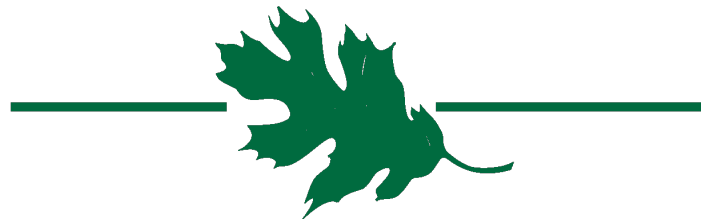


**REQUEST FOR QUALIFICATIONS AND PROPOSAL
for Stormwater NPDES Implementation Assistance**

OAKLEY



CALIFORNIA

DUE: Wednesday, December 14, 2022, at 2:00 p.m.

City of Oakley
Public Works & Engineering Department
3231 Main Street
Oakley, CA 94561

Contents

SECTION 1 INTRODUCTION.....	3
SECTION 2 PROJECT DESCRIPTION.....	3
SECTION 3 PRELIMINARY SCOPE OF SERVICES.....	4
SECTION 4 FORMAT OF PROPOSAL.....	6
SECTION 5 CONTENT OF PROPOSAL.....	6
SECTION 6 SUBMITTAL REQUIREMENTS.....	9
SECTION 7 COMPENSATION FOR AS-NEEDED SERVICES.....	10
SECTION 8 CONSULTANT EVALUATION AND SELECTION.....	10
SECTION 9 SCHEDULE.....	11
SECTION 10 ATTACHMENTS.....	11

SECTION 1 INTRODUCTION

The City of Oakley Public Works & Engineering Department is seeking qualifications and cost proposals for specialized technical and engineering services to assist the City in meeting requirements contained in the Municipal Regional Stormwater NPDES Permit (MRP) and to fulfill its obligations as a member of the Contra Costa Clean Water Program (CCCWP).

The City intends to select one (1) qualified firm (Consultant) with whom to execute a Consulting Services Agreement (CSA) for a term of two (2) years, with an option for up to two (2) years of extensions at the City's discretion to a total of four (4) years. A Sample Consulting Services Agreement is included in Attachment A. The Consultant shall provide consulting services on a regular and as-needed basis depending on the nature of the activity. Regular services include, but are not limited to, attendance at regularly scheduled committee meetings. As-needed services include, but are not limited to, site or project-specific tasks, such as enforcement response activities, inspections, and plan reviews.

This Request for Qualifications and Proposals (RFQ/P) is available on the City's website at <https://www.ci.oakley.ca.us/business/request-for-proposals/>. It is the responsibility of the firms responding to this RFQ/P to check the website to obtain any addenda and any other pertinent documentation that may be issued prior to the deadline.

Proposals submitted by interested firms shall consist of:

- 1) Statement of Qualifications (SOQ), or Technical Proposal; and
- 2) Cost Proposal (in a separate envelope)

Unsigned Proposals or Proposals signed by an individual not authorized to bind the prospective firm will be considered non-responsive and rejected. Proposals received after the time and date specified above will be considered non-responsive and returned.

SECTION 2 PROJECT DESCRIPTION

The City of Oakley, incorporated in July 1999, is one of California's youngest cities. Residents enjoy a charming area with an abundant housing supply, quality schools, and a friendly atmosphere that truly make Oakley, "A Place for Families in the Heart of the Delta."

Oakley's residents enjoy a progressive community that is rich in history, supports strong family values, and offers a high quality of life. Our residents take pride in being a part of a City that is building a prosperous future for generations to come.

The City prides itself as an efficient provider of services. Our mission is to operate the City by achieving maximum efficiency in its service delivery and keeping expenditures and operating costs to a minimum while responding to community needs and priorities. The City seeks to optimize governmental administration to be as cost-effective as possible while providing the high quality of service expected by the community.

The City is seeking firms with similar philosophies to the City's mission to provide high-quality, efficient, and cost-effective services. The City is a member of the Contra Costa Clean Water Program (CCCWP). The successful firm (Consultant) will assist the City in complying with all provisions of the Municipal Regional NPDES Permit (MRP) and meeting our responsibilities within the CCCWP.

SECTION 3 PRELIMINARY SCOPE OF SERVICES

A preliminary scope of services is described below. The scope includes both regularly scheduled and as-needed tasks. Proposers are encouraged to supplement/augment this preliminary scope of services as needed to meet the quality assurance, schedule, and budgetary expectations of the City of Oakley for the work. The final scope of services may be refined during contract negotiations with the selected firm to better meet the City's expectations. The selected Consultant shall comply with all laws, codes, rules, and regulations of the State, County, and City applicable to the work to be performed.

A. **General Program Assistance.** This includes provisions that do not have specific implementation tasks otherwise outlined below, including but not limited to:

- i. Consulting on the following (assume 80 hours per year for purposes of pricing):
 - Inquiries from the Water Board staff
 - Updates to the ERP documentation as needed
 - Strategies for outreach efforts
 - Implementation of version three of the MRP (MRP 3.0)
 - The CCCWP AGOL database on behalf of the City
 - Private Lands Drainage Areas (PLDAs) planning, implementation, and compliance
 - Green Stormwater Infrastructure (GSI) planning, implementation, and compliance
 - Integrated Pest Management planning, implementation, and compliance
 - Corp Yard SWPPP
- ii. Implementing and enforcing the provisions of the City's Enforcement Response Program (ERP) (assume 20 hours per year for purposes of pricing)
- iii. Maintaining the CCCWP AGOL database in collaboration with, and on behalf of, the City (assume 20 hours per year for purposes of pricing)
- iv. Providing training support for City staff (assume 20 hours per year for purposes of pricing)

B. **Program Meetings.** This budget item includes attendance and representation on the committees of the Contra Costa Clean Water Program (CCCWP) (Committee meetings are generally held one time per month)

Currently, the City is on the following committees:

- i. Management Committee
- ii. Development Committee (alternating with each Fiscal Year)
- iii. Administrative Committee (alternating with each Fiscal Year)

This budget item includes providing all necessary services to keep the City staff apprised and engaged in the CCCWP, including but not limited to:

- i. Reporting to City staff on pertinent happenings within the meetings and upcoming votes
- ii. Attending special meetings if scheduled by the CCCWP
- iii. Assisting staff with providing the information requested by the CCCWP
- iv. Other coordination activities are required to provide high-quality representation for the City on these committees (assume 20 hours per year for purposes of pricing)

- C. **C.6 Construction Site Inspections.** This budget item includes performing C.6 construction site inspections for regulated projects under construction within the City.
(Assume ten active construction projects during each of the water years for pricing purposes)

This budget item includes, but is not limited to:

- i. Maintaining written documentation for each visit
- ii. Documenting correspondence regarding violations and enforcement actions
- iii. Following up with violations until compliance is achieved
- iv. Coordinating with City staff on all issues associated with the C.6 inspections

- D. **Stormwater Control Plan and O&M Plan Review.** This budget item includes the review of Stormwater Control Plans (SWCPs) and Operations and Maintenance Plans (O&M Plans).
(Assume ten SWCPs and ten O&M Plans during each year of the contract for pricing purposes)

This item includes, but is not limited to:

- i. Reviewing submitted plans for compliance with the MRP and the CCCWP requirements and thresholds
- ii. Providing written comments in letter format to the City
- iii. Tracking comments, reviews, and approvals

- E. **Data Collection and Management.** This budget item includes the collection of data for the Annual Report that is not otherwise collected by other entities (such as Iron House Sanitary District (ISD), Revel Environmental Manufacturing (REM), and the CCCWP. 'Collection' here constitutes gathering new data, such as by inspection or by measurement.

This includes, but is not limited to:

- i. Hot Spot inspections per C.10 of the MRP
- ii. Annual O&M inspections required per C.3 of the MRP
- iii. Other items required for the City and CCCWP Annual Reports

It also includes maintaining records for:

- i. The City's Enforcement Response Plan (ERP)
- ii. Enforcement actions
- iii. C.6 construction site inspections documentation
- iv. C.3 O&M inspections documentation
- v. Hot Spot inspections documentation
- vi. SWCPs and O&M Plans

- F. **Green Infrastructure Plan Implementation.** Assist with City staff in implementing the City of Oakley's green infrastructure plan per NPDES deadline requirements. (Assume 80 hours for pricing purposes).

- G. **Annual Report Preparation.** This budget item includes: 1) compiling all relevant information for the Annual Report; 2) entering the data in the Water Board's SMARTS system, and 3) proactively coordinating with the City to prepare for certification of the report within the timelines set forth by both the Water Board and the CCCWP. 'Compiling' here constitutes assembling collected data.

Sources of data will include, but are not limited to:

- i. The Consultant
- ii. Iron House Sanitary District (ISD)
- iii. REM
- iv. CCCWP
- v. City staff

This budget item specifically includes, but is not limited to:

- i. Proactively coordinating with City staff for the timely compilation of necessary data
- ii. Compiling and providing (in coordination with City staff) data the City is obligated to submit for the CCCWP Annual Report
- iii. Fully cooperating and collaborating with the CCCWP
- iv. Other necessary and desirable management, or other activities, to assist the City to ensure adequate reporting to meet the City's obligations to the CCCWP and to comply with NPDES and the MRP.

H. Records

- i. The Consultant will be required to submit all electronic files generated during the course of work for the City of Oakley, including but not limited to reports, photographs, software output, and various records. All such files and records shall become the sole property of the City of Oakley.

SECTION 4 FORMAT OF PROPOSAL

A. Format

- i. The Proposal shall not exceed twenty (20) single-sided or ten (10) double-sided, standard-sized (8½" x 11") pages. The page limit does not apply to the schedule of rates, costs, fees, one-page table of contents, or any folder or cover.
- ii. All pages shall be numbered.
- iii. A minimum font size of 12 shall be used.

SECTION 5 CONTENT OF PROPOSAL

The Proposal shall include the following:

A. Cover letter

- i. Describe the proposing firm's interest in the Project and the commitment of personnel to the Project.
- ii. Provide a statement that the proposing firm takes no exceptions to the City's Consulting Services Agreement (CSA) or will list any exceptions they may request if selected. Note that listing exceptions does not indicate that the City will agree to said exceptions if selected.

B. Executive Summary

- i. Briefly describe the firm's experience and qualifications in dealing with similar projects and why the firm should be selected for this project.
- ii. Describe staffing and resources needed, key staff experience, and how staff will be utilized throughout the project durations.

C. Project Understanding and Approach

- i. Describe the firm's understanding of the work and provide detail on the firm's approach.
- ii. Identify any innovative and cost-saving solutions.
- iii. Provide a redline/strike-out of the proposed scope of services, include any proposed improvements to the scope of services of added services that may be required to meet the intent of the project, and explain your reasoning and/or alternate approach to the work or greater detail. This is done to facilitate negotiation of the final scope of services and expedite development of an Agreement for award.
- iv. Provide information on constraints or coordination issues.

D. Experience/Project Team

- i. Discuss and identify key personnel, qualifications, and assignments.
- ii. Identify key personnel, firm affiliation, responsibility, title, and how long the person has been with the firm.
- iii. Highlight the firm's and the key personnel's experience with related projects of similar complexity and scope, completed within the last ten (10) years.
- iv. Include any subconsultants if they would perform a portion of the work.
- v. Provide client references for projects completed by the firm with similar scopes of work. References shall be able to speak directly about and have direct knowledge of the performance of the company proposing and shall match some portion of the experience referenced for each of the key staff members proposed.

DI. Scope of Services

- i. Within Scope of Services section:
 - Include a comprehensive proposed scope of services based on the preliminary scope of service shown in this RFP/Q.
 - Clearly identify in any new or modified scope items not clearly identified in the preliminary scope of services shown in this RFP/Q.
 - Provide any additional improvements to the scope of services the firm deems relevant and clearly indicate how the additions will provide benefit.
- ii. For purposes of this project, the scope of services included in this RFP/Q will constitute the scope of services for the contract agreement, except as specifically shown in the proposal to be modified.
- iii. It is the City's intent to copy the agreed upon additions or modifications directly from the proposed scope of services into the original preliminary scope of services for inclusion in the contract agreement.

DII. Resumes

- i. Provide resumes for key personnel clearly indicating:
 - Educational background
 - Valid licenses and certifications that may be applicable
 - Background and specific relevant project experience.
- ii. Each resume shall include references and contact information for at least (3) three projects shown for experience, and at least one should match references provided for the company proposing.

- iii. Resumes shall not exceed 4 pages (2 sheets of paper in printed front and back, or 4 sheets of paper if one-sided).
- iv. Resumes shall be provided for all personnel proposed, including all subconsultants.
- v. Resumes should be reasonably concise and only include work experience relevant to the scope of work.
- vi. Resumes should clearly identify each person's current employer for this project.

G. Schedule of Work

- i. Provide a work schedule for each year of the contract, including the City's discretionary years 4 and 5.

H. Conflict of Interest Disclosure

- i. The firm proposing shall disclose and list any financial, business, or other relationships with the City that may have an impact on the outcome of the project required for performance. A potential conflict of interest includes but is not limited to work-related to contracts with other City departments, other municipalities, local land developers, current clients, and other parties who may have a financial interest in the outcome of the project.
- ii. See the Conflict-of-Interest section on the attached Consulting Services Agreement (CSA) for more information. At the City's discretion, a potential conflict of interest may be waived or factored into final award decisions and/or a modified scope of work.

I. Non-Collusion Statement

- i. Proposing firms shall include within their proposals a statement of Noncollusions that clearly states the following:

"The Consultant declares, by signing and submitting a proposal, that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Consultant has not directly or indirectly induced or solicited any other Consultant to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Consultant or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Consultant has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Consultant or any other Consultant, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Consultant, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and, further, that the Consultant has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal."

J. Certification of Insurance Requirements

Provide a verification letter that you understand and can comply with the City's insurance requirements and form types. Include a written statement with the contract form, indemnification, conflicts of interest provisions, and acceptable insurance that meet the insurance limits and requirements. The individual authorized to negotiate the final contract must sign the letter. Insurance coverage shall meet at least the following limits:

- | | |
|---------------------------------|-----------------------------|
| a. General Commercial Liability | \$1,000,000 |
| b. Automobile Insurance | \$1,000,000 |
| c. Worker's Compensation | per State Law (\$1,000,000) |

The City's insurance provisions are provided in Attachment B.

K. Cost Proposal (in a separate envelope)

Cost proposals shall include at a minimum:

- i. The cost for each task included in the scope of services
- ii. A cost breakdown by task for individual staff involved in the project (including any subconsultants).
- iii. Estimated hours of work and labor rates by individual staff.
- iv. All overhead markups are to be included in the labor rates shown.
- v. Subconsultant labor is clearly delineated from prime consultant labor.
- vi. Total cost estimate shall be on a Time and Materials Not-to-Exceed basis to perform all services requested.

SECTION 6 SUBMITTAL REQUIREMENTS

A. Proposal Submittal

- i. Proposals shall be submitted to:

Kevin Rohani, Public Works Director
City of Oakley
Public Works & Engineering Department
3231 Main Street
Oakley, California 94561

- ii. Submittals shall consist of:
 - Technical Proposal: three (3) hard copies and one (1) PDF copy on a USB or Flash drive
 - Cost Proposal: one (1) hard copy in a separate sealed envelope and one (1) PDF copy on a USB or Flash drive (this may be the same USB as used for the technical proposal).
- iii. All proposals shall be signed by an authorized official of the firm.

B. Questions

- i. All questions related to this RFP/Q shall be submitted in writing to the attention of Billilee Saengchalern, Principal Engineer, via email to the following email address: Saengchalern@ci.oakley.ca.us
- ii. The subject line of emails must read **STORMWATER NPDES**. All questions must be submitted prior to the Questions deadline, as shown in the schedule.
- iii. Questions received after the deadline will remain unanswered. No oral questions or inquiries about this RFP/Q will be accepted.

SECTION 7 COMPENSATION FOR AS-NEEDED SERVICES

As-needed services include C.6 inspections, SWCP/ O&P Plan reviews, enforcement response activities and documentation, and other non-regular tasks pertaining to stormwater regulatory compliance. For these services, the Consultant shall, at the City's request, advise the City in writing of the scope of services to be provided for each assignment and the estimated cost on a time and materials not-to-exceed basis to perform these services. The Consultant shall not proceed to perform any such services until the City and Consultant have established a detailed scope of work, detailed cost proposal, and schedule to complete the work, and the City has given its written authorization to proceed.

SECTION 8 CONSULTANT EVALUATION AND SELECTION

A. Proposal Evaluations

- i. Final ranking will be based on a composite of 70% on review rankings by the committee and 30% on cost effectiveness.
- ii. SOQs are to be reviewed by an evaluation committee using a rating matrix to determine the ranking of proposals. An incomplete proposal will not be advanced in the selection process.

No.	Evaluation Criteria	Weight
1	Completeness of Response	Pass/Fail
2	Project Understanding & Approach	13
3	Proposed Scope of Services	15
4	Qualification & Specific Experience of Key Team Members	15
5	Experience with Similar Types of Projects	10
6	Schedule and Capacity to Provide Qualified Personnel	10
7	References/Satisfaction of Previous Clients	7
8	Cost Effectiveness	30
	Subtotal	100

- iii. Cost proposals will be evaluated after criteria 1 through 7 have been scored and compiled.
- iv. For cost effectiveness, the schedule of fees provided will be evaluated through financial modeling of similar services provided in typical historical project(s) based on the fee schedule provided.
- v. Firms are hereby notified that the selection of the Consultant for this contract is dependent on prior approval by the City of Oakley Council.
- vi. Late submittals will not be accepted.

B. Protest Procedures and Dispute Resolution

- i. The protest procedures and dispute resolution process shall be conducted in accordance with the City of Oakley policies.

C. Additional Information

- i. The City reserves the right to reject any and all Proposals submitted.
- ii. All responses to the RFP/Q become the property of the City of Oakley.
- iii. The RFP/Q does not commit the City of Oakley to award a contract or to pay any cost incurred by the preparation of the proposal.
- iv. The City of Oakley reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects pertaining to the RFP/Q process, to obtain further information from any and all consultant teams, and to waive any defects as to form or content of the RFP/Q or any responses by any consultant teams.
- v. Once a final award is made, all RFP/Q responses, except financial and proprietary information, become a matter of public record and shall be regarded by the City of Oakley as public records. The City shall not in any way be liable or responsible for the disclosure of any such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act.
- vi. Award of a contract does not guarantee that the Consultant or its subconsultants will actually receive any work.

SECTION 9 SCHEDULE

<u>Event</u>	<u>Date</u>
Request for Qualifications Released	November 16, 2022
Written Questions Deadline	December 7, 2022
Receipt of SOQ/Proposal Deadline	December 14, 2022
Tentative Date for Interview	January 16, 2022

SECTION 10 ATTACHMENTS

- Attachment A – Sample Consulting Services Agreement**
- Attachment B – Insurance Provisions**



**CONSULTING SERVICES AGREEMENT BETWEEN THE CITY
OF OAKLEY AND _____ FOR _____ SERVICES
ASSOCIATED WITH _____**

THIS AGREEMENT for consulting services is entered into by and between the City of Oakley, a municipal corporation in the State of California (hereinafter referred to as "City") and _____ (hereinafter referred to as "Consultant"), collectively sometimes referred to hereinafter as the "Parties", as of _____ (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 or proposal letter attached hereto and incorporated herein 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 prior to 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 provided for in Section 8. Should this Agreement be amended to include additional tasks as contemplated in Section 1, the term of services shall be extended as mutually agreed upon by City and Consultant.
- 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 in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 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.
- 1.5 **Public Works Requirement.** Notice is hereby given that "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code, requiring the payment of prevailing wages and the provisions set out in Exhibit B.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed _____ Dollars and _____ Cents (\$_____), 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, 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 Consultant's signature.

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 approved by the City Manager, which shall not exceed the maximum amount allowed by the Oakley Municipal Code.
- 2.5 Hourly Fees.** Fees for work performed by Consultant shall not exceed the amounts shown on the Compensation Schedule attached hereto and incorporated herein as Exhibit A.
- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit A, and expenses not listed in Exhibit A are not chargeable to the City.
- 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 of this Agreement, 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 in order 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, shall procure the types and amounts of insurance listed below and in Exhibit C 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 to the City, and that such insurance is in effect prior to commencing work under this Agreement. 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 thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Verification of the required insurance is attached hereto and incorporated herein as Exhibit D.

4.1 Variation. The City may approve a variation in the insurance requirements, upon a determination that the coverage, scope, limit, and form of such insurance is either not commercially available, or that the City's interests are otherwise sufficiently protected.

4.2 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.3 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:

- 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 the City, and indemnify and hold the City and its officials, officers, employees, agents, and volunteers harmless from and against any and all losses 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 Liability is caused by the sole negligence, active negligence, or willful misconduct of the City or any third party.

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.

However, notwithstanding the foregoing, in accordance with California Civil Code Section 1668, nothing in this Agreement shall be construed to exempt the City from its own fraud, willful injury to the person or property of another, or violation of law. In addition, and notwithstanding the foregoing, 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 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 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.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator of 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 30 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. This Agreement may be extended at the option of the City. Should City decide to exercise its option to extend this Agreement, City shall provide written notice to Consultant at least sixty (60) days prior to the end date of this Agreement. 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, unless City agrees to do so by written amendment to this Agreement. Similarly, Consultant understands and agrees that, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses

incurred during the extension period, unless City agrees to do so by written amendment to this Agreement.

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 of this Agreement 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 three (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 TEN THOUSAND DOLLARS (\$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 three (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 of Contra Costa or in the United States District Court for the Northern 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 twelve (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 Kevin Rohani, P.E., Public Works Director/City Engineer ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

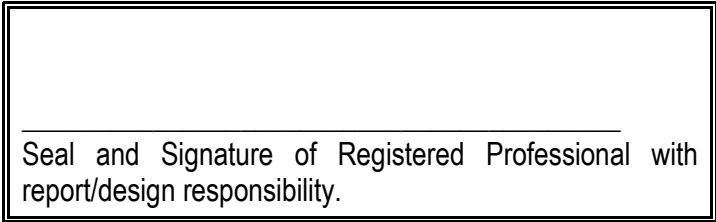
10.10 Notices.
Any written notice to Consultant shall be sent to:

Attn: _____

Any written notice to City shall be sent to:

City of Oakley
Attn: Kevin Rohani, Public Works Director/City Engineer
3231 Main Street
Oakley, CA 94561

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 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 and Compensation Schedule, Provisions Required for Public Works Contracts, Insurance Requirements, and Verification of Required Insurance, attached hereto and incorporated herein as Exhibit A, B, C and D respectively, 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 and Compensation Schedule
- Exhibit B Provisions Required for Public Works Contracts
- Exhibit C Insurance Requirements
- Exhibit D Verification of Required Insurance

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.

10.14 Authorized Signature. Each person and party signing this Agreement warrants that he/she has the authority to execute this Agreement on behalf of the principal and that the party will be bound by such signature.

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

CITY

CONSULTANT

City of Oakley, a municipal corporation
in the State of California

_____, a **California Corporation**

By: _____
Joshua McMurray, City Manager

By: _____
Signature

Attest:

By: _____
Name, Title

Libby Vreonis, City Clerk

Approved as to Form:

Derek P. Cole, City Attorney

EXHIBIT A

SCOPE OF SERVICES AND COMPENSATION SCHEDULE

EXHIBIT B

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to the City \$25.00 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply Labor Code Section 1775, which establishes a penalty of up to \$50.00 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake,

inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
 3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
 4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.
 2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project. The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.
- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

EXHIBIT C

INSURANCE REQUIREMENTS

PROFESSIONAL SERVICE CONTRACTS:

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Offer Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
(not required if consultant provides written verification it has no employees)
4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than **\$1,000,000** per occurrence or claim, \$2,000,000 aggregate.

If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage should be provided in the form of an endorsement to

the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage 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.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City.**

Waiver of Subrogation

Consultant hereby grants to City a waiver of any right to subrogation which Consultant or any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of contract work.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's

obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

EXHIBIT D

VERIFICATION OF REQUIRED INSURANCE



EXHIBIT A

Insurance Requirements

PROFESSIONAL SERVICE CONTRACTS

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit (i.e., \$2,000,000)
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. **(WC insurance is not required if Consultant provides written verification it has no employees)**
4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 policy aggregate.

If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 forms if later revisions used).

2. For any claims related to this contract, the **Consultant's insurance coverage 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 in excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with thirty (30) days prior written notice to the City.

Waiver of Subrogation

Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City.

Claims Made Policies

If any coverage required is written on a claims-made basis:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Consultant must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 10 10 01 and CG 20 37 10 01.

Special Risks or Circumstances

City reserves right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.