in confidence and not disclose to any person, firm, governmental entity, or corporation, without CITY's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of CITY. CONSULTANT further agrees to maintain in confidence and not to disclose to any person, firm, governmental entity, or corporation any data, information, technology, or material developed or obtained by CONSULTANT during the performance of the Services. The covenants contained in this Section 1.6 shall survive the termination of this Agreement for whatever cause.

**Ownership of Material.** Any reports and other material prepared by or on behalf of CONSULTANT under this Agreement (collectively, the "Documents") shall be and remain the property of CITY. All Documents not already provided to CITY shall be delivered to CITY on the date of termination of this Agreement for any reason. The Documents may be used by CITY and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes CITY may deem appropriate without further employment of or payment of any compensation to CONSULTANT.

**Documentation.** CONSULTANT shall keep and maintain full and complete documentation and accounting records, employee time sheets, and correspondence pertaining to the performance of the Services, and CONSULTANT shall make such documents available for review and/or audit by CITY and CITY's representatives at all reasonable times for at least four years after the termination of this Agreement or completion of the Services.

**Testimony.** CONSULTANT agrees to testify at CITY's request if litigation is brought against CITY in connection with the Services. Unless the action is brought by CONSULTANT or is based upon CONSULTANT's negligence, CITY will compensate CONSULTANT for the preparation and the testimony at CONSULTANT's standard hourly rates.

## COMPENSATION

**Compensation.** Compensation for the Services shall be in accordance with Exhibit B, Compensation, attached hereto and incorporated herein. It is agreed that the compensation for the Services shall not exceed \$ \_\_\_\_\_ ("Cost Ceiling").

**Invoices.** CONSULTANT shall submit monthly invoices in a form satisfactory to CITY on or before the tenth day of each month for Services provided during the preceding month. CONSULTANT shall submit time and cost records as necessary to substantiate performance of the Services. Within 35 days after receipt of each such invoice, CITY shall verify the accuracy of the invoice, correct the charges where appropriate and as discussed and mutually agreed with CONSULTANT, and make payment to CONSULTANT in an amount equal to the amount of such invoice, as verified or corrected by CITY. No payment hereunder shall be construed as evidence of acceptance of any of CONSULTANT's work. CITY reserves the right to withhold payment from CONSULTANT on account of Services not performed satisfactorily, delays in CONSULTANT's performance of Services, or other defaults hereunder. CONSULTANT shall not stop or delay performance of the Services under this Agreement on account of payment disputes with CITY.

**Status Reports.** Together with each monthly invoice, CONSULTANT shall submit a status report detailing the amount expended on the Services to that date and the remaining amount to be expended before the Cost Ceiling is reached. CONSULTANT shall notify CITY in writing when payments have reached 90 percent of the Cost Ceiling.

**Withholding.** In lieu of holding retention, CITY shall withhold CONSULTANT's final payment until the Services are complete and CITY has received all Documents. CONSULTANT shall diligently continue and complete performance of the Services if the Services are not complete at the time CONSULTANT has performed services up to the Cost Ceiling.

### TIME OF PERFORMANCE

**Effective Date.** This Agreement shall become effective upon execution of the second signature and shall remain in full force and effect until the Services are completed (the "Term"). CONSULTANT agrees to complete all services by \_\_\_\_\_.

**Termination.** This Agreement may be terminated at any time by CITY upon written notice to CONSULTANT.

**Final Payment.** CONSULTANT shall be entitled to compensation for Services performed up to the time of such termination, it being understood that any payments are full compensation for the Services rendered under this Agreement.

**Other Remedies.** Nothing in this Article 3 shall be deemed to limit the respective rights of the parties to terminate this Agreement for cause or otherwise to exercise any rights or pursue any remedies which may accrue to them.

### DESIGNATED CONTACTS

**CITY Contact.** CITY designates \_\_\_\_\_, its \_\_\_\_\_, as its contact who shall be responsible for administering and interpreting the terms and conditions of this Agreement, for matters relating to CONSULTANT's performance under this Agreement, and for liaison and coordination between CITY and CONSULTANT. In the event CITY wishes to make a change in CITY 's representative, CITY will notify CONSULTANT of the change in writing.

**CONSULTANT Contact.** CONSULTANT designates \_\_\_\_\_ as its contact, who shall have immediate responsibility for the performance of the Services and for all matters relating to performance under this Agreement. Any change in CONSULTANT's designated contact shall be subject to written approval by CITY.

### INDEMNIFICATION AND INSURANCE

**Indemnification.** CONSULTANT shall, to the fullest extent allowed by law, with respect to claims, liability, loss, damage, costs, or expenses, including reasonable attorney's and expert witness fees, awards, fines, penalties, or judgments, arising out of or relating to the Services (collectively "Claims"), defend, indemnify, and hold harmless CITY, its Officials, officers, employees and agents (the "CITY Parties"), except to the extent the Claims are attributable to CITY Parties' gross negligence or willful misconduct. CONSULTANT shall defend the CITY Parties as required by California Civil Code Section 2778, and with counsel reasonably acceptable to those parties. CONSULTANT shall have no right to seek reimbursement from the CITY Parties for the costs of defense. The obligations contained in this Section 5.1 shall survive the termination of this Agreement for whatever cause for the full period of time allowed by law and shall not in any way be limited by the insurance requirements of this Agreement. With respect to the professional liability of design professionals, as defined in Civil Code section 2782.8(c)(2), Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless any City Parties from and against any and all Claims which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, or as may be provided in Civil Code section 2782.8.

**Health and Safety.** CONSULTANT may perform part of the Services at sites which contain unknown working conditions and contaminated materials. CONSULTANT shall be solely responsible for the health and safety of CONSULTANT's employees during the performance of the Services.

**Insurance.** CONSULTANT and all of CONSULTANTS employees, subcontractors, consultants and other agency shall procure, provide and maintain at all times during the performance of this Agreement, and for such additional periods as described herein, the insurance listed below with insurers licensed to do business in the State of California and with a Best's rating of no less than A:VII.

Comprehensive Automobile Liability Insurance. Comprehensive Automobile Liability Insurance providing bodily injury liability and property damage, to protect against all liability arising out of the use of any owned, leased, passenger or commercial automobile at a minimum amount of \$1,000,000 combined single limit and \$2,000,000 aggregate. Coverage shall apply to hired and non-owned autos.

Commercial General Liability Insurance. Commercial General Liability Insurance, with limits providing a minimum amount of \$1,000,000 combined single limit coverage for each occurrence, \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate. The insurance shall cover all operations including but not limited to the following: (1) premises, operations and mobile equipment liability; (2) completed operations and products liability; (3) contractual liability insuring the obligations assumed by CONSULTANT in this Agreement; (4) broad form property damage liability; (5) personal injury liability endorsement, including death; and (6) automobile bodily injury and property damage insurance, including all owned, hired and non-owned equipment.

Professional Liability Insurance. Professional Liability Insurance protecting against liabilities arising out of or in connection with negligent acts, errors, or omissions of CONSULTANT and all of CONSULTANTS employees, subcontractors, consultants and other agency in connection with this Agreement, at a minimum amount of \$1,000,000 combined single limit coverage and \$1,000,000 aggregate, on a "claims made basis" with a continuation of coverage extension for liabilities for two years from the date the Services are substantially complete. Such professional liability policies shall include coverage for liability assumed by the CONSULTANT under this Agreement.

Workers Compensation Insurance. Workers Compensation insurance, occupational disease insurance and employer's liability insurance shall be required with minimum limits as required by law, covering all workplaces involved in this Agreement.

Policy Terms. Concurrently with execution of this Agreement, CONSULTANT shall provide CITY with Certificates of Insurance evidencing that CONSULTANT has obtained or maintains the insurance required by this Section 5.3. The Certificates shall be on forms acceptable to CITY. CONSULTANT shall also furnish CITY with original endorsements with the following documentation:

- Precluding cancellation or reduction in coverage before the expiration of thirty (30) days after CITY shall have received written notification thereof from CONSULTANT by United States mail;
- Providing that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, and include a "separation of insureds" or "severability" clause which treats each insured separately, except with respect to the limits of the insurer's liability (cross-liability endorsement);
- Naming CITY, its City Council, boards, commissions, committees, officers, employees and agents as additional insureds ("Additional Insureds"); and
- Providing that for any claims relating to CONSULTANT's services hereunder, CONSULTANT's insurance coverage shall be primary insurance with respect to CITY, its City Council, boards, commissions, committees, officers, employees and agents, and that any insurance or self-insurance maintained by CITY for itself, its City Council, boards, commissions, committees, officers, employees and agents shall be in excess of CONSULTANT's insurance and shall not be contributory with it.
- It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverages requirements and/or limits shall be available to the Additional Insured, including but not limited to any umbrella or excess insurance. Furthermore, the requirements for coverage and limits shall be the greater of: (a) the minimum coverage and limits specified in this Agreement; or (b) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

Material Breach. If CONSULTANT fails to maintain insurance coverage or provided insurance documentation which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. CITY, at its sole option, may terminate this Agreement and obtain damages from CONSULTANT resulting from said breach. Alternatively, CITY may purchase the required insurance coverage, and without further notice to CONSULTANT, may deduct from sums due to CONSULTANT any premium costs advanced by CITY for such insurance. These remedies shall be in addition to any other remedies available to CITY.

NOTICES

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by facsimile or reputable overnight courier and shall be deemed received upon the earlier of: (1) if personally delivered, the date of delivery to the address of the person to receive such notice; (2) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day; (3) if sent by facsimile, with the original sent on the same day by overnight courier, the date on which the facsimile is received, provided it is before 5:00 P.M. Pacific Time; or (4) if sent electronically, the date of delivery on the confirmed read receipt. Notice of change of address shall be given by written notice in the manner described in this Article 6. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

If to CITY:                      City Manager  
   170 Santa Maria Avenue  
   Pacifica, CA 94404  
   Phone: (650) 738-7409  
   Facsimile: (650) 359-6038  
   Email: ltinfow@ci.pacifica.ca.us

If to CONSULTANT: \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_  
   Phone: \_\_\_\_\_  
   Facsimile: \_\_\_\_\_

MISCELLANEOUS

**Entire Agreement.** This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by an amendment in writing signed by each party.

**No Assignment.** The Services are deemed unique and CONSULTANT shall not assign, transfer, subcontract or otherwise substitute its interest in this Agreement or any of its obligations hereunder without the prior written consent of CITY. As limited by this Section 7.2, this Agreement is to be binding on the successors and assigns of the parties hereto.

**Severability.** If any part of this Agreement is determined to be unconstitutional, invalid or beyond the authority of either party, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.

**Counterparts.** This Agreement may be signed in counterparts and, when fully signed, such counterparts shall have the same effect as if signed in one document.

**Choice of Law.** This Agreement and all matters relating to it shall be governed by the laws of the State of California without reference to its choice of laws principles and venue shall be in the appropriate court in San Mateo County, California.

**Waiver.** No failure on the part of either Party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. A waiver by either CITY or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other further breach.

**Mediation.** In the event the parties are unable to resolve a dispute arising under this Agreement through good faith negotiations, the parties agree to submit the matter to mediation with a mutually agreeable mediator. Prior to the mediation, the parties shall exchange any documents reasonably necessary to resolve the matter to be mediated.

**Attorney's Fees.** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

**Interpretation.** In the event this Agreement is ever construed in any dispute between the parties, it and each of its provisions shall be construed without regard to the party or parties responsible for its preparation and shall be deemed to have been prepared jointly by the parties. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement.

**Authority.** Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**CITY OF PACIFICA**

By: \_\_\_\_\_  
Lorie Tinfow, City Manager

Date \_\_\_\_\_

Approved As To Form

By: \_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

**CONSULTANT**

\_\_\_\_\_

By: \_\_\_\_\_

Date \_\_\_\_\_

By: \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF WORK**

## **EXHIBIT B**

### **Compensation**

CITY shall pay CONSULTANT for the Services on a cost reimbursement basis, up to the Cost Ceiling (as defined in Section 2.1 of the Agreement). CONSULTANT agrees to use appropriate methods to contain its fees and costs under this Agreement. Compensation shall include only the following costs, which shall all count toward the Cost Ceiling:

1. Direct Labor

Direct labor costs shall be the total number of hours worked on the job by each employee times the agreed hourly rate for such employee's labor as set forth on the attached Exhibit B-1. CITY will pay all personnel at their regular straight-time rate, including any work performed on overtime or on holidays or weekends.

2. Subconsultant Costs

Subconsultant services shall be billed at cost plus a 10 percent markup. CONSULTANT shall provide a copy of each subconsultant's invoice for which it seeks payment from CITY with any invoice in which such payment is requested.

3. Other Direct Costs

The following categories of costs are eligible for reimbursement, which shall be made at the actual cost to CONSULTANT without any additional mark-up:

a. Reasonable living and traveling expenses of employees when away from home office on business in its prosecution of the Services. CONSULTANT must have prior approval of CITY to be reimbursed for these expenses.

b. Automobile expenses for personal vehicle use, if necessary, at the IRS approved mileage rate.

c. Reproduction of drawings and specifications by CONSULTANT as required under this Agreement, at rates prevailing in this community for bulk reproduction or at other reasonable rates approved by CITY.

d. Special overnight delivery or messenger services.

Payments to CONSULTANT for reimbursable costs/expenses will be made only after the specific costs/expenses have been incurred and CONSULTANT has submitted substantiating documentation, such as copies of paid invoices or other documentation confirming that such costs/expenses have been incurred.

**EXHIBIT B-1**