

City of Alameda

REQUEST FOR QUALIFICATIONS



The Public Works Department is seeking statements of qualification
for Energy Conservation Design-Build Services

Issued: August 16, 2018

Submittal Deadline:

2:00 PM on September 6, 2018

City of Alameda
Public Works Department
950 West Mall Square
Alameda, CA 94501

I. NOTICE OF INVITATION

NOTICE IS HEREBY GIVEN THAT The City of Alameda (City) Public Works Department issues this Request for Qualifications (RFQ) and invites the submittal of Statements of Qualification from Energy Services Companies (ESCO) that meet the minimum requirements contained herein and can serve the City' needs for Energy Conservation Design-Build Services. It is necessary for Respondents to read the information contained in this RFQ to understand how to submit, what documents must be included and what legal obligations the Respondent is submitting by providing a successful statement of qualification. Any Respondent that wishes to be considered must submit the information requested in this RFQ and, if invited, participate in an interview. Proposals must be received by the City Public Works Department by 2:00 PM on September 6, 2018.

SUBMITTAL OF STATEMENT OF QUALIFICATIONS

Respondents shall submit three (3) complete double-sided, copies of their statement of qualifications and a compact disc or portable hard drive containing a Portable Document File (PDF) proposal. The printed proposals should be on paper containing a minimum of 20% post-consumer recycled content. Statement of Qualifications must be in a sealed envelope bearing the caption "City of Alameda – Energy Conservation Design-Build Services". Statement of Qualifications shall be submitted to:

ATTN: Erin Smith, Deputy Public Works Director
City of Alameda
950 West Mall Square
Alameda, CA 94501
RE: Energy Conservation Design-Build Services

Statement of Qualifications may be submitted in person at the Public Works Department, or by mail, but must be received by 2:00 PM on September 6, 2018. Late proposals 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. Any Proposal received prior to September 6, 2018 may be modified by written addendum or withdrawn by written request from the Respondent to the City up to the official time when all proposals are due.

Pre-proposal questions will be accepted until August 31, 2018. All questions regarding this RFQ should be directed to:

Erin Smith, Deputy Public Works Director
City of Alameda Department of Public Works
950 West Mall Square
Alameda, CA 94501
esmith@alamedaca.gov

In order to control information disseminated regarding this Request for Qualifications, ESCOs interested in submitting Statement of Qualifications are directed **not** to make personal contact with members of the City Council. Failure to do so will result in the revocation of the submitted Response from review.

CONDITIONS OF REQUEST FOR QUALIFICATION

General Conditions. The City reserves the right to cancel or reject all or a portion or portions of the request for qualification without notice. Further, the City makes no representations that any agreement will be awarded to any organization submitting a Statement of Qualifications. The City reserves the right to reject any and all Statement of Qualifications submitted in response to this request or any addenda thereto.

The City also reserves the right to reject any subconsultant or individual working on the proposed team and to replace the sub-consultant or individual with a mutually acceptable replacement.

Liability of Costs and Responsibility. The City shall not be liable for any costs incurred in response to this request for qualification. All costs shall be borne by the person or organization responding to the request. The person or organization responding to the request shall hold the City harmless from any and all liability, claim or expense whatsoever incurred by or on behalf of that person or organization. All submitted material becomes the property of the City of Alameda.

The selected lead consultant will be required to assume responsibility for all services offered in the proposal whether or not they possess them within their organization. The selected lead consultant will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

Validity. The Respondent agrees to be bound by its Statement of Qualifications for in all respects until one such Statement of Qualifications has been accepted by the City and an agreement fully executed, or until a Statement of Qualifications has been specifically rejected by the City, whichever occurs first, but in no event longer than four (4) months from the date of submission.

Permits and Licenses. Respondent, and all of respondent's sub-consultants, at its and/or their sole expense, shall obtain and maintain during the term of any agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License which will be required in connection with the performance of services hereunder.

Respondent's Representative. The person signing the Statement of Qualifications must be a legal representative of the firm authorized to bind the firm to an agreement in the event of the award.

Prevailing Wage. The selected Contractor will be required to pay the prevailing wage rates in effect on the date this Request for Qualifications was first published, pursuant to California law, including California Labor Code sections 1720 through 1861. General prevailing wage rates in Alameda County are on file with the Department of Industrial Relations, and shall be made available to any interested party upon request.

Confidentially. The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless information is exempt from disclosure by law, the content of any request for explanation, exception, or substitution, response to this RFQ, protest, or any other written communication between the City and Respondent, shall be available to the public. The City intends to release all public portions of the Statement of Qualifications following the evaluation process at such time as a recommendation is made to the City Council. If Respondent believes any communication contains trade secrets or other proprietary information that the Respondent believes would cause substantial injury to the Respondent's competitive position if disclosed, the Respondent shall request that the City withhold from disclosure the proprietary information by marking each page containing such

proprietary information as confidential. Respondent may not designate its entire proposal as confidential nor designate its Price Sheet as confidential. Submission of a Statement of Qualifications shall indicate that, if Respondent requests that the City withhold from disclosure information identified as confidential, and the City complies with the Respondent's request, Respondent shall assume all responsibility for any challenges resulting from the nondisclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees that may be awarded to the party requesting the Respondent information), and pay any and all costs and expenses related to the withholding of Respondent information. Respondent shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Respondent information. If Respondent does not request that the City withhold from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

Conflict of Interest. The Respondent warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code sections 1090 et seq., or sections 87100 et seq., during the performance of services under any Agreement awarded. The Respondent further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

II. PROJECT DESCRIPTION AND GOALS

The City of Alameda seeks an Energy Service Company (ESCO) to implement Energy Conservation Measures subject to award of one or more agreements with the City pursuant to Government Code Sections 4217.10 through 4217.18. The ESCO shall design, engineer, construct and project manage the installation ECMs.

Respondents shall be able to offer a turn-key comprehensive energy efficiency program that accomplishes the following:

- Reduces energy costs and maximizes the net economic benefit to the City of Alameda by identifying and installing qualified energy conservation measures that support Alameda's goals and meet specifications
- Achieves an annual guarantee for cost savings for each year of the contract
- Prepares a long-term strategic approach that maximizes the ongoing benefits of energy conservation measures
- Leverages all other available funding sources to reduce project costs
- Comply with any and all requirements of Title 24 and the California Building Code
- Required measurement and verification (M&V) of implemented energy conservation measures
- Upgrades old and/or inefficient systems while maintaining consistent and reasonable levels of occupant comfort
- Improves utilization of technology to achieve optimum performance and savings
- Provides additional benefits that directly result from energy related services & capital improvements including but not limited to reduced maintenance needs, improved indoor air quality, reduced greenhouse gases, increased building resiliency/emergency preparedness (onsite energy generation/storage).
- Educates the public of the benefits of energy conservation
- Minimizes financial and technical risk to the City of Alameda

- Provides training to employees on maintenance and repair of equipment and/or controls

This solicitation is intended to establish a qualified ESCO with whom the City can enter into a professional services agreement for an Investment Grade Audit of select facilities. Based on identified energy savings potential and other available funding sources, the City reserves the right to compensate the ESCO for the Investment Grade Audit and consider the project complete or pursue a design-build contract with the ESCO for City selected measures from the audit.

III. MINIMUM REQUIREMENTS

ESCOs must meet the following minimum requirements to be considered for this Project:

1. Accredited by the National Association of Energy Services Companies (NAESCO), or included on the U.S. Department of Energy's (DOE) Qualified List of Energy Service Companies
2. Demonstration of ASHRAE Level 2 Audit capability to references of previous clients within the last five (5) years—preferably Municipality Projects.
3. Successfully implemented at least five (5) energy performance contracts for the public sector, preferably Municipalities, in the last five (5) years
4. Extensive experience in successful analysis and development of energy efficiency measures; including auditing, savings calculations, project costing, strategic planning, design specifications, construction oversight, commissioning, maintenance and energy management.
5. Be licensed in the State of California to design and construct any project listed in the ESCO's Proposal and possess the requisite design licensing and engineering qualifications. Any such licenses must be in good standing at the time of Proposal submission.
6. Be able to meet any applicable bonding, insurance, non-collusion, and criminal records check requirements, at City's request
7. No pending or recent litigation in the past five (5) years associated with the savings performance and/or measurement and verification (M&V) of a guaranteed energy savings project. Provide an acknowledgment letter stating such, signed by an officer of the company. Please include title of company officer. Failure to provide accurate and complete information as requested is grounds for disqualification.
8. Experience in securing all available grants, rebates, incentives and financing available through Federal, State, local and utility company programs
9. A proven record of on-time and on-budget performance

IV. STATEMENT OF QUALIFICATION REQUIREMENTS

The Respondent shall include in its Statement of Qualifications, at a minimum, the information outlined below.

COVER LETTER. A signed letter of interest that provides an overview of the unique capabilities, management structure, cost advantages, and competitive differentiators of the ESCO. Please indicate the person the City shall contact for questions or follow up to the Statement of Qualifications as well as the person who will negotiate on behalf of the ESCO, if different. The Cover Letter shall also specify the ESCO's:

- Legal name and address of ESCO's principal place of business
- Evidence that ESCO is authorized to conduct business in the State of California

- Provide address of closest local office to the City of Alameda

Cover Letter shall not to exceed two pages.

The Statement of Qualifications should be divided into the tab sections listed below:

Tab 1: Background, Financial Capacity & Management Structure. Provide a brief history of the ESCO, key differentiating factors and areas of expertise, length of time performing services, location of main office, telephone number, contact name, and local resources.

Include the ESCO's legal form of entity (sole proprietorship, partnership, corporation, joint venture, etcetera) and State of incorporation or other organization. If ESCO is a joint venture or partnership, identify all members of the joint venture or partnership, roles and responsibilities. Provide if the responding ESCO is privately held, publicly traded, or a non-profit. If the ESCO is a subsidiary or affiliate of another company or companies, identify such other company or companies.

Provide a statement of the respondent's financial capacity and capability to perform to the terms of this solicitation request. Include a statement if the ESCO holds the guarantee or if held by a 3rd party.

Provide three (3) years of audited financials along with the name, address, and the telephone number of firm(s) that prepared Financial Statements.

Identify the key members of the project team and describe the management structure of the responding firm. Provide resumes illustrating qualifications and experience of the key personnel to be used on this project.

Tab 2: Energy Project References.

- A. Provide detailed project history for five (5) public sector clients, preferable municipalities, where the ESCO provided similar energy performance contracting services in the last five (5) years. Include the following:
- Client's name, address, telephone number, and contact person
 - Description of the scope of work
 - Start/Completion date; Contract Term
 - Services and equipment provided
 - Energy savings guarantee amount
 - Project cost and funding description
 - Post Project Support Services and other additional benefits to the client
 - Identify if an American Society of Heating Refrigeration and Air Conditioning Engineers (ASHRAE) Level 2 energy audit, Investment Grade Audit, was completed as part of the project

For one the projects listed above, provide the measurement & verification report, where the International Performance Measurement and Verification Protocol (IPMVP) Option C method was used.

- B. Provide a complete list of projects that in the last five (5) years experienced a savings shortfall. Include the amount of the shortfall and method in which it was remedied under the ESCO's savings guarantee.

- C. Provide a complete list of all projects in the last five (5) years that:
- Cancelled a contract due to a savings shortfall (list reasons); or
 - Have past or pending lawsuits or litigation regarding performance contract with a customer (list reasons); or
 - Have past “out of court” settlements regarding a performance contract (list reasons)

In addition to litigation, please provide a complete list of all projects nationwide where there was either a criminal indictment or a conviction relating to the conduct of a performance contract. This includes officers and representatives of the company, as well as public officials connected with the project.

This section must be accompanied by an acknowledgment letter signed by an officer of the respondent ESCO affirming the statements in this section are true and correct. **Failure to provide accurate and complete information as requested is grounds for disqualification.**

Tab 3: Project Approach.

- A. Provide a description of the ESCO’s approach to performing audits, identifying improvement measures, benchmarking, leveraging additional money for projects and developing priority list of projects.
- B. Provide a description of the ESCO’s approach to managing the project and procedures for minimizing occupant disruptions.
- C. Describe how the ESCO ensures construction deadlines are met.
- D. Describe the steps taken by the ESCO during and after the implementation process to ensure successful project implementation and continued savings.
- E. Describe training program available for City employees.

Tab 4: Energy Savings and Pricing.

- A. Describe the experience and qualifications of the respondent's measurement and verification (M&V) team, along with an organizational chart of M&V team members and structure.
- B. Describe the ESCO’s experience with obtaining California grant funding sources, including but not limited to, utility rebates, Energy Commission funding, public grants, etc.
- C. Describe the ESCO’s approach to projecting and proving the energy and operational savings.
- D. Provide a description of the monitoring services after installation to ensure continued savings.
- E. Provide a sample of your firm’s energy savings guarantee documents.
- F. Describe the reconciliation process of the guarantee.

Note: The base period for the savings guarantee will be the most recent consecutive 12-month period at the time of award of contract. The baseline period shall only be adjusted in the following events:

1. *Changes in utility rates.*
2. *Changes in the number of days in the utility billing cycle.*
3. *Changes in the square footage of the facility.*
4. *Changes in the operational schedule of the facility.*
5. *Significant changes in weather (10% or more variation in degree hours from base period to current period).*
6. *Significant changes in the amount of equipment or lighting utilized in the facility.*
7. *Significant changes in the nature of intensity of energy use such as change of Building Purpose or Functional space.*

- G. Provide a proposed profit markup percentage your firm will apply to any and all subcontracted services resulting from this contract. Professional services fees may be negotiated separately upon partner selection.

Tab 5: Standard Consultant Agreement and Required Insurance. A sample agreement is included in **Exhibit A** for the respondent's review. This consultant agreement will be used for the Investment Grade Audit stage of the project(s). General Liability, Automobile, Professional Liability, and Worker's compensation insurance amounts required are set forth in the consultant agreement. If a respondent wishes to take exception to any of the terms and conditions contained in the consultant agreement, identify those here. If the respondent is willing to enter into the agreement as is written, please include an affirmative statement as such. Failure to identify contractual issues of dispute can later be the basis for the City disqualifying a respondent. Any exceptions to terms, conditions, or other requirements must be clearly stated.

V. EVALUATION CRITERIA

The City will adhere to the following procedures in evaluating the received Statement of Qualifications. An Evaluation/Selection Committee (Committee), which may include members of City staff and possibly one or more outside experts, will screen and review all Statement of Qualifications. Scoring will be as follows:

Category	Point Value
Background, Financial Capacity & Management Structure Local office support, financial capability and solvency, strength of proposed team	20
Energy Project References Strength of past Municipal energy performance contracts, quality of client service provided	25
Project Approach Project management and implementation approach, ability to minimize disruptions to building occupants, approach to training staff	25
Savings & Pricing Information Savings approach, measurement & verification team, transparency of energy savings calculations and pricing information	20
Willingness to Comply with the Proposed Agreement Terms A sample agreement is included in Exhibit A that will be used for the Investment Grade Audit. Statement of Qualifications will be rated based on the exceptions taken to the proposed contract or inability to meet insurance requirements.	10
Total Possible Points	100

Statement of Qualifications will first be screened to ensure responsiveness to the Request for Qualifications (RFQ). The City may reject as non-responsive any Statement of Qualifications that does not include the documents required to be submitted by this RFQ. At any time during the evaluation process, the City reserves the right to request clarifications or additional information from any or all Respondents regarding their Statement of Qualifications. The Committee will initially review all responsive written Statement of Qualifications based upon the Evaluation Criteria set forth above. The

Committee may also contact references. The City may conclude the evaluation process at this point and recommend selection. Alternatively, the City may ask selected Respondents to participate in an oral interview. The individual(s) from Respondent's firm or entity that will be directly responsible for carrying out the contract, if awarded, should be present at the oral interview. In addition to conducting an oral interview, the City may during this stage of the evaluation process also contact and evaluate references, contact any Respondent to clarify any response or request revised or additional information, contact any current users of a Respondent's services, solicit information from any available source concerning any aspect of a proposal, and seek and review any other information deemed pertinent to the evaluation process.

EXHIBIT A. Standard Agreement and Insurance Requirements

SERVICE PROVIDER AGREEMENT

THIS SERVICE PROVIDER AGREEMENT (“**Agreement**”) is entered into this ___ day of _____, 20___, by and between CITY OF ALAMEDA, a municipal corporation (the "**City**"), and COMPANY (a California corporation, partnership, sole proprietor, individual), whose address is ADDRESS (the “**Provider**”), in reference to the following:

RECITALS:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. The City is in need of the following services: Investment Grade Energy Audit to identify Energy Conservation Measures subject to award of one or more agreements with the City pursuant to Government Code Sections 4217.10 through 4217.18.
- C. City staff issued a RFP/RFQ on August 16, 2018 and after a submittal period of days received NUMBER of timely submitted proposals. Staff reviewed the proposals, interviewed qualified firms and selected the service provider that best meets the City’s needs
- D. Provider is specially trained, experienced and competent to perform the special services which will be required by this Agreement
- E. City and Provider desire to enter into an agreement for Investment Grade Energy Audit to identify Energy Conservation Measures subject to award of one or more agreements with the City pursuant to Government Code Sections 4217.10 through 4217.18, upon the terms and conditions herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM:

The term of this Agreement shall commence on the ___ day of _____ 2018, and shall terminate on the ___ day of _____ 20___, unless terminated earlier as set forth herein.

This Agreement may be mutually extended on a year-by-year basis, for up to four (4) additional years, at the sole discretion of the Public Works Director, based, at a minimum, upon satisfactory performance of all aspects of this Agreement. Public Works may submit written notice that the Agreement is to be and the compensation adjusted by the Consumer Price Index for the San Francisco Bay area as reported by the U.S. Department of Labor, Bureau of Labor Statistics for the previous calendar year.

2. SERVICES TO BE PERFORMED:

Provider agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included

in Exhibit A as requested. The Provider acknowledges that the work plan included in Exhibit A is tentative and does not commit the City to request Provider to perform all tasks included therein.

3. COMPENSATION TO PROVIDER:

a. By the 7th day of each month, Provider shall submit to the City an invoice for the total amount of work done the previous month. Pricing and accounting of charges are to be according to the fee schedule as set forth in Exhibit B and incorporated herein by this reference. Extra work must be approved in writing by the City Manager or his/her designee prior to performance and shall be paid on a Time and Material basis as set forth in Exhibit B.

b. The total compensation for the work under this Agreement is not to exceed \$_____.

4. TIME IS OF THE ESSENCE:

Provider and City agree that time is of the essence regarding the performance of this Agreement.

5. STANDARD OF CARE:

Provider agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals or service providers, as applicable, in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City.

6. INDEPENDENT PARTIES:

Provider hereby declares that Provider is engaged as an independent business and Provider agrees to perform the services as an independent contractor. The manner and means of conducting the services and tasks are under the control of Provider, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Provider's services. None of the benefits provided by City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Provider, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any compensation due to Provider. Payments of the above items, if required, are the responsibility of Provider.

7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):

Provider assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Provider shall indemnify, defend, and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Provider.

8. NON-DISCRIMINATION:

Consistent with City's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Provider or Provider's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Provider agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. HOLD HARMLESS:

a. Provider shall indemnify, defend, and hold harmless the City, its City Council, boards, commissions, officials, employees, and volunteers ("**Indemnitees**") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("**Claims**"), arising from or in any manner connected to Provider's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Provider, Provider shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Provider. However, Provider shall not be obligated to indemnify Indemnitees from Claims arising from the sole negligence or willful misconduct of Indemnitees.

b. **Indemnification for Claims for Professional Liability Only:** As to Claims for professional liability only, Provider's obligation to defend Indemnitees (as set forth above) is limited as provided in California Civil Code Section 2782.8.

c. Provider's obligation to indemnify, defend and hold harmless Indemnities shall expressly survive the expiration or early termination of this Agreement.

10. INSURANCE:

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with subsections 10A, B, C and D. Such certificates, which do not limit Provider's indemnification, shall also contain substantially the following statement:

"Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide ten (10) days' advance written notice to the City of Alameda. Attention: Risk Manager."

b. It is agreed that Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City, its City Council, boards, commissions, officials, employees, and volunteers as additional insured shall be submitted with the insurance certificates.

A. COVERAGE:

Provider shall maintain the following insurance coverage:

(1) Workers' Compensation:

Statutory coverage as required by the State of California.

(2) Liability:

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$1,000,000 each occurrence
 \$2,000,000 aggregate - all other

Property Damage: \$1,000,000 each occurrence
 \$2,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

(3) Automotive:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury: \$1,000,000 each occurrence
Property Damage: \$1,000,000 each occurrence

or

Combined Single Limit: \$2,000,000 each occurrence

(4) Professional Liability:

Professional liability insurance which includes coverage for the professional acts, errors and omissions of Provider in the following minimum limits:

\$1,000,000 each occurrence

B. SUBROGATION WAIVER:

Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Provider shall look solely to its insurance for recovery. Provider hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Provider or City with respect to the services of Provider herein, a waiver of any right to subrogation which any such insurer of said Provider may acquire against City by virtue of the payment of any loss under such insurance.

C. FAILURE TO SECURE:

If Provider at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Provider's name or as an agent of the Provider and shall be compensated by the Provider for the costs of the insurance

premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. ADDITIONAL INSURED:

City, its City Council, boards, commissions, officials, employees, and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. SUFFICIENCY OF INSURANCE:

The insurance limits required by City are not represented as being sufficient to protect Provider. Provider is advised to consult Provider's insurance broker to determine adequate coverage for Provider.

11. CONFLICT OF INTEREST:

Provider warrants that it is not a conflict of interest for Provider to perform the services required by this Agreement. Provider may be required to fill out a conflict of interest form if the services provided under this Agreement requires Provider to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. PROHIBITION AGAINST TRANSFERS:

a. Provider shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Provider shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer. The City Manager may consent or reject such request in his/her sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the City under this Agreement may be assigned by Provider to a bank, trust company or other financial institution without prior written consent.

b. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Provider, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Provider is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Provider, shall be construed as an assignment of this Agreement. Control means fifty percent or more of the voting power of the corporation.

13. APPROVAL OF SUB-PROVIDERS:

a. Only those persons and/or businesses whose names and resumes are attached to this Agreement shall be used in the performance of this Agreement. However, if after the start of this Agreement, Provider wishes to use sub-providers, at no additional costs to the City, then Provider shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the City Manager at least five (5) days in advance. The City Manager may consent or reject such requests in his/her sole and absolute discretion.

b. Each sub-provider shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by the Provider. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement.

c. The requirements in this Section 13 shall not apply to persons who are merely providing materials, supplies, data or information which the Provider then analyzes and incorporates into its work product.

14. PERMITS AND LICENSES:

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City Business License that may be required in connection with the performance of the services and tasks hereunder.

15. REPORTS:

a. Each and every report, draft, work product, map, record and other document produced, prepared or caused to be prepared by Provider pursuant to or in connection with this Agreement shall be the exclusive property of City.

b. No report, information or other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior approval of the City Manager or his/her designee.

c. Provider shall, at such time and in such form as City Manager or his/her designee may require, furnish reports concerning the status of services and tasks required under this Agreement.

16. RECORDS:

a. Provider shall maintain complete and accurate records with respect to the services, tasks, work, documents and data in sufficient detail to permit an evaluation of the Provider's performance under the Agreement, as well as maintain books and records related to sales, costs, expenses, receipts and other such information required by City that relate to the performance of the services and tasks under this Agreement (collectively the "**Records**").

b. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to the Records to the representatives of City or its designees during regular business hours upon

reasonable prior notice. The City has the right to examine and audit the Records, and to make copies or transcripts therefrom as necessary, and to allow inspection of all proceedings and activities related to this Agreement. Such Records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained by Provider for a period of three (3) years after receipt of final payment.

c. If supplemental examination or audit of the Records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Provider shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

17. NOTICES:

a. All notices shall be in writing and delivered: (i) by hand; or (ii) sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service; or (iii) sent by overnight or same day courier service at the party's respective address listed in this Section.

b. Each notice shall be deemed to have been received on the earlier to occur of: (x) actual delivery or the date on which delivery is refused; or (y) three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

c. Either party may, at any time, change its notice address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

d. All notices, demands, requests, or approvals from Provider to City shall be addressed to City at:

City of Alameda
Public Works Department
950 W Mall Square
Alameda, CA 94501
ATTENTION: Erin Smith, Deputy Public Works Director
Ph: (510) 747-7938; esmith@alamedaca.gov

e. All notices, demands, requests, or approvals from City to Provider shall be addressed to Provider at:

[Provider Name]
[Department]
[Address]
[City, State, zip]
ATTENTION: [Title]
Ph: (xxx) [xxx-xxxx] / Fax: (xxx) [xxx-xxxx]

18. SAFETY:

a. The Provider will be solely and completely responsible for conditions of all vehicles owned or operated by Provider, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Provider will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. The Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

b. The Provider will immediately notify the City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. The Provider will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Provider's employee(s) involved in the incident; (iii) name and address of Provider's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

19. TERMINATION:

a. In the event Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Provider shall be deemed in default in the performance of this Agreement. If such default is not cured within two (2) business days after receipt by Provider from City of written notice of default, specifying the nature of such default and the steps necessary to cure such default; City may thereafter immediately terminate the Agreement forthwith by giving to the Provider written notice thereof.

b. The foregoing notwithstanding, City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Provider as provided herein.

c. Upon termination of this Agreement either for cause or for convenience, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination. The obligation of the parties under this Section 19.c. shall survive the expiration or early termination of this Agreement.

20. ATTORNEY'S FEES:

In the event of the bringing of any action or suit by a party hereto against the other party by reason of any breach of any covenants, conditions, obligation or provision arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses of the action or suit, including reasonable attorneys' fees, experts' fees, all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For the purposes of this Agreement, reasonable fees of attorneys of the Alameda City Attorney shall be based on the fees regularly charged by

private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Alameda City Attorney's services were rendered who practice in Alameda County in law firms with approximately the same number of attorneys as employed by the Alameda City Attorney's Office.

21. COMPLIANCE WITH ALL APPLICABLE LAWS:

During the Term of this Agreement, Provider shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by the Provider, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Provider shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by City.

22. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

23. WAIVER:

A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

24. INTEGRATED CONTRACT:

The Recitals and Exhibits are a material part of this Agreement and are expressly incorporated herein. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Provider.

25. CAPTIONS:

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

Signatures on next page

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

COMPANY
(A California corporation, partnership,
sole proprietor, individual)

CITY OF ALAMEDA
A Municipal Corporation

NAME
TITLE

Dave Rudat
Interim City Manager

NAME
TITLE

RECOMMENDED FOR APPROVAL

Liam Garland
Public Works Director

APPROVED AS TO FORM:
City Attorney

Janet Kern
City Attorney

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES or PROVIDERS FORM B

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

City of Alameda
Public Works Department
Alameda Point, Building 1
950 West Mall Square, Room 110
Alameda, CA 94501-7558

SAMPLE

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

REF:

The City of Alameda, its City Council, boards and commissions, officers & employees are additional insured for work done on their behalf by the named insured.

PRIMARY INSURANCE:

IT IS UNDERSTOOD AND AGREED THAT THIS INSURANCE IS PRIMARY AND ANY OTHER INSURANCE MAINTAINED BY THE ADDITIONAL INSURED SHALL BE EXCESS ONLY AND NOT CONTRIBUTING WITH THIS INSURANCE.

SEVERABILITY OF INTEREST:

IT IS AGREED THAT EXCEPT WITH RESPECT TO THE LIMIT OF INSURANCE, THIS COVERAGE SHALL APPLY AS IF EACH ADDITIONAL INSURED WERE THE ONLY INSURED AND SEPARATELY TO EACH INSURED AGAINST WHOM CLAIM IS MADE OR SUIT IS BROUGHT.

WAIVER OF SUBROGATION:

IT IS UNDERSTOOD AND AGREED THAT THE COMPANY WAIVES THE RIGHT OF SUBROGATION AGAINST THE ABOVE ADDITIONAL INSURED (S), BUT ONLY AS RESPECTS THE JOB OR PREMISES DESCRIBED IN THE CERTIFICATE ATTACHED HERETO.

NOTICE OF CANCELLATION:

IT IS UNDERSTOOD AND AGREED THAT IN THE EVENT OF CANCELLATION OF THE POLICY FOR ANY REASON OTHER THAN NON-PAYMENT OF PREMIUM, 30 DAYS WRITTEN NOTICE WILL BE SENT TO THE CERTIFICATE HOLDER BY MAIL. IN THE EVENT THE POLICY IS CANCELED FOR NON-PAYMENT OF PREMIUM, 10 DAYS WRITTEN NOTICE WILL BE SENT TO THE ABOVE.

POLICY NUMBER:

COMMERCIAL AUTO
CG 20 48 02 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provisions of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Countersigned By: (Authorized Representative)
Named Insured:	

SCHEDULE

SAMPLE

Name of Person or Organization:

City of Alameda
 Public Works Department
 950 West Mall Square, Room 110
 Alameda, CA 94501-7558

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

REF: _____

The City of Alameda, its City Council, boards and commissions, officers, employees and volunteers are additional insured for work done on their behalf by the named insured.

NOTICE OF CANCELLATION:

IT IS UNDERSTOOD AND AGREED THAT IN THE EVENT OF CANCELLATION OF THE POLICY FOR ANY REASON OTHER THAN NON-PAYMENT OF PREMIUM, 30 DAYS WRITTEN NOTICE WILL BE SENT TO THE CERTIFICATE HOLDER BY MAIL. IN THE EVENT THE POLICY IS CANCELED FOR NON-PAYMENT OF PREMIUM, 10 DAYS WRITTEN NOTICE WILL BE SENT TO THE ABOVE.