



**REQUEST FOR PROPOSALS (“RFP”)
FOR
CITY OF PACIFICA**

**PROFESSIONAL DESIGN SERVICES FOR
THE 400 BLOCK ESPLANADE COASTAL
TRAIL**

RFP SUBMITTAL DEADLINE:

Thursday, November 3, 2016

SUBMIT TO:

CITY OF PACIFICA

ATTN: Ryan Marquez, Assistant Civil Engineer

170 Santa Maria Avenue

Pacifica, CA 94044

**CITY OF PACIFICA
COUNTY OF SAN MATEO**

CITY OF PACIFICA ESPLANDE COSTAL TRAIL PROJECT

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REQUEST FOR PROPOSALS (“RFP”)

CITY OF PACIFICA ESPLANADE COASTAL TRAIL

1. PURPOSE

The purpose of the project is the preparation of final design plans, permit applications and environmental documents for public access improvements along west side of the 400 block. This project brings to fruition the vision of a safe, enjoyable pedestrian path along Pacifica’s scenic coast. The trail is approximately 1 block in length or approximately one tenth of a mile long.

It is expected that the creation of a wide, level trail will encourage residents and visitors to use the improved path and not stray off to the edge of the bluff. Landscape restoration with native vegetation is included in the project.

2. DEADLINE FOR SUBMITTING RFP RESPONSE

Interested proposers responding to this RFP shall submit **one (1) original and three (3) copies** of their RFP response.

All RFP response shall be clearly marked “**400 BLOCK ESPLANADE COASTAL TRAIL**” and shall be delivered **no later than 5:00 pm on Thursday, November 3rd, 2016** to:

City of Pacifica
Attn: Ryan Marquez, Assistant Civil Engineer
170 Santa Maria Avenue
Pacifica, CA 94044

ANY LATE RFP RESPONSES WILL BE SUBJECT TO OUTRIGHT REJECTION

3. CONTACT PERSON(S)

Technical questions or comments concerning this RFP may be directed to the following individual:

Ryan Marquez, Assistant Civil Engineer
Office: (650) 738-3769
Email: marquezr@ci.pacifica.ca.us

4. INSTRUCTIONS TO PROPOSER

4.1 Examination of Proposal Documents

The submission of a proposal shall be deemed a representation and certification by the Proposer that they:

- 4.1.1 Have carefully read and fully understand the information that provided by the City to serve as the basis for submission of this proposal.
- 4.1.2 Have the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.
- 4.1.3 Represent that all information contained in the proposal is true and correct.
- 4.1.3 Acknowledge that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer and Proposer hereby grants the City permission to make these inquiries, and to provide any and all related documentation in a timely manner.

No request for modification of the proposal shall be considered after its submission on grounds that Proposer was not fully informed to any fact or condition.

4.2 Addenda/Clarifications

Should discrepancies or omissions be found in this RFP or should there be a need to clarify this RFP, questions or comments regarding this RFP must be put in writing and received by the City no later than **5:00 p.m. Monday, October 24, 2016.**

Correspondence shall be addressed to: Ryan Marquez, Assistant Civil Engineer, 170 Santa Maria Avenue, Pacifica, CA 94044 or emailed to marquezr@ci.pacifica.ca.us. Responses from the City will be communicated in writing to all recipients of this RFP. Inquiries received after the date and time stated will not be accepted and will be returned to senders without a response. All addenda shall become a part of this RFP and shall be acknowledged on the Proposer's Form.

The City shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the City or its representatives.

4.3 Withdrawal of Proposals

Proposer may withdraw its proposal at any time before the deadline for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

4.4 Rights of the City of Pacifica

This RFP does not commit the City to enter in a contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract. The City reserves the right to:

- Make the selection based on its sole discretion;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening for its own convenience;
- Remedy technical errors in the Request for Proposals process;
- Approve or disapprove the use of particular subconsultants;
- Negotiate with any, all or none of the Proposers;
- Accept other than the lowest offer;
- Waive informalities and irregularities in the Proposals; and/or
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the City.

5. **PROPOSED RFP TIMELINE**

The RFP Timeline is as follows:

Begin RFP Process	October 5, 2016
RFP Submittal Period	October 5, 2016 to November 3, 2016 at 5:00 PM
Deadline to Submit Questions Related to the RFP	October 24, 2016 at 5:00 PM
Deadline for Submittal of Proposals	November 3, 2016 at 5:00 PM
Review by City Staff and Interview Top 2 or 3 Proposers	November 3 -November 17, 2016
Notify Successful Consultant	November 17, 2016
Negotiate Contract	November 17 – November 25, 2016
City Council Approval	December 12, 2016

6. INFORMATION TO BE SUBMITTED

These instructions outline the guidelines governing the format and content of the proposal and the approach to be used in its development and presentation. The intent of the RFP is to encourage responses that clearly communicate the Proposer's understanding of the City's requirements and its approach to successfully provide the products and/or services on time and within budget. Only that information which is essential to an understanding and evaluation of the proposal should be submitted. Items not specifically and explicitly related to the RFP and proposal, e.g. brochures, marketing material, etc. will not be considered in the evaluation.

The Proposer shall complete and furnish the following items with their proposals:

6.1 Proposal Overview & Summary

This section/paragraph shall clearly convey the Proposer's understanding of the work and project approach. Proposer should address the overall approach to the project, the reports and deliverables that are to be presented, and a work plan that outlines Proposer's approach and methodology.

6.2 Project Schedule

Include a table or written description indicating the anticipated duration and start and completion dates for tasks.

6.3 Cost Proposal

The Consultant shall provide an estimate of the required personnel hours by task and job title per proposed schedule. This hourly rate shall include labor, reporting, travel, technical supervision, equipment, taxes, insurance, and all other incidental charges. There should be separate hourly rate and mileage charged for travel time.

6.4 Consultant Qualifications

Experience:

Provide a general overview of the Consultant's experience at providing municipal utility rate studies.

Project Team:

Describe the Consultant's Project Team. Include the key individuals, including subconsultants that will actually be responsible for the project's technical activities and for management of the project. Include a percent-time availability table for the project manager and

key staff. An organization chart should be provided showing the inter-relation of all the project team members, both City and Consultants

References: Provide at least three (3) references for the key individuals on the project team. This section should provide a short description of the project and your firm or staff member's role, and a specific contact person with phone number. The selection team will be focusing on project performance and will be requesting input as to conformance with schedules and budgets.

6.5 Additional Information

The proposer may include any other information in the proposal that will assist the City in the selection process.

6.6 Contractor Billing Rates

PLEASE NOTE: The City of Pacifica does not pay for services before it receives them. Therefore, do not propose contract terms that call for upfront payments or deposits.

7. CONTRACT TYPE AND METHOD OF PAYMENT

It is anticipated that the agreement resulting from this solicitation if awarded will be a "time and not to exceed" contract.

Proposer shall be prepared to accept the terms and conditions of the Agreement, including Insurance Requirements in Exhibit 1 – Agreement for Consultant Services. If a Proposer desires to take exceptions to the Agreement, Proposer shall include the following in their submittal package:

- Proposer shall clearly identify each proposed change to the Agreement including relevant Attachments.
- Proposer shall furnish the reasons for, as well as specific recommendations, for alternative language.

The above factors will be taken into account in evaluating proposals. Proposals that take substantial exceptions to be proposed Agreement may be determined by the City, at its sole discretion, to be unacceptable and no longer considered.

Insurance Requirements

The selected Proposer(s), at Proposer's sole cost and expense and for the full term of the Agreement or any extension thereof, shall obtain and maintain the required insurance as specified in the Contract Documents.

All policies, endorsements, certificates and/or binders shall be subject to the approval of the City Manager, the Director of Public Works or their representative as to form

and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager, Director of Public Works or their representative. The selected Proposer agrees to provide the City with a copy of said policies, certificates and/or endorsement upon award of contract.

8. REVIEW AND SELECTION PROCESS

City staff will evaluate the proposals provided in response to this RFP based on the following criteria:

- 8.1 Responsiveness of the RFP response related to the scope of work;
- 8.2 Proposer's written understanding of the proposed scope of work;
- 8.3 Ability, capacity, and skill of Consultant to perform the services on a qualified and timely basis;
- 8.4 Responses of the consultant's references;
- 8.5 Experience, expertise, and qualifications of the Consultant and Consultant's team members to be assigned to this Project;
- 8.6 The sufficiency of financial resources and ability of the firm to perform the scope of services;
- 8.7 The quality, availability, and adaptability of the Consultant's services as related to the proposed scope of work;
- 8.8 Consultant's success record on similar projects;
- 8.9 Such other information that may be required or secured.

Evaluation criteria are not necessarily listed in the order of importance. The City reserves the right to weigh its evaluation criteria in any matter it deems appropriate. In addition, the City reserves the right to reject any or all RFP responses and to waive informalities and irregularities in RFP responses received. Final approval of contract award is subject to the action of the City of Pacifica City Council.

9. ORAL INTERVIEWS

When deemed necessary, City may choose to conduct oral interviews with the top ranking proposer for the Project, and may base its Final ranking on both proposals and oral interviews. The City will then enter into negotiations with the most qualified firm that best matches the City's needs and if successful will enter into a contract with the City.

10. PUBLIC NATURE OF PROPOSAL MATERIAL

Responses to this RFP become the exclusive property of the City of Pacifica and the State Coastal Commission. At such time as the Director of Public Works recommends

the firm to the City Manager or to the City Council, as applicable all proposals received in response to this RFP becomes a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Proposer as business or trade secrets and plainly marked as “Confidential,” “Trade Secret,” or “Propriety.” The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as “Confidential,” “Trade Secret,” or “Propriety” or if disclosure is required under the Public Records Act. Any proposal which contains language purporting to render all or significant portions of the proposal “Confidential,” “Trade Secret,” or “Propriety” shall be regarded as non-responsive.

CITY OF PACIFICA 400 BLOCK ESPLANDE COASTAL TRAIL

SCOPE OF WORK

The following preliminary scope of work is presented in outline form for the Consultant's information only. The preliminary scope of work will be used as a basis for the consultant's proposed scope of work with amendments as appropriate. The final scope of work will be negotiated with the City and produced in final form by the Consultant.

- Project Planning and Project Management**

Attend a project initiation meeting including key members of the consultant team, City staff and agency partners to collect background materials and information; review the project goals, objective, scope and schedule; and establish work and communications protocols.

Prepare final scope of work and detailed breakdown of staff hours to be devoted to each primary task by individual and final project schedule. Update schedule monthly or more frequently if necessary.

Attend monthly progress meetings with City, prepare agenda, record and distribute minutes. Coordinate and integrate the work of all sub consultants.

Monitor the contract's budget and schedule. Ensure timely submittal of invoices for all work as completed. Any work outside the scope of services must have pre-approval in writing by the City prior to any work being completed on an out of scope task.

Deliverables

- Updated project scope, schedule and budget.
- Meeting notes (where applicable).
- Regular progress reports, budget tracking reports, and invoices.
- Conceptual Design

Collect and review available existing information, including maps and documents to verify existing right of way, topography, facilities and vegetation, aerial photos, existing infrastructure, utilities, landscaping, and significant terrain features within project limits. Collect photographs and other pertinent information as necessary.

Include a review of relevant current and proposed City and other agency plans and

projects

Conduct field visits to evaluate conditions potential trail and parking alignments and design.

Meet with City staff to review existing condition information.

Facilitate a meeting with the City's Coastal Trail Improvement Subcommittee consisting of members of the Recreation Board, Natural Resources Committee and Traffic Safety Commission to review project scope and obtain input.

Meet with City staff to review input from each meeting and refine project scope.

Based on input provided, determine a feasible and most desirable trail alignment along with key design elements to be included in conceptual designs (such as parking improvements, trail surfacing, trail head signage and amenities, fencing, etc).

Assume that a preferred alignment and one alternative will be required. Assume that three conceptual designs for the trail will be required, including a bare bones concept, an enhanced concept, and a fully improved concept. Additionally, provide recommendations for potential phasing of the project. Provide cost estimates for each option.

Attend a community meeting, if necessary, to be arranged by the City to present the conceptual design and gather information and input from potential trail users, nearby residents, and interested parties. The City will provide notices of the meetings to all residents abutting the potential trail alignment(s) and to all neighborhood and City social media sites.

Following the community meeting, attend a meeting or teleconference with City staff and key stakeholder agencies and organizations (Coastal Conservancy and Coastal Commission) to obtain input regarding design.

Using comments obtained from the community meeting, and directions from City staff, revise the recommended conceptual design for staff review and comment. Revise construction and design cost estimate, if necessary. Present the revised, recommended conceptual design to City staff, and following review, to the Beautification and Natural Resource Commission.

Attend a City Council meeting at which the conceptual design is to be recommended for approval.

Deliverables

- Maps and exhibits needed for various meetings and reviews.
- Meeting notes (where applicable).
- PowerPoint presentation of the project.
- Final report documenting the conceptual design process including description and discussion of the alternatives and selected design, associated cost estimate schedules, and phasing of various stage of the project.
- Preliminary (50%) Design

Based on the approved conceptual design, prepare 55% complete preliminary design plans, specification outline and cost estimates, and submit five (5) copies for City staff review. All plan sheets shall be developed to a 75% design level. Submittal shall include:

- A.** City standard plan sheets, including title page and sheet index. Prepare a list and proposed arrangement of anticipated final design drawings and details, including applicable custom and City standard details (City will furnish cover sheet and title block for plan set).
- B.** Information gathered from all appropriate utility companies, all existing facilities identified and conflicts between existing and proposed facilities resolved.
- C.** Base map sheets – layout sheets for trail and parking improvements reflecting, complete topographic, existing facility, utility and boundary information, as pertinent.
- D.** Preliminary grading and drainage plan illustrating recommended drainage alternatives.
- E.** Proposed geometrics and cross-sections.
- F.** Proposed native plant restoration and re-vegetation concepts.
- G.** Proposed trail, parking, revegetation, and site improvements details.
- I.** Outline project specifications reflecting City standard contract documents, City standard specifications, project special provisions including Consultant-generated bid item descriptions, and supplemental general provisions and technical specifications as needed.*

J. Preliminary construction cost estimate – verification that project is within allocated construction budget.

Based on City comments on the draft 50% plans, prepare revised plans and descriptions to provide the basis for CEQA document preparation and for proceeding with design development.

Deliverables

- Five (5) copies of all PS&E elements for City review
- Revised drawings, quantities and descriptions to support the CEQA review and permitting process
- All pertinent design files in CAD, Word, Excel, and PDF.
- Environmental Documentation

The scope assumes a Mitigated Negative Declaration will be the appropriate CEQA document for the proposed trail project. If the proposer has other opinions or concerns this should be reflected in the proposal.

Focused environmental studies are anticipated to be required for the subjects of biological resources, cultural resources, geology, and hydrology. Additional specialized studies (such as Phase I Environmental Site Assessment, traffic analysis, or air quality modeling) are assumed to be not required. If the proposer has other opinions or concerns this should be reflected in the proposal.

Prepare a Biological Assessment of the setting for the trail project. The objective of the assessment will be to provide information on sensitive resources so that the trail and parking improvements can be sited and designed, if possible, to avoid any potential for significant impacts.

Identify potential impacts to sensitive habitats and/or species from the proposed trail project. Evaluate setbacks to bluff and endangered species habitats.

Provide a list of plant species recommended to revegetate areas disturbed by trail construction; this list should be suitable for use in the construction and erosion control plans.

Provide an archaeological assessment – a reconnaissance-level investigation of pre-historic and historic archaeological resources for the proposed trail route and parking improvements, including search of the California Historical Resources Information System, and consultation with Native American tribes through the Native American

Heritage Commission.

Complete geological and hydrological studies to evaluate the proposed trail and erosion hazards. Geological study will include evaluation of the potential impact of coastal erosion and retreat on the long-term life of the project.

Prepare a Circulation Draft Mitigated Negative Declaration/ Initial Study. Review site and project background, focused environmental study reports and project plans and coordinate with the City, Coastal Conservancy, Coastal Commission and other pertinent agencies during the preparation and review of the environmental document.

Prepare an administrative draft Mitigated Negative Declaration/ Initial Study, including discussion as appropriate to each impact category, a determination of impact significance for each impact category, and mitigation measures for potentially significant impacts.

Prepare a project description based on information provided by designers, with minor modification as necessary for a CEQA document, as well as Introduction, Setting, Required Approvals, etc. Reflect the findings of the biological assessment, cultural and historical resources assessment, and the geologic and hydrologic study.

Prepare all other Mitigated Negative Declaration/ Initial Study checklist categories. Prepare Mandatory Findings of Significance.

Transmit the administrative draft Initial study electronically to the City, SCC, and other partner agencies. Based on comments and as directed by City staff, prepare a Circulation Draft Initial Study. Prepare and post the Notice of Intent to Adopt Mitigated Negative Declaration (Notice of Completion) and deliver copies to the State Clearinghouse and local organizations and individuals as directed by the City.

Prepare Final Initial Study/Mitigated Negative Declaration (Response to Comments)

Respond to public and agency comments received on the Circulation Draft IS/MND, in the form of a separate Comments and Responses document that, along with the Circulation Draft IS/MND, will constitute the Final IS/MND. Comments on the draft IS/MND and Comments and Responses will be submitted by mail or electronically.

Prepare draft Mitigation Monitoring and Reporting Program (MMRP) and transmit the administrative Comments and Responses document and draft MMRP electronically.

Review City and SCC comments on administrative Comments and Responses and draft MMRP, coordinating with staff as necessary, and prepare Final Comments and Responses and Final MMRP.

Prepare and post the Notice of Determination, and distribute copies to as directed by the City.

Deliverables

- Biological assessment report - supporting information for use in preparation of CEQA findings and location of significant resources for incorporation in project maps, if appropriate.
- Archaeological investigation report for use in preparation of CEQA findings and:
- Engineering geologic and hydrologic investigation report for the proposed trail project.
- 5 copies of Circulation Draft MND. Provide camera-ready copy of document plus digital files.
- 5 copies of Comments and Responses document and MMRP. Provide camera-ready copy of documents plus digital files.
- Final Design

Meet with City staff and CEQA consultants to review CEQA findings and mitigations and to receive authorization and direction to proceed with final design.

Coordinate potholing of any utility conflicts or other study of locations where additional information is needed for design.

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Prepare final drawings, project-specific technical specifications, and cost estimate for all project elements as listed in Task 3, plus a Storm Water Pollution Prevention Plan (SWPPP) meeting the requirements of the Regional Water Quality Control Board.

Submit five (5) copies of all materials for staff review and comment at the 90% complete and 95% complete stages.

Prepare final detailed project cost estimate and deliver with final plans and specifications.

Provide assistance to the City answering technical questions from bidders and

preparing addenda. Attend preconstruction conference.

Deliverables:

- 5 sets of draft products (including reduced plans and full-size plans).
- 8 sets of final Trail and Parking Improvement Construction Plans, Specifications and Estimate
- Digital 100% complete contract documents and estimates in Autocad V.14, Microsoft Word 7.0, Microsoft Excel 7.0, or higher as appropriate.
- A set of reproducible plans on mylar at 24" X 36" size. All plan sheets shall be signed by the licensed professional in charge of the design.

*Note on Specifications - Specification format for this project is not CSI. Specifications will be written for each bid item individually. City will provide examples and requirements for acceptable specification format.

- Project Permitting

Permits include a Coastal Development Permit, and filing notification of the project with the Regional Water Quality Control Board. Potential additional permits include California Department of Fish and Wildlife (CA DFW) Section 1600 Streambed Alteration Permit, if there are any waterways that are crossed or affected; and if site improvements (i.e., beach access) extend below the Mean High Tide Line a permit may be required from Army Corps of Engineers (USACE).

Prepare a project description narrative for inclusion in permit applications, staff reports and potential use in presentations.

Prepare Coastal Zone Permit application and Notice of Intent package (Notice of Intent, site map, and fee) for electronic submittal to the Regional Water Quality Control Board (RWQCB).

If applicable (consultant may make a finding or assumption as part of the proposal) prepare CA DFW and/or USACE permit applications.

Coordinate with the City for required signatures and fees and to ensure that the necessary application materials are submitted to the permitting agencies.

Follow up on the applications and provide or coordinate additional information requested by the permitting agencies.

Deliverables:

- Completed permit application forms and exhibits as noted above.
- Notes from follow-up contacts regarding the applications
- Additional data or clarifications in response to agency requests

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CITY OF PACIFICA ESPLANADE COASTAL TRAIL

SITE OVERVIEW



SITE PHOTOS



Facing south from Manor Dr. entrance



Facing north from Manor Dr. entrance



Facing north from south edge of property near 528 Esplanade



Facing south from the northwest corner of property near 390 Esplanade

ATTACHMENT 1

AGREEMENT FOR CONSULTANT SERVICES

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:

1. SCOPE OF SERVICES

- 1.1. **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").
- 1.2. **Compliance with Law.** The Services shall be performed in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and orders.
- 1.3. **Time is of the Essence.** CONSULTANT agrees to diligently prosecute the Services. In the performance of this Agreement, time is of the essence.
- 1.4. **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.
- 1.5. **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.
- 1.6. **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.

- 1.7. **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.
- 1.8. **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.
- 1.9. **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.

2.COMPENSATION

- 2.1. **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").
- 2.2. **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.
- 2.3. **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.

- 2.4. **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.

3.TIME OF PERFORMANCE

- 3.1. **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 _____.
- 3.2. **Termination.** This Agreement may be terminated at any time by CITY upon written notice to CONSULTANT.
- 3.3. **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.
- 3.4. **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.

4.DESIGNATED CONTACTS

- 4.1. **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.
- 4.2. **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.

5.INDEMNIFICATION AND INSURANCE

- 5.1. **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.

- 5.2. 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.
- 5.3. 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.
- A. 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.
 - B. 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.
 - C. 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.

- D. 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.
- E. 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.
- F. 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.

6. 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: Director of Public Works
 170 Santa Maria Avenue
 Pacifica, CA 94404
 Phone: (650) 738-3767
 Email: ocampov@ci.pacifica.ca.us

If to CONSULTANT: _____

 Phone: _____
 Facsimile: _____

7. MISCELLANEOUS

7.1. **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.

- 7.2. **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.
- 7.3. **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.
- 7.4. **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.
- 7.5. **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.
- 7.6. **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.
- 7.7. **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.
- 7.8. **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.
- 7.9. **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.
- 7.10. **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: _____ Date _____
Lorie Tinfow, City Manager

Attest

By: _____ Date _____
Kathy O'Connell, City Clerk

Approved As To Form

By: _____ Date _____
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 not to exceed 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

(Consultant Fee Schedule)