

REQUEST FOR PROPOSALS

On-Call & Environmental Planning Services



Issue Date: April 5, 2024

Questions/Inquires Due: April 19, 2024

Formal RFP Response Deadline: May 6, 2024

Anticipated Contract Award Date: June 4, 2024

Anticipated Start Date of Contract: July 1, 2024

CITY OF PINOLE
COMMUNITY DEVELOPMENT DEPARTMENT
2131 PEAR STREET
PINOLE, CA 94965

REQUEST FOR PROPOSALS

ON-CALL & ENVIRONMENTAL PLANNING SERVICES

INTRODUCTION

The purpose of this Request for Proposal (RFP) is to invite proposals from qualified firms to establish a consultant contract for a period of up to four years to provide professional city planning services for the Planning Division. Through this process, the City aims to award two types of On-Call contracts that cover both (1) Environmental Services and (2) As-Needed General Planning Services. The details of the services needed are outlined in this RFP, and generally include (1) preparing environmental documentation and technical studies to comply with the California Environmental Quality Act (CEQA), and (2) general planning-related development and land use project review including site visits, public counter services, environmental determinations, technical plan check and map review.

This RFP intends to have firms under contract to be available to provide services, on-call, if the City should need them. Selected firms will be required to enter into the City's Standard Consulting Agreement. To be considered for future individual projects selected firms will be invited to prepare and submit project-specific work plans and cost proposals based on informal solicitations on an as-needed and as-requested basis. The City will endeavor to distribute the work to the City's On-Call firms in an equitable manner considering the type and needs of the project and the particular experience of the firms. When entering into a professional services agreement with the selected firm(s) for a period of four years, the City does not guarantee any specific amount of fees related to the work awarded to any firm, nor does it guarantee the initiation of any Task Orders during the duration of the contract.

CITY PROFILE

Pinole is a bayfront community of about 19,000 residents in Contra Costa County, incorporated on June 25, 1903. The City has a land area of more than five square miles and is bordered by Hercules to the North, San Pablo and Richmond to the South, and the unincorporated areas of Tara Hills and El Sobrante to the southeast and southwest of the City. The City is divided by Interstate 80 (I-80) in that approximately 60 percent of the 7,106 total housing units are located on the north of I-80 and 40 percent of the housing units are located on the south of I-80. Pinole is known for its 'big box' shopping opportunities and has over 50 major retailers and restaurants situated within Pinole shopping centers.

Pinole has a well-defined, historic downtown, and a range of residential neighborhoods transitioning from older single-family and mixed residential districts on a traditional street grid around the downtown, to more typically suburban neighborhoods arranged around cul-de-sacs and curvilinear residential streets. Higher density apartment townhome complexes, interspersed with commercial sites, are generally located along and near major arterials.

The City operates on the City Council-City Manager system of local government with five elected council members serving four-year terms with a rotating mayor. City Hall hours of operation are 8:00 am to 4:30 pm, Monday through Thursday. City Hall is closed to the public on Fridays.

BACKGROUND

The City of Pinole has seen a substantial uptick in development over the last five years, including five large housing developments ranging in size from 29 units to 223 units and a large industrial building. The Planning Division also has a significant workload planned for the 23/24, 24/25 and 25/26 fiscal years. In addition to the projected steady increase in planning requests and entitlements, major updates to the City's General Plan are also in the pipeline. These updates include the introduction of a new Health and Environmental Justice Element, as well as an updated Safety Element. Moreover, the City is slated to adopt its first Climate Action and Adaptation Plan. Alongside these updates, the Planning Division will be responsible for implementing the Housing Element, which includes substantial modifications to the Three Corridor Specific Plan and Zoning Ordinance. The City will be looking forward to completing the California Environmental Quality Act (CEQA) clearances for these major projects.

As described above, the Building and Planning Divisions of the Community Development Department in the City have been, and are expected to continue, experiencing a significant amount of activity. To be able to deliver services to the development community and homeowners, in addition to major long-range planning policy work currently underway, the City must continue to augment planning staff. The City of Pinole has used staff augmentation in the recent past to manage the increased amount of activity. Augmenting planning staff allows for efficient and accelerated processing of entitlements and environmental review by the City.

SCOPE OF SERVICES

The purpose of this Request for Proposal (RFP) and Statement of Qualifications is to provide interested consultant firms with sufficient information concerning the services desired by the City of Pinole. This information is intended to enable the firms to prepare and submit qualifications and proposals for providing two categories of services (1) Environmental Planning Services and (2) On-call Planning Services, as described below. Successful consultants need not demonstrate experience or capabilities with all planning and/or environmental functions listed below. The breadth of capabilities, experience or access to specialized technical experts may play a role in the contract size.

A: ENVIRONMENTAL PLANNING SERVICES

The City of Pinole is seeking firms to perform a variety of environmental planning tasks including, but not limited to, the following:

- A. Preparation of Initial Studies and Notices of Preparation.
- B. Preparation of Notices of Determination and the ability to file electronically with the State Clearinghouse, as well as physical copies posted with the Contra Costa County Clerk.
- C. Preparation of Negative Declarations and Mitigated Negative Declarations.

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- D. Preparation of Environmental Impact Reports, Supplemental and Subsequent EIRs, and EIR Addendums.
 - E. Preparation of supporting technical studies, including biological resources and wetlands studies, cultural resources studies, traffic analyses, air quality and GHG analyses, acoustical studies, aesthetics and visual resources analyses, hydrological, geotechnical, and other technical analyses.
 - F. Preparation of Mitigation Monitoring and Reporting Programs, CEQA Findings and Statements of Overriding Considerations, including appropriate resolutions.
 - G. Peer review of technical studies submitted by Project applicants.
 - H. Facilitation of community engagement processes.
 - I. Attendance and presentations at community scoping sessions, Planning Commission and City Council workshops and public hearings.

B: ON-CALL PLANNING SERVICES

The City of Pinole is seeking firms to perform a variety of on-call planning services for all types of projects requesting entitlements, including but not limited to new residential, commercial, and industrial buildings and uses. Selection of firms for on-call services will be based on their:

- 1. Understanding of local City planning and environmental regulations and processes;
- 2. Historic processing time of City documents;
- 3. Ability to prepare products requiring minimal revisions and/or training;
- 4. Costs;
- 5. Knowledge of issues; and
- 6. Availability.

The on-call planning services that a successful applicant would provide include, but are not limited to, the ability to perform the following:

- A. Be present at City Hall and hold regular office hours as agreed upon by staff and Consultant.
- B. Develop and maintain good working relationships with other city departments, other jurisdictions, and the public.
- C. Analyze projects for compliance with the City's General Plan, zoning ordinance, Subdivision Map Act, Design Guidelines, applicable specific plans and other policies.
- D. Review and process ministerial applications and discretionary entitlements, such as: Plan Checks, Zoning Clearances, Sign Permits, Use permits, Variances, Design Review, Tentative Maps, and General Plan and Zoning amendments.
- E. Compile and analyze data on economic, social, environmental, and physical factors affecting land use.
- F. Meet with developers, engineers, property owners, contractors and other individuals to discuss, advice, explain processes and suggest improvements regarding potential projects, pre-applications, development applications, feasibility analysis, conceptual development plans and code interpretation.
- G. Ability to write Planning Commission and City Council staff reports, resolutions, ordinances, conditions of approval, and give oral presentations.

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- H. Attend public hearings and community meetings as necessary.
 - I. Analyze projects for CEQA compliance.
 - J. Ability to review projects and provide comments within timelines specified by the Permit Streamlining Act and the City (shorter timelines may be required for certain projects).
 - K. Provide strong emphasis on the management of multiple projects and competing priorities while maintaining quality, meeting schedules and staying within budget.
 - L. Answer public inquiries by telephone, email or in person at a public counter regarding property zoning and/or General Plan land uses, application submittal requirements, etc.
 - M. Facilitation of special projects.

PROPOSAL CONTENT

The proposal shall clearly address all of the information requested herein. To achieve a uniform review process and obtain the maximum degree of comparability, proposals must be organized and contain all information as specified below:

- A. Cover Letter: Maximum of two pages serving as an executive summary which shall include an understanding of the scope of services. The letter shall acknowledge the acceptance to the terms and conditions of the Consulting Services Agreement (Attachment A) and shall contain a statement that the proposal is valid for ninety (90) days.
- B. Brief Company Profile. General company information including number of employees, location of company headquarters and branch offices, number of years in business and organization, disciplines, and staffing. Describe the general qualifications of the firm as they relate to the work proposed with this RFP.
- C. Organization and Staffing. Provide a list of the consultant's employees and agents whom the consultant anticipates assigning to this project. This list shall include a summary of the qualifications, licenses, and experience of each individual; and the professional Planning level of work to be performed by each individual.
- D. Description and Approach. The proposal should demonstrate the Consultant's knowledge of the needs and objectives of the work proposed under this RFP. Describe your project management approach. Provide a detailed description of how the team, (including sub-consultants if applicable), will be managed.
- E. Schedule of Work (consultants responding to Environmental Planning Services only): Describe your scheduling methodology and approach to schedule management. Provide a typical detailed schedule for all phases of a given project for this general scope of work and proposed services.
- F. Subconsultants – If resources outside the firm may be used to establish a team with a breadth of expertise, list consultants who would provide services and identify their expertise and experience in the specific type of work they would provide to the City.
- G. Cost Proposal. The cost proposal shall include the hourly rate for services. Include any subconsultant's fee schedule, if applicable. This should include hourly billable costs of each team member; Senior Planner, Associate Planner, etc. Describe the approach to cost control and budgeting.
- H. Résumé, Relevant Projects/Services with References. Provide résumés of the individual(s) from the Proposer's firm or entity that will be directly responsible for carrying out the contract, three references to include name, address, contact person and phone number of the

municipality/company, length of time services were provided, and a description of the services provided.

- I. Required Statements/Documents. Include statements of assurance regarding the following requirements:
 1. Disclose any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to the consultant, management, or employees relative to the services to be provided under the Agreement. Consultant must disclose any real or apparent conflict of interest associated with this project or with working for the City of Pinole. If a Consultant has no conflicts of interest, a statement to that effect shall be included in the Proposal.
 2. Ability and agreement to fulfill the indemnification and insurance requirements contained in the standard contract.
 3. A statement that nothing contained in the submitted proposal will be proprietary.
 4. Acknowledgement that the Consultant understands that all documents submitted to the City in connection with the proposal are subject to the California Public Records Act and may be disclosed without notice to the Consultant.
 5. A description of any and all proposed exceptions, alterations or amendments to the Scope of Services or other requirements of this RFP, including the Standard Contract (**Attachment A**).
 6. List and explain any pending bankruptcies, liens, stop payment notices, judgments, lawsuits, arbitrations, mediations, foreclosures, and any similar actions filed or resolved in the past seven (7) years. Please indicate whether a client has ever terminated a contract for breach, and if so, please explain.

SUBMITTAL

Consultants shall submit one (1) electronic copy in PDF format of the Consultant’s proposal by email to LWhalen@ci.pinole.ca.us. Proposal submission described above must reach us prior to **5:00 PM (local), May 6, 2024 (Proposal Submission Deadline)**.

AMENDMENTS TO THE RFP

The City reserves the right to amend the RFP by addendum prior to the final proposal submittal date.

QUESTIONS AND INQUIRES

All questions and inquiries must be submitted via email to Lilly Whalen at LWhalen@ci.pinole.ca.us. The deadline to submit questions is April 19, 2024. It shall be the Consultant’s responsibility to check the City of Pinole or Public Purchase websites to obtain any addenda that may be issued. Addenda to this RFP will be posted on the [City of Pinole website](#) and [Public Purchase website](#). One comprehensive response to all submitted questions will be posted on the City’s website. Do not contact other individuals or City departments in this regard. Information provided by anyone other than the above contact may be invalid and proposals which are submitted in accordance with such information may be declared non-responsive.

TIMELINE

The following table is an outline of the anticipated schedule for the proposal review and contract award. The schedule is subject to change. The selected consultants must be available to commence work as soon as July 1, 2024 as outlined in the table below.

Milestone	Date	Time
RFP Released for Project	April 4, 2024	5pm
Deadline to submit questions and requests for clarifications	April 19, 2024	5pm
Answers to questions and requests for clarifications posted	April 26, 2024	5pm
Proposal Submission Deadline	May 6, 2024	5pm
Proposals Reviewed by City Staff	May 7-10, 2024	
City Staff Interview Top Firms	May 13, 2024	Hold all day
City Council Contract Award (anticipated)	June 4, 2024	
Work Commences	July 1, 2024	

EVALUATION CRITERIA

The City intends to engage the most qualified consultant(s) available that demonstrate a thorough understanding of the City’s needs. City staff will use the following criteria to evaluate proposals, for a total of 100 points:

- Understanding of Work to be Performed (the Scope of Services): 15 points
- Demonstrated Quality Firm and Professional Staff Technical Skill, Experience, Performance and Approach: 25 points
- Familiarity with City, County, and State Procedures: 20 points
- Firm’s and Professional Staff References/Satisfaction of Clients: 15 points
- Completeness and Quality of Proposal: 15 points
- Cost Approach to performing this type of service: 10 points

The City may request a qualification interview with the highest ranked consultant(s) prior to determining the final ranking. The City reserves the right to reject any and all proposals.

GENERAL TERMS AND CONDITIONS

1. The City is not liable for any expenses incurred by any proposer prior to issuing the contract.
2. The Consultant, once selected, is required to submit monthly billings.

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3. The Consultant selected for the project must obtain a City business tax certificate and maintain liability and workers compensation insurance coverage in accordance with the City Professional Services Agreement template, attached.
 4. All work product generated by the Agreement will be owned by the City.
 5. This solicitation for proposals does not commit the City to enter a contract or to pay any costs incurred in the preparation of the proposal.
 6. The City reserves the right to accept or reject any and all proposals, and to negotiate with any and all qualified Consultants, or to cancel in part or in its entirety this RFP.
 7. The City reserves the right to accept any proposal received, to reject any or all proposals, in whole or in part, to waive irregularities, formalities, or both, as deemed appropriate, to request clarification of any submittal, and to negotiate with the preferred Consultant to provide the requested services.
 8. The City hereby notifies all Consultants that no person will be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, or veteran status.
 9. Once the Consultant is selected, the City and the Consultant will execute the City's Professional Services Agreement, which will set forth the scope of work, the estimated time schedule, and the applicable rates and reimbursements.
 10. All proposals submitted in response to this RFP will become the property of the City upon submission and a matter of public record pursuant to applicable law (including the California Public Records Act, Government Code section 6250 and following). The City reserves the right to make copies of all proposals available for inspection and copying by interested members of the public as records of the City and the City will be under no obligation to the Consultant to withhold such records. Insofar as a proposals contains information that the Consultant regards as proprietary and confidential, it is the responsibility of the Consultant (and not the City) to specifically identify which items of information are proprietary and clearly identify in writing which specific pieces of information are proprietary. It will be insufficient for the Consultant to merely identify the entire proposal or an entire page or set of pages of proprietary information. Not-to-exceed sums, hourly rates and the like that may be set forth in the proposal will not constitute proprietary information nor will any information readily available to the general public or any other information not regarded as proprietary and confidential under federal or state law.

ADDRESS PROPOSALS AND QUESTIONS TO:

Lilly Whalen
Community Development Director
LWhalen@ci.pinole.ca.us
(510) 724-9832



PROPOSALS ARE DUE ON MAY 6, 2024 BY 5PM

SUBMIT VIA EMAIL ONLY TO:

LWhalen@ci.pinole.ca.us

All proposals must remain firm for a period of ninety (90) days following the last day to accept proposals

ATTACHMENT A: STANDARD PROFESSIONAL SERVICES CONTRACT

CONSULTING SERVICES AGREEMENT
BETWEEN THE CITY OF PINOLE AND

[NAME OF CONSULTANT]

THIS AGREEMENT for consulting services is made by and between the City of Pinole (“City”) and
 (“Consultant”) (together sometimes referred to as the “Parties”) as of
, 20 (the “Effective Date”) in Pinole, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on , and Consultant shall complete the work described in Exhibit A by 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.
- 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 professional 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.

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- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed

, for all work set forth in Exhibit A and all reimbursable expenses incurred in performing the work. In the event of a conflict between this Agreement and Consultant's proposal 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;

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- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
 - At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
 - The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
 - 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 sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever

incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire

Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B.

2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed (\$ [REDACTED]). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets 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 Exhibit C, and only under the terms and conditions set forth therein.

Section 4. INSURANCE REQUIREMENTS. Before beginning any services under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall be fully responsible for the acts and omissions of its subcontractors or other agents.

4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Consultant is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

4.2 Commercial General and Automobile Liability Insurance

4.2.1 **General requirements.** Consultant, Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence and FOUR MILLION DOLLARS (\$4,000,000) aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.

4.2.2 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if Consultant has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

4.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.

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- b. City, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Consultant. Coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.
 - c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and non-contributing.
 - d. The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.
 - e. Consultant agrees to give at least 30 days prior written notice to City before coverage is canceled or modified as to scope or amount.

4.3 PROFESSIONAL LIABILITY INSURANCE.

- 4.3.1 **General requirements.** Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence or claim covering the Consultant's errors and omissions.
- 4.3.2 **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:
 - a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

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- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.
 - c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five (5) years after completion of work under this Agreement.
 - d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 ALL POLICIES REQUIREMENTS.

- 4.4.1 **Submittal Requirements.** Consultant shall submit the following to City prior to beginning services:
 - a. Certificate of Liability Insurance in the amounts specified in this Agreement; and
 - b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.
- 4.4.2 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.3 **Deductibles and Self-Insured Retentions.** Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than ONE HUNDRED THOUSAND DOLLARS (\$100,000).
- 4.4.4 **Wasting Policies.** No policy required herein shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 4.4.5 **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect 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.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

4.4.7 Excess Insurance. If Consultant maintains higher insurance limits than the minimums specified herein, City shall be entitled to coverage for the higher limits maintained by the Consultant.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 General Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or

other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City or its directors, officials, officers, employees, agents or volunteers. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor. This Section 5.1 shall survive any expiration or termination of this Agreement.

- 5.2 **PERS Indemnification.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

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.

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- 6.2 **Consultant No 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.
- 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 **Pinole Business License.** Consultant shall obtain a City of Pinole business license according to the terms of Title 5 of the City of Pinole Municipal Code and deliver to City proof of such business license prior to beginning work under this Agreement. Work under this Agreement cannot begin until the City receives proof that Consultant has obtained a City of Pinole business license.

7.6 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

SECTION 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that if City issues such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized

by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. 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 City.
- 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 included, but not be limited to, the following:
- 8.6.1 Immediately terminate the Agreement;
- 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- 8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

SECTION 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and

agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 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 endeavor to 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.

Consultant will comply with all conflict of interest laws and regulations including, without limitation, City’s Conflict of Interest Code (on file in the City Clerk’s Office). It is incumbent upon the Consultant or Consultant’s firm to notify the City pursuant to section 10.10 Notices of any staff changes relating to this Agreement.

- a. In accomplishing the scope of services of this Agreement, all officers, employees and/or agents of Consultant(s), unless as indicated in Subsection b., will be performing a very limited and closely supervised function, and, therefore, are unlikely to have a conflict of interest arise. No

disclosures are required for any officers, employees, and/or agents of Consultant, except as indicated in Subsection b.

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- b. In accomplishing the scope of services of this Agreement, Consultant(s) will be performing a specialized or general service for the City, and there is substantial likelihood that the Consultant's work product will be presented, either written or orally, for the purpose of influencing a governmental decision. As a result, the following Consultant(s) shall be subject to the Disclosure Category "1-5" of the City's Conflict of Interest Code:

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 _____ who shall act as the City's representative. All correspondence shall be directed to or through _____ or his or her designee.

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

Any written notice to City shall be sent to:

10.11 **Professional Seal.** Where applicable in the determination of the City, 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.

10.12 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

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.

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

CITY OF PINOLE

CONSULTANT

Andrew Murray, City Manager

[NAME, TITLE]

Consultant's City of Pinole Business
License #:_

Attest:

Heather Bell, City Clerk
Approved as to Form:

Eric S. Casher, City Attorney

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

EXHIBIT C
CITY-FURNISHED FACILITIES

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.