



City of Pacific Grove Request for Proposal (RFP)

for

**A Comprehensive Fee Study, Development Impact Fees, and/or a Cost
Allocation Plan**

Issue Date: September 1, 2022

Proposal Due Date: September 30, 2022

Submit responses to:

City of Pacific Grove
Attn: Lori Frati, Management Analyst
300 Forest Avenue
Pacific Grove, California 93950
Email address: lfrati@cityofpacificgrove.org

Table of Contents

1. RFP Overview

- 1.1 Introduction and Background
- 1.2 Purpose of RFP
- 1.3 Schedule of Events
- 1.4 RFP Coordinator
- 1.5 RFP Amendment and Cancellation
- 1.6 Letter of Intent to Respond
- 1.7 Questions Pertaining to the RFP
- 1.8 Public Records Law
- 1.9 Rights to Submitted Materials
- 1.10 City Agreements and Insurance Requirements

2. Scope of Work and Specifications

- 2.1 Overview of the Project
- 2.2 Desired Outcome
- 2.3 Performance Requirements
 - 2.3.1 User Fee Study
 - 2.3.2 Development Impact Fee Study
 - 2.3.3 Cost Allocation Plan

3. Proposal Submission Requirements

- 3.1 General Instructions
- 3.2 Proposal Format
 - 3.2.1 Transmittal Letter
 - 3.2.2 Table of Contents
 - 3.2.3 Executive Summary
 - 3.2.4 Company Information
 - 3.2.5 Company Background
 - 3.2.6 Statement of Qualifications
 - 3.2.7 Key Staffing, Development, and Implementation Approach
 - 3.2.8 Training
 - 3.2.9 Ongoing Support
 - 3.2.10 References
 - 3.2.11 Pricing
 - 3.2.12 Proposed Legal Agreement
 - 3.2.13 Additional Information

4. Proposal Evaluation

5. General Condition

- 5.1 General Conditions
- 5.2 Reference Checks
- 5.3 Changes to RFP
- 5.4 Submittal Address

1. RFP Overview

1.1 Introduction and Background

The City of Pacific Grove is a Charter City known for small-town hospitality and friendliness. It is run by a council-manager form of government. The major operating departments of the City are: City Manager, Administrative Services, Community Development, Public Works, Police, Fire, Recreation and the Library. The City population is 15,545 and it is approximately 2.86 square miles. The City shares borders with the City of Monterey, the Pacific Ocean, and the Del Monte Forest.

1.2 Purpose of RFP

The purpose for the City of Pacific Grove's request for proposal is to identify and select a vendor with a proven record of accomplishment in developing Comprehensive Fee Schedules, Development Impact Fees, and Cost Allocation Plans. In 2018, the City worked with a consultant to develop a Comprehensive Fee Study and a Cost Allocation Plan. While all City fees were evaluated, the Building Department Fees were only partially reviewed due to a shared-agreement with another City. The City would like to review all existing fees, as well as evaluate the Building Department Fees as part of this study. All City fees have been updated annually based on the CPI.

The City has not undertaken a Development Impact Fee Study; or the current City staff is not aware of a previous study. The Study would be used to assess a variety of development impact fees on new development to assist in mitigating City-wide impacts on public improvements, public services, and community amenities. The City's impact fee program must comply with all relevant sections of the Government Code.

The City Council has made the Comprehensive Fee Study and the Development Impact Fee portion of this proposal a City Council Priority. Depending on costs and perceived benefit, the City may award a contract in this fiscal year for one or all three of the studies. An emphasis will be placed on the Comprehensive Fee Study and the Development Impact Fees.

1.3 Schedule of Events

The RFP schedule of events identifies the City's best estimate of the schedule that will be followed.

RFP Event	Date/Time
RFP Issued	September 1, 2022
Deadline for Written Questions	September 15, 2022 at 4:30 pm
Deadline for Letter of Intent to Respond	September 15, 2022 at 4:30 pm
City Issues Response to Written Questions	September 22, 2022
Deadline for Submitting a Proposal	September 30, 2022 at 4:30 pm
City Evaluation of Proposals	October 3 -7, 2022
Estimated time when City Determines Finalist	October 10, 2022
Contract Awarded	October 19, 2022

The City reserves the right to adjust this schedule as it deems necessary.

1.4 RFP Coordinator

All communications concerning this RFP must be submitted in an e-mail to the RFP Coordinator, Lori Frati, Management Analyst. The RFP Coordinator will be the sole point of contact for this RFP. The coordinator can be reached via email at lfrati@cityofpacificgrove.org.

1.5 RFP Amendment and Cancellation

The City reserves the unilateral right to amend this RFP in writing at any time. The City also reserves the right to cancel or reissue all or any part of the RFP at its sole discretion. This information will be posted to the City's website. If an amendment is issued, it will also be provided to all vendors who have submitted a Letter of Intent to Respond.

1.6 Letter of Intent to Respond

Vendors who anticipate submitting a proposal should submit an email indicating a vendor's intent to respond to this RFP. The letter of intent should be emailed to the RFP Coordinator. The subject line should read, "Company Name – Letter of Intent to Respond". The following information should be included in the Letter of Intent to Respond:

- Name of Vendor
- Vendor's Address
- Vendor's Contact Person
- Contact Person's Telephone Number & E-mail Address
- Name and version of system to be proposed

Submittal of a Letter of Intent to respond, by the specified deadline, is highly desirable for submitting a proposal, and is necessary to ensure a vendor's receipt of RFP amendments and other communications regarding the RFP. The Letter of Intent does not bind vendors to submitting a proposal. Not submitting a Letter of Intent does not preclude a vendor from submitting a proposal by the required deadline.

1.7 Questions Pertaining to the RFP

All questions pertaining to this RFP must be submitted by e-mail to the RFP contact: Lori Frati, Management Analyst at lfrati@cityofpacificgrove.org. All vendors who have notified the City of their intent to respond to the RFP will be provided, via e-mail, a copy of all questions submitted as well as the City's response.

1.8 Public Records Law

Pursuant to the California Public Records Act, Government Code Section 6250 and following, public records may be inspected and examined by anyone desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. All submitted proposals are subject to the California Public Records Act, and may be determined to be public records subject to disclosure, even if the vendor claims confidential treatment. The City will disclose public records as required under the California Public Records Act.

1.9 Rights to Submitted Materials

All Proposals and related correspondence, reports, charges, schedules, exhibits and other documentation submitted with this RFP will become property of the City and a matter of public record. All documents submitted in response to this request will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to these disclosure requirements.

1.10 City Agreements and Insurance Requirements

The successful proposer(s) will be required to sign a contract with the City relating to the work to be performed. Once selected, the proposer must procure and maintain insurance in accordance with the City's insurance requirements for the duration of the contract. The cost of this insurance is the proposer's responsibility.

2. Scope of Work and Specifications

2.1 Overview of the Project

The City of Pacific Grove is interested in engaging a consultant to work with staff to prepare a Comprehensive Fee Study, Development Impact Fee Study, and a Cost Allocation Plan (Projects). The contract may be awarded for one or all of the studies.

The consultant will ensure that all project documents are both accurate and appropriate for the City's current needs, and work with City staff on strategies to maximize cost recovery. General steps for each individual Project would include:

- 2.1.1 Work with staff to define the purpose, uses, and goals of each Study or Plan.
- 2.1.2 Meet with staff and conduct interviews to gain an understanding of the City's practices and operations.
- 2.1.3 Review any existing documentation related to fees or the cost allocation plan
- 2.1.4 Provide any suggestions or strategies to improve cost recovery levels, and recommend any new fees, if necessary
- 2.1.5 Offer assisting in developing fee modification strategies that incentivize local policy goals
- 2.1.6 Develop and present draft a final report for City staff to review
- 2.1.7 Provide staff will worksheets to support the components in the final plan in an excel or editable format, as well as any training on how to update any schedules that need to be revisited annually or until the next study
- 2.1.8 Produce a final written report based on specific project needs, which could include comparison with similar organizations

- 2.1.9 Present the information related to the User Fee Study and/or the Development Impact Fee to the City Council at a City Council Meeting.

Additional specifics related to individual plans will be listed in the Performance Specifications of this document.

2.2 Desired Outcome

The desired outcome would be to receive a report that will be used to establish fees and allocate percentages/rates that support the full cost recovery of services; and a Development Impact Fee study that assists in mitigating city-wide impacts on public improvements, public services, and community amenities. Individual Performance requirements for each study are listed below:

2.3 Performance Requirements

2.3.1 User Fee Study

Project tasks shall include, but are not necessarily limited to, the following. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

- 2.3.1.1 Work and meet with City staff to refine the project scope, purpose, uses and goals of the City's User Fee Study to ensure that the study will be both accurate and appropriate to the City's needs. Review project schedule and answer any questions pertaining to the successful development of the Study.
- 2.3.1.2 Conduct a comprehensive review of the City's existing fees. For a list of City fees, see the attached "Exhibit A" Adopted Master Fee Schedule Fiscal Year 2022-23", which is adopted annually and is effective July 1. Identify the total cost of providing each City service and in a manner that is consistent with all applicable laws, statutes, rules and regulations governing the collection of fees, rates and charges by public entities.
- 2.3.1.3 Compare service costs with existing recovery levels. This should include any service areas where the City is currently charging for services as well as areas where the City, perhaps, should charge in light of the City's practices, or the practices of similar or neighboring cities. Include (as allowed by statutes/laws/rules/regulations) practices for deferral and/or forgiveness of fees and/or substitution of public services/facilities in lieu of fees for privately funded and City projects with public benefit. Include a comparison of current City practices and similar practices of similar or neighboring cities.
- 2.3.1.4 Recommend appropriate fees and charges based on your analysis together with the appropriate subsidy percentage for those fees where full cost recovery may be unrealistic (e.g. senior services). Consider the cost of pre-application and post-application meetings to mitigate project problems, assist project proponents to prepare the application, emergency response cost recovery such as inspection costs after fires

and/or acts of god and how those costs can be recovered, either on a permit specific basis or as an overall percentage applied to permit fees.

- 2.3.1.5 Prepare a report that identifies each service, its full cost, recommended and current cost recovery levels. The report should also identify the direct cost, the indirect cost, and the overhead cost for each service; and provide a model for adjusting these fees for the City's current and future needs.
- 2.3.1.6 Prepare a report that identifies the present scope performed under the fee, the proposed scope performed under the recommended fee, present fees, recommended fees, percentage change, cost recovery percentage, revenue impact; and fee comparison with other Monterey County cities or other California cities that are comparable to Pacific Grove. A survey comparison of fees with similar cities is for information only.
- 2.3.1.7 Report on other matters that come to your attention in the course of your evaluation that in your professional opinion the City should consider.
- 2.3.1.8 Present your study to the City's management group and make necessary adjustments as requested.
- 2.3.1.9 Prepare and participate in presenting the plan to interested external parties (public meetings).
- 2.3.1.10 Assist the Administrative Services Department in presenting the plan to the City Council.
- 2.3.1.11 Provide the City with an electronic copy of the final comprehensive study, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in costs. Develop a model for adjusting fees to include the addition of hypothetical service area information for future service enhancements, and the ability to calculate the estimated costs of providing the service under consideration (Scenario and "what if" analyses).
- 2.3.1.12 Provide on-site training to enable staff to update fee
- 2.3.1.13 Prepare a final fee study report in a single PDF file of the plan that can be made available to City staff. Any master fee schedule revisions developed shall be made available to the City electronically, providing the ability to add or delete and/or update information as needed.
- 2.3.1.14 Consult with City staff should it become necessary to defend the City's User Fees as a result of any legal or other challenge.

2.3.2 Development Impact Fee Study

The City assesses a variety of cost recovery-based fees. The consultant (or consultants) will conduct a comprehensive update of the nexus analysis for these fees and explore adding development impact fees as appropriate. The City's fees must comply with any applicable state and federal law including but not limited to the Mitigation Fee Act (California Government Code Section 66000 et seq., also known as Assembly Bill 1600).

Project tasks shall include, but are not necessarily limited to, the following. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

- 2.3.2.1 Develop a comprehensive impact fee study in alignment with broad policies to adequately facilitate desired development within the City while supporting the City's Capital Improvement Program.
- 2.3.2.2 Conduct a comprehensive Development Impact Study in alignment with updated long-range planning policies to complement development within the City and meet policy objectives.
- 2.3.2.3 The consultant (or consultants) will be responsible for preparing background reports as well as technical reports documenting the study results for each fee.
- 2.3.2.4 Provide an overview of development impact fees and in-lieu fees in neighboring and/or similar-sized cities as a means of comparison.
- 2.3.2.5 Provide City staff with an interactive tool that will ensure predictable and intuitive fees that are easily accessible and understandable to customers interested in calculating fees on their own for a particular type of project
- 2.3.2.6 Prepare and participate in presenting the plan to interested external parties (public meetings).

2.3.3 Cost Allocation Plan

Develop a Full Cost Allocation Model for calculating the full costs of providing each city service. The requirements of the model shall allow for the following:

- 2.3.3.1 Allow for Additions, revisions or removal of direct and overhead costs so that the cost allocation plan can be easily adapted to a range of activities both simple and complex.
- 2.3.3.2 Identify overhead rates that can be used in the calculation of billable hourly rates for user fees, and reimbursements from other governmental agencies.
- 2.3.3.3 Provide the ability of the City to continuously update the model and overhead cost allocation plan easily from year to year as the organization changes.

- 2.3.3.4 Identify hypothetical service area information for future service enhancements, and the ability to calculate the estimated cost of providing the service under consideration.
- 2.3.3.5 Comply with [Title 2, Code of Federal Regulations, Part 225, Cost Principles for State, Local, and Indian Tribal Governments](#); as part of the cost allocation plan proposal, please provide the following:
- a) Provide a Methodology appropriate for the calculation and allocation of an overhead cost rate complying with Title 2, Code of Federal Regulations, Part 225, Cost Principles for State, Local, and Indian Tribal Governments.
 - b) Prepare a study of each program with overhead costs that are borne in whole or in part by the General Fund that can receive overhead cost for reimbursement from State and Federal governments and/or other sources.
- 2.3.3.6 Present the cost allocation plan to the City’s management group and make necessary adjustments as requested.
- 2.3.3.7 Provide the City with an electronic copy of the final comprehensive review, including related schedules and cost determination in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in costs.
- 2.3.3.8 Consult with the City staff should the need arise to defend the cost allocation plan as a result of audits or other challenges.

3 Proposal Submission Requirements

3.1 General Instructions

Proposals should provide a straightforward, concise description of the vendor’s company, qualifications, proposed solution, and capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content.

Proposals should be organized consistent with the outline provided in this section of the RFP. Vendors must follow all formats and address all portions of the RFP set forth herein providing all information requested.

Submittals must be received no later than September 30, 2022. Proposals received after this date and time will not be considered.

3.2 Proposal Format

Proposals must be structured, presented, and labeled in the following manner:

- Transmittal Letter
- Table of Contents

- Executive Summary
- Company Information
- Company Background
- Statement of Qualifications
- Implementation and Development Approach
- Training
- Ongoing Support
- References
- Pricing for each study or any discounts associated with conducting all three studies/plans. All pricing must be placed in a sealed envelope.
- Proposed Legal Agreement(s)
- Additional Information

Details of information that shall be included in each response are listed in Sections 3.2.1 – 3.2.13.

Failure to follow the specified format, to label the responses correctly, or to address all the subsections may result in the rejection of the Proposal.

3.2.1 Transmittal Letter

The proposal must provide a written transmittal of the proposal in the form of a standard business letter. The Transmittal Letter will reference and respond to each of the following bulleted items.

- Signature of a company officer empowered to bind the vendor to the provisions of this RFP and any contract awarded pursuant to it.
- A high-level statement of the vendor’s credentials to deliver the services sought under the RFP.
- A statement indicating the proposal remains valid for at least 90 days.
- A statement that the vendor or any individual who will perform work for the vendor is free of any conflict of interest (e.g., employment by the City.)

3.2.2 Table of Contents

All pages are to be numbered and the table of contents should identify each major section.

3.2.3 Executive Summary

This section of the proposal should provide a concise synopsis of vendor's proposal and credentials to deliver the services sought under the RFP. In addition, it should explain how the vendor's proposal will differentiate itself from other consultant solutions and the reasons the City should select the vendor's proposal. This may include a list of the unique attributes or experience that gives the vendor a competitive edge.

3.2.4 Company Information

This section of the proposal must include the following company information:

- Provide the legal entity name, Federal Employer Identification Number (EIN), and form of business (i.e. Corporation, LLC, etc.).
- Identify if the vendor is a subsidiary of a larger company. If so, whom?
- Provide a primary contact name, address, phone number, and email address.
- Identify the location of company headquarters and offices, which will support the implementation.
- Identify the location, hours of operation, and contact information of ongoing maintenance and support staff.
- Provide the current number of employees at the company.
- Provide the current number of employees dedicated to the solution you are proposing.
- Identify all subcontractors and associated scope of work.
- List the company's Pacific Grove business license number, or statement of understanding that a business license must be purchased prior to doing business with City.
- Identify any pending litigation against the vendor.
- Identify if vendor has filed any bankruptcy or insolvency processing in the last 10 years.
- Identify any mergers, acquisitions, or sales of the vendor company within the last five years (if so, an explanation providing relevant details).

3.2.5 Company Background

This section should identify the following:

- A description of the Vendor's background, nature of business and organizational history.
- A statement of how long the Vendor has been providing the services that are being proposed and required by this RFP.
- Disclose the Vendor's annual company revenues and profit for the last three company fiscal years. It is acceptable to include this information as an appendix in the proposal.

3.2.6 Company Qualifications

In this section of proposal, the Vendor should identify company and staff qualifications and experience in implementing the proposed studies or plans. More specifically, this section should identify the following:

- Describe your experience in providing comprehensive fee studies, development impact fee studies, and cost allocation plans; especially for municipalities similar in size to Pacific Grove.
- Identify some examples of your existing client base including the number of clients you provided the services being proposed here.

3.2.7 Key Staffing, Development, and Implementation Approach

In this section the vendor should address the following:

- Provide a project organization chart highlighting the key staff who will be assigned to accomplish the work and any related bios for the project manager and key personnel
- Describe your implementation methodology and approach that is relevant to one or all studies. This includes the tools and techniques that will be used and methodologies that the firm will employ.
- Outline strategies and options that will result in the development and recommendations that are practical to the City of Pacific Grove, meaning that the recommendations must not exceed the City's ability to implement and properly utilize them.
- Describe the roles and responsibilities of both the City and vendor staff during each phase of implementation. In addition, provide an estimated level of effort and skillset required for the City staff during implementation.
- Provide a project schedule that includes all tasks, deliverables, milestones, and resources required. The City seeks a detailed understanding of the work plan that will be followed to ensure success.

Please also indicate any lead time that is needed before a company representative can begin working on the study.

- Describe your validation process for ensuring all information is accurate and your criteria for success. Also, outline the responsibilities of City staff during the final validation and acceptance process.

3.2.8 Training

- Provide an overview of any training that would be needed to understand the methodology related to the studies. The goal would be to allow City staff to understand the how any fees or allocations were derived.

- If applicable, describe your training strategy/plan that includes current and future employees of City in any updates to the underlying calculations with the plans or studies during periods when formal studies are not conducted.

3.2.9 Ongoing Support

Please provide an overview of any support that you firm will offer in relation to follow-up questions regarding the completed studies.

3.2.10 References

The vendor must provide at least five references. At least three of the references should be for comprehensive fee studies, development impact fees, and cost allocation plans in the last three years. The City prefers references from local government agencies with similar demographics. For each reference, vendor should provide the following information:

- Entity name
- Customer contact information (name, title, phone, and email)
- Scope of work performed identifying the services provided and solutions implemented
- Project start and end dates

3.2.11 Pricing

The City is seeking a clear and comprehensive understanding of all costs associated with the project. This would include development of the studies, on-going training, and travel. The City may entertain remote meetings, however an on-site presentation may be required by the City Council.

All pricing shall be submitted in a separate sealed envelope.

Each individual study or plan shall be priced separately, along with any discounts identified if the City moves forward with all three studies.

3.2.12 Proposed Legal Agreement

It is recognized that the formal basis of any agreement between the City and the vendor is a contract rather than a proposal. The City's standard contract is included in Exhibit B. While the City does not typically modify the contract terms, the Vendor may include a draft of any proposed modifications to the City's standard contract. If the Vendor requires an alternate contract, that information must be included with the RFP response.

The proposed legal agreement(s) may serve as the basis for contract negotiations between the City and the selected vendor(s) or the City may elect to use its own agreement as the basis.

3.2.13 Additional Information

In this section, the vendors are required to provide the following materials:

- Example of a development impact fee study for similar City
- Any training material for on-going support. The City is typically planning to update all studies on five-year intervals; however this could be subject to change.
- If the company offers a complimentary service to enhance the requested studies, please include any informational material, as well as the costs. Please note that these documents are not required for this proposal; however it is requested for potential consideration and future studies.

4 Proposal Evaluations

After the proposals are received, the City shall review and evaluate them for responsiveness to the RFP in order to determine whether the proposer possesses the qualifications necessary for the satisfactory performance of the services required. The City may also investigate qualifications of all proposers to whom the award is contemplated, and the City may request clarifications of proposals directly from one or more proposers.

In reviewing the proposals, the City will consider the following:

- The qualifications (including education, training, licenses, experience and past performance) of the proposer and its agents, employees and sub-consultants in completing projects of a similar type, size and complexity.
- The feasibility of the proposal based upon the methodology of the proposed scope of services to meet the City's needs, the quality of services proposed, and the reasonableness of the total project costs and of the proposed time period over which the work will be completed.
- Understanding of the work to be completed based upon the clarity of the proposal and responsiveness to this RFP.
- Quality, clarity, completeness, and responsiveness of proposal.
- Demonstrated ability to work in a cooperative and collaborative manner with clients.
- Proposed timeline.
- Anticipated value and price.
- Perceived risk or lack of risk
- Company financial stability.
- References for each of the primary product(s) and service(s) proposed
- Reasonableness of any proposed adjustments to the City's contracts)
- Ability to negotiate and execute a contract in a timely manner.

The City reserves the right, at its sole discretion, to request clarifications of proposals or to conduct discussions for the purpose of clarification with any or all vendors. The purpose of any such discussions shall be to ensure full understanding of the proposal. Discussions shall be limited to specific sections of the proposal identified by the City and, if held, shall be after initial evaluation of proposals are complete. If clarifications are made as a result of such discussion, the vendor shall put such clarifications in writing.

5 General Terms and Conditions

5.1 General Conditions

- The City reserves the right to reject any and all proposals, to waive any informality, to request interviews of Contractor(s) prior to award and to select and negotiate the Contract services in the best interest of the City.
- The City reserves the right to accept all or part of any proposal, and to negotiate a contract for services and cost with the selected Contractor.
- The Contractor shall provide all necessary personnel, materials and equipment to perform and complete all work under this proposal.
- The Contractor shall be unbiased and vendor neutral.
- Unless otherwise stated, invoices are to be submitted to the Administrative Services Department upon delivery of service to the City. The invoice must include an itemization of all services provided, including unit list price, net price, extensions total amount(s) due, and amounts previously paid.
- Unless otherwise stated, payment will be made within thirty (30) days of the completion of the service, in an acceptable fashion, to the City, and receipt of invoice, whichever is later.
- The contract for the services described in the RFP should not be considered exclusive. As deemed necessary, the City reserves the right to obtain these services from any other vendor.
- Neither party shall be liable for any inability to perform its obligations under any subsequent agreement due to war, riot, insurrection, civil commotion, fire, flood, earthquake, storm or other act of nature.
- Notification of the parties shall be considered to have been constructively received when it is mailed via the United States Postal Service, e-mailed, or delivered in hand to the parties as stated in the contract.
- Proposal shall also mean quotation, bid, offer, qualification/experience statement, and services. Proposers shall also mean vendors, proposer's, bidders, or any person or firm responding to a Request for Information.

- The City reserves the right to retain all proposals for a period of 60 days for exam and comparison.
- All contracts entered into by the City of Pacific Grove shall be governed by the Laws of the State of California. Any disputes shall be resolved within the venue of the State of California.
- The proposer may submit an alternative proposal or proposals that it believes will also meet the City's project objectives, but in a different way. In this case, the proposed must provide an analysis of the advantages and disadvantages of each of the alternatives, and discuss under that circumstances the City would prefer one alternative to the other(s).

5.2 Reference Checks

The City of Pacific Grove reserves the right to contact any reference, or any client listed in the documents for information which may be helpful to the City in evaluating the Contractor's performance on previous assignments.

5.3 Changes to RFP

Changes to the RFP will be e-mailed to all vendors that submitted a letter of intent to respond. Such changes become an integral part of the RFP for incorporation into any contract awarded pursuant to the RFP.

5.4 Submittal Address

Send proposals to Lori Frati, Management Analyst at lfrati@cityofpacificgrove.org or mail to:

City of Pacific Grove
Administrative Services Department
Attn: Lori Frati, Management Analyst
300 Forest Avenue
Pacific Grove, CA 93950

If submitting by mail, please ensure "title of RFP" is written in the lower left-hand corner of the envelope. Three bound copies, plus one electronic file shall be submitted.

Proposals must be complete and submitted by the due date. Late submissions or delivery via facsimile will not be considered. The City assumes no responsibility for delays caused by delivery service. Postmarking by the due date will not substitute for actual receipt.

**CITY OF PACIFIC GROVE
PROFESSIONAL SERVICES AGREEMENT**

This PROFESSIONAL SERVICE AGREEMENT (“PSA”) FOR NON-CONSTRUCTION PROJECTS (“Agreement”), is made and effective as of [Insert date], between the City of Pacific Grove (“City”), a municipal corporation and [Insert consultant], [a sole proprietorship, partnership, limited liability partnership, corporation] (“CONSULTANT”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on [Insert date] and shall remain and continue in effect until the tasks described herein are completed, but in no event later than [Insert date], unless sooner terminated pursuant to the provisions of this Agreement.

2. SCOPE OF WORK

CONSULTANT shall perform the tasks and services (“Services”) described and set forth in Exhibit A, Scope of Services, attached hereto and incorporated herein as though set forth in full. CONSULTANT shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A. To the extent that Exhibit A is a proposal from CONSULTANT, such proposal is incorporated only for the description of the Scope of Services and no other terms and conditions from any such proposal shall apply to this Agreement unless specifically agreed to in writing.

3. PERFORMANCE

CONSULTANT shall at all times faithfully, competently and to the best of their ability, experience, and talent, perform all Services described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting their obligations under this Agreement.

[IF RFP ADD: CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

CONSULTANT is bound by the contents of City’s Request for Proposal on file hereto and incorporated herein as Exhibit D, and the contents of the proposal submitted by CONSULTANT, available on file at _____, hereto and incorporated herein as Exhibit E. In the event of conflict, the requirements of City’s Request for Proposals and this Agreement shall take precedence over those contained in CONSULTANT’s proposals.]

4. CITY MANAGEMENT

The City Manager, or their designee, shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by CONSULTANT, but not including the authority to enlarge the Scope of Work or change the

compensation due to CONSULTANT. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents that enlarge the Scope of Work or change CONSULTANT's compensation, subject to Section 6 hereof.

5. PAYMENT

- a. The City agrees to pay CONSULTANT monthly, in accordance with the payment rates and terms and the Payment Schedule as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed [Insert amount] dollars (\$__.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.
- b. The City Manager's contract authority is limited to \$39,999.99, which includes all costs. Contracts, including any contract amendments that exceed the total threshold, require City Council approval. Any contracts, including contract amendments that exceed the total threshold, which do not have City Council approval, shall be void.
- c. CONSULTANT shall not be compensated for any Services rendered in connection with its performance of this Agreement that are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager or the City Council. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and CONSULTANT at the time City's written authorization is given to CONSULTANT for the performance of said services.
- d. CONSULTANT shall submit invoices monthly for actual Services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for Services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within forty-five (45) days of receipt of an invoice therefore.

6. INSPECTION

City shall at all times have the right to inspect the work and materials. CONSULTANT shall furnish all reasonable aid and assistance required by City for the proper examination of the work and all parts thereof. Such inspection shall not relieve CONSULTANT from any obligation to perform said work strictly in accordance with the specifications or any modifications thereof and in compliance with the law.

7. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

- a. The City may at any time, for any reason, without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon CONSULTANT at least thirty (30) days prior written notice. Upon receipt of said notice, CONSULTANT shall immediately cease all Services under this Agreement, unless the notice provides otherwise. If the City

suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

- b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to CONSULTANT the actual value of the Services performed up to the time of termination, provided that the Services performed are of value to the City. Upon termination of the Agreement pursuant to this Section, CONSULTANT will submit an invoice to the City pursuant to Section 6.

8. DEFAULT OF CONSULTANT

- a. CONSULTANT's failure to comply with the provisions of this Agreement shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating CONSULTANT for any Services performed after the date of default and can terminate this Agreement immediately by written notice to the CONSULTANT. If such failure by the CONSULTANT to make progress in the performance of Services hereunder arises out causes beyond the CONSULTANT's control, and without fault or negligence of the CONSULTANT, it shall not be considered a default.
- b. If the City Manager or designee determines CONSULTANT is in default in the performance of any of the terms or conditions of this Agreement, they shall cause to be served upon CONSULTANT a written notice of the default. The CONSULTANT shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event CONSULTANT fails to cure its default within such period of time or fails to present City with a written plan for the cure of the default, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

9. OWNERSHIP OF DOCUMENTS

- a. CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of Services under this Agreement. CONSULTANT shall maintain adequate records of Services provided in sufficient detail to permit an evaluation of Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. If there is a substantial billing deviation adverse to City, then the cost of an audit shall be borne by CONSULTANT. Such records, together with supporting documents, shall be maintained for a period of five (5) years after receipt of final payment.

- b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the Services to be performed pursuant to this Agreement shall become the sole property of City and may be used, reused, or otherwise disposed of by City without the permission of CONSULTANT. With respect to computer files, CONSULTANT shall make available to City, at CONSULTANT's office and upon reasonable written request by City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. CONSULTANT hereby grants to City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by CONSULTANT in the course of providing the Services under this Agreement.

10. RECORD AUDIT

In accordance with Government Code, Section 8546.7, for expenditures of greater than \$10,000, records of both City and CONSULTANT shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment.

11. INDEMNIFICATION AND DEFENSE

Indemnity

To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless City and any and all of its officers, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or subconsultants (or any City or individual that CONSULTANT shall bear the legal liability thereof) in the performance of Services under this Agreement. CONSULTANT's duty to indemnify and hold harmless City shall not extend to the City's sole or active negligence.

Duty to defend

In the event City, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the Services encompassed by this Agreement, and upon demand by City, CONSULTANT shall defend City at CONSULTANT's cost or at City's option, to reimburse City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by CONSULTANT's negligent acts, errors or omissions. Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and City, as to whether liability arises from the sole or active negligence of the City or its officers, employees, or agents, CONSULTANT will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely or actively negligent. CONSULTANT will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

12. INSURANCE

CONSULTANT shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached to and part of this Agreement.

13. INDEPENDENT CONSULTANT

- a. CONSULTANT is and shall at all times remain as to City a wholly independent consultant and/or independent contractor. The personnel performing the Services under this Agreement on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this Agreement. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of City. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.
- b. No employee benefits shall be available to CONSULTANT in connection with the performance of this Agreement. Except for the fees paid to CONSULTANT as provided in the Agreement, City shall not pay salaries, wages, or other compensation to CONSULTANT for performing Services hereunder for City. City shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing Services hereunder.

14. LEGAL RESPONSIBILITIES

CONSULTANT shall keep itself informed of State and Federal laws and regulations that in any manner affect those employed by it or in any way affect the performance of its Services pursuant to this Agreement. CONSULTANT shall at all times observe and comply with all such laws and regulations. City, and its officers, employees, and agents shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

15. UNDUE INFLUENCE

CONSULTANT declares and warrants that no undue influence or pressure was used against or in concert with any officer, employee or agent of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer, employee or agent of City has or will receive compensation, directly or indirectly, from CONSULTANT, or from any officer, employee or agent of CONSULTANT, in connection with the award of this Agreement or any Services to be performed as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to any and all remedies at law or in equity.

16. NO BENEFIT TO ARISE TO CITY OFFICERS AND EMPLOYEES

No officer, employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Services performed under the Agreement

during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Services performed under this Agreement.

17. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

- a. All information gained by CONSULTANT in performance of this Agreement shall be considered confidential and shall not be released by CONSULTANT without City's prior written authorization. CONSULTANT, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives City notice of such court order or subpoena.
- b. CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless City is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONSULTANT is prohibited by law from informing City of such Discovery. City retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to CONSULTANT in such proceeding, CONSULTANT agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

[Note: The following paragraph is only to be used when the City will be taking in a fee or deposit from an applicant and uses those funds to retain the CONSULTANT to prepare an EIR, Specific Plan, or some other specific document or where the City is funding a similar development-type study.]

- c. [CONSULTANT covenants that neither CONSULTANT nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their Services hereunder. CONSULTANT further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or sub-consultant. CONSULTANT further covenants that CONSULTANT has not contracted with nor is performing any Services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and

agrees that CONSULTANT and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the Services under this Agreement.]

d. If City determines CONTRACTOR comes within the definition of Contractor under the Political Reform Act (Government Code §87100 et seq.), CONTRACTOR shall complete and file and shall require any other person doing Work under this Agreement to complete and file a “Statement of Economic Interest” with CITY disclosing CONTRACTOR’s and/or such other person’s financial interests.

18. DISCRIMINATION

CONSULTANT agrees that in the performance of this Agreement, neither CONSULTANT nor any person acting on CONSULTANT’s behalf shall discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, genetic information, marital status, sexual orientation, sex, gender identity, gender expression, military or veteran status or age.

19. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, by first class mail, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City:	[Insert City Employee] City of Pacific Grove 300 Forest Avenue Pacific Grove, CA 93950 Attention: City Clerk
To CONSULTANT:	_____

Notice is effective on the date of personal service, or 5 days following deposit in a United States mailbox, or date of postmark. The parties may agree to service by email.

20. THIRD PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in third parties.

21. ASSIGNMENT

CONSULTANT shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of CITY. Because of the personal nature of the Services to be rendered pursuant to this Agreement, only CONSULTANT shall perform the Services described in this Agreement. CONSULTANT may use assistants, under their direct supervision, to perform some of the Services under this Agreement.

[If specific to Consultant, add: CONSULTANT shall provide City fourteen (14) days' notice prior to the departure of [Insert name of particular person with expertise] from CONSULTANT's employ. Should [insert name] leave CONSULTANT's employ, City shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, CONSULTANT's sole compensation shall be payment for actual Services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between City and the CONSULTANT. Before retaining or contracting with any sub-consultant for any Services under this Agreement, CONSULTANT shall provide City with the identity of the proposed sub-consultant, a copy of the proposed written contract between CONSULTANT and such sub-consultant, which shall include and indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed sub-consultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from City for such insurance.]

22. LICENSES

At all times during the term of this Agreement, CONSULTANT shall have in full force and effect, all licenses required of it by law for the performance of the Services described in this Agreement. CONSULTANT shall obtain a valid City Business License and shall maintain said Business License for the term of this Agreement and any extensions.

23. GOVERNING LAW

City and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in Monterey County, or federal district court with jurisdiction over City. CONSULTANT agrees not to commence or prosecute any dispute arising out of or in connection with this Agreement other than in the aforementioned courts and irrevocably consents to the exclusive personal jurisdiction and venue of the aforementioned courts.

24. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to their obligations described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this

Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. No amendment shall be valid unless in writing, executed by both parties.

25. DISPUTE RESOLUTION; ATTORNEY'S FEES

CONSULTANT shall continue to perform under this Agreement during any dispute. CONSULTANT and City hereby agree to make good faith efforts to resolve disputes as quickly as possible. In the event any dispute arising from or related to this Agreement results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

26. WORK SCHEDULED/TIME OF COMPLETION

City and CONSULTANT agree that time is of the essence in this Agreement.

27. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of CONSULTANT warrants and represents that they have the authority to execute this Agreement on behalf of the CONSULTANT and have the authority to bind CONSULTANT to the performance of its obligations hereunder.

28. INTERPRETATION OF CONFLICTING PROVISIONS

In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

29. SEVERABILITY

If any term of this Agreement is held invalid by a court of competent jurisdiction or arbitrator the remainder of this Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF PACIFIC GROVE

CONSULTANT

By: _____
Department Director

By: _____
Consultant

Date: _____

Date: _____

By: _____
City Manager or Mayor

By: _____
City Administrative Services Department

Date: _____

Date: _____

Approved As To Form:

City Attorney

Date

Attachments:	Exhibit A	Scope of Services
	Exhibit B	Payment Schedule
	Exhibit C	Insurance Requirements
	[Exhibit D	Request for Proposal]
	[Exhibit E	Consultant's Proposal]

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

PAYMENT SCHEDULE

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of City, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

General liability insurance. CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Professional liability (errors & omissions) insurance. CONSULTANT shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and CONSULTANT agrees to maintain continuous coverage through a period no less than three (3) years after completion of the Services required by this Agreement.

Note: May need to delete workers' compensation and employer's liability insurance requirements for certain sole proprietorships, partnerships, or corporations without employees.

Workers' compensation insurance. CONSULTANT shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

CONSULTANT shall submit to CITY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of CITY, its officers, agents, employees and volunteers.

Umbrella or excess liability insurance. [Optional depending on limits required]. CONSULTANT shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;

- Concurrency of effective dates with primary policies;
- Policies shall “follow form” to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Other provisions or requirements

Proof of insurance. CONSULTANT shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers’ compensation. Insurance certificates and endorsements must be approved by City’s Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. 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 CONSULTANT, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City’s own insurance or self-insurance shall be called upon to protect it as a named insured.

City’s rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by CONSULTANT or City will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders’ Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best’s Key Rating Guide, unless otherwise approved by the City’s Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against CITY, its elected or appointed officers, agents, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the City to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. 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.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to CITY with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. CONSULTANT agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONSULTANT, provide the same minimum insurance coverage and endorsements required of CONSULTANT. CONSULTANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONSULTANT agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the City and CONSULTANT may renegotiate CONSULTANT's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

Timely notice of claims. CONSULTANT shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

EXHIBIT D

REQUEST FOR PROPOSAL

EXHIBIT E

CONSULTANT'S PROPOSAL