

REQUEST FOR PROPOSALS

On-Call Annual Environmental Services

CITY OF ALAMEDA

July 9, 2013

Important Dates:

Proposal Due Date:	July 29, 2013
Selection Interviews:	Week of August 12, 2013
Award of Agreement:	September 2, 2013
Projected Agreement Start Date:	September 16, 2013

Contact:

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I. INTRODUCTION

The City of Alameda Public Works Department is requesting proposals for environmental investigation, reporting, and permitting, on a fiscal basis for various construction projects in the City of Alameda.

A. Background.

The City of Alameda is a charter city with a population of over 75,000. The City performs numerous construction projects each year. Most of the projects are non-federally funded and qualify for categorical exemptions under the California Environmental Quality Act (CEQA). Some of the projects require environmentally related permits. While the City does not have any creeks or waterways, it does have several salt-water lagoons and an extensive coastline in the San Francisco Bay.

B. Purpose of the Request.

The City desires to obtain the services of one or more outside organizations to assist in the following: investigating proposed construction sites, reviewing available literature, determining if there are any potentially significant environmental impacts, preparing CEQA documents, and obtaining necessary permits for one or multiple projects. The City may select up to three organizations to provide all or a portion of these services on an on-call basis, and may renew the contract on a yearly basis up to three additional years. The total budget cost for each fiscal year contract is \$70,000. For each project, a work order delineating estimated quantities shall be prepared and used for invoicing. The usage of the services are on an as-needed basis so that if the demand is not there, the services will not be requested.

II. SCOPE OF SERVICES

Attached as Exhibit A is a list of major work tasks that should be accomplished as part of the general scope of work. The proposer is asked to define the approach and the specific scope of work and methodology to achieve the objectives presented in this RFP, using the two example projects in Exhibit A. The proposer should include for each example a refined scope of work by developing a detailed description of all project tasks, both those tasks suggested in this scope of work and any changes, additions or recommendations proposed. The description of each project task should include specification of the task itself, the methodology or analytical process, scheduling, personnel, and costs.

III. PROPOSAL FORMAT

All proposals shall include the following minimum information:

A. Approach.

A short discussion of the intended approach to the two example projects that demonstrates the proposer's understanding of the issues and tasks and the proposer's ability to address them.

B. Description of Organization, Management and Team Members.

A description of the team/consultant organization, and a work plan that identifies the personnel to be assigned to each task. The organization description should clearly identify who will be the project manager and the day to day contact person for the job.

C. Organization Qualifications.

Provide an outline of the organization qualifications indicating relevant background experience and capabilities for this type of work and this location.

D. Scope of Work.

The proposal should contain a description of each work task with an explanation of how the proposer plans to approach the tasks and the steps that will be taken to complete the task including analytical methods and tools. Proposers must demonstrate that they understand the magnitude and importance of each individual task. Tasks should be organized into phases constituting measurable deliverables.

E. Proposed Project Schedule.

Time is of the essence for this agreement. The proposal shall include a schedule to undertake the work program, and identify how quickly the proposer can respond to a request for on-call services based on the two example projects listed in Exhibit A.

F. Proposed Budget.

Indicate the hourly rates for expected personnel and subconsultants, including typical reimbursables (e.g. travel). For the example project, estimate the costs and hours for the total project, on a task by task basis, and on a subconsultant basis, inclusive of reimbursables. Prices quoted must be binding through the end of the fiscal year (June 30, 2015).

G. References, Related Experience and Examples of Work.

Client references with phone numbers for relevant work. Specify the client, location, consultant firm members and participating individuals and role on team (principal, project director, etc.), type of work, implementation results or status, examples of work, and other relevant information as needed.

IV. SELECTION PROCESS

A. Qualifications.

All proposals received by the due date will be evaluated by the City. Only information which is received in response to the RFP or any subsequent interview will be evaluated. The City will judge the responses of each proposing firm in several critical areas. Selected proposers may be invited to an oral interview.

B. Selection Criteria.

The City will select the most qualified proposal(s) based on the following factors. Responses to the RFP should address the qualities and indicators that are listed below:

1. Ability of the Lead Consultant to Design an Approach and Work Plan to Meet the Project Requirements.

An assessment of the overall quality of the proposal. Qualities and indicators that will receive consideration include the proposer's performance in converting the Scope of Services into a work plan; the detail and clarity of the discussion as to the proposer's approach to undertaking the project; the proposer's performance in identifying any special problems or concerns which may be associated with the project and preliminary ideas about how these obstacles should be addressed; the inclusion of any unique approaches which are designed to save time and money or increase the benefits or effectiveness of the proposed work; and the demonstrated ability to work with governmental bodies and a full understanding of applicable laws or regulations that relate to the project.

2. Ability of the Proposer to Carry Out and Manage the Proposed Project.

An assessment of the past experience of the organization in general. Qualities and indicators that will receive consideration include the number and types of projects the organization or its employees have completed; the variety of projects completed and a demonstration of the organization's ability to undertake this project, the general level of experience in the areas of supervision, observing and monitoring projects; the organization's ability to realize timetables and quality control objectives; and the

demonstrated general ability to bring about a successful completion of the projects under the proposer's direction.

3. Capabilities of the Consultant Organization and/or Team.

Assessment of the capabilities of the organization and individuals that will be engaged in the project. Qualities and indicators that will receive consideration include what professionals will be doing/working on each task; the various professional, technical, and educational achievements and registrations of each organization and individuals involved; the applicable experience of the proposed assigned staff, and the specific experience gained on similar projects.

4. Timeliness of the Consultant Organization and/or Team.

An assessment of the perceived ability of each organization to devote the necessary human resources and management attention to the project. Qualities and indicators that will receive consideration include the number and size of the projects presently being performed by each organization and the assigned staff; the status of existing projects; the past ability of the organization to deliver projects on a timely basis; and the nature of existing projects that are behind schedule or past the completion date.

5. Proximity to the Project Involved for the Proposer and/or Team.

The application of this criteria shall include an assessment of the geographic proximity to the project; the location of the office from which the proposed project will be administered; the perceived response time and general availability of the proposer's management to be on site; the perceived effect that project management location will have on price and the ability of the project to be expedited on a timely basis; and the availability of special travel or communication plans which would effectively mitigate difficulties associated with location.

6. Willingness to Comply with the Proposed Agreement Terms.

A sample agreement is attached. Proposals will be rated based on the exceptions taken to the proposed contract.

7. Cost of Proposal

Cost, while not determinative, may be considered in the selection process.

C. Proposed Selection and Project Schedule.

Proposal Due Date: July 29, 2013

Selection Interviews: Week of August 12, 2013

Award of Agreement: September 2, 2013

Projected Agreement Start Date: September 16, 2013

End of Contract, if not renewed: June 30, 2014

D. Award of Contract.

It is anticipated that any award of an agreement for services will be made by the City Manager on or before September 2, 2013.

This contract may be mutually amended on a year-by-year basis, for up to three (3) additional years, at the sole discretion of the Public Works Director, based, at a minimum, upon satisfactory performance of all aspects of this contract. The Public Works Director may submit written notice that the contract is to be extended at the same terms and costs as the existing contract.

V. PROPOSAL DUE DATE AND DELIVERY

Three (3) sealed copies of the proposal, clearly marked with the project description, should be submitted no later than:

2:00 PM, Monday, July 29, 2013

to the address below. All copies received by that time will be date and time stamped. Proposals will not be accepted after this time. Proposals should be addressed to:

Laurie Kozisek, Associate Civil Engineer
Public Works Department
950 West Mall Square, Room 110
Alameda CA 94501

FAXed or emailed proposals **will not** be accepted. Hand carried proposals will be accepted at the above address.

VI. CONDITIONS OF REQUEST

A. General Conditions.

The City reserves the right to cancel or reject all or a portion or portions of the request for proposals without notice. Further, the City makes no representations that any agreement will

be awarded to any organization submitting a proposal. The City reserves the right to reject any and all proposals submitted in response to this request or any addenda thereto.

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

Any changes to the proposal requirements will be made by written addendum.

B. Liability of Costs and Responsibility.

The City shall not be liable for any costs incurred in response to this request for proposals. 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.

C. Validity.

The proposer agrees to be bound by its proposal for a period of ninety (90) days commencing July 29, 2013, during which time the City may request clarification or correction of the proposal for the purpose of evaluation. Amendments or clarifications shall not affect the remainder of the proposal, but only that portion so amended or clarified.

D. Standard Consultant Agreement.

A sample consultant agreement has been provided in the Appendix for the proposer's review and comment. If a proposer wishes to take exception to any of the terms and conditions contained in the consultant agreement, these should be identified specifically; otherwise it will be assumed that the proposer is willing to enter into the agreement as it is written. Failure to identify contractual issues of dispute can later be the basis for the City disqualifying a proposer. Any exceptions to terms, conditions, or other requirements must be clearly stated. Otherwise, the City will consider that all items offered are in strict compliance with the RFP, and the successful proposer will be responsible for compliance. The City will consider such exceptions as part of the evaluation process which may constitute grounds for rejection of the proposal. The consultant agreement will not be executed by the City without first being signed by the proposer.

E. Permits and Licenses.

Proposer, and all of proposer'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.

F. Oral and Written Explanations.

The City will not be bound by oral explanations or instructions given at any time during the review process or after the award. Oral explanations given during the review process and after award become binding when confirmed in writing by an authorized City official. Written responses to question(s) asked by one proposer will be provided to all proposers who received Requests for Proposals.

G. Proposer's Representative.

The person signing the proposal must be a legal representative of the firm authorized to bind the firm to an agreement in the event of the award.

H. Deliverables.

Two (2) copies of administrative draft reports are required upon completion of each major part of the project. Following approval by the staff, four (4) copies of each final report are required.

One unbound copy of each final document and a computer disk containing all final documents and all information are to be provided. The consultant will develop a system to assemble, organize, store and utilize data in an electronic format. At the outset of the agreement, the consultant will submit a description of the software to be used in preparation of the reports and graphics.

I. Insurance

General Liability, Automobile, Professional Liability, and Worker's compensation insurance are required in the amount set forth in the attached sample consultant agreement.

Exhibit A: Scope of Work

Attachment: Standard Consultant Agreement

EXHIBIT A – SCOPE OF WORK

On-Call Annual Environmental Services

The scope of work includes, but is not limited to, the following:

- 1) Provide staff and services on an as-called basis
- 2) Review project plans
- 3) Provide field and literature investigation services for:
 - a. Wetlands
 - b. Special status species and critical habitats
 - c. Construction windows (fish, wildlife and rainfall concerns)
 - d. Water quality
 - e. Archeological resources
 - f. Mitigation suggestions
- 4) Provide construction inspection services as related to permit enforcement
- 5) Direct others to conduct investigations and explorations
- 6) Attend meetings with City and permitting agencies
- 7) Coordinate with the design engineer, architect, general contractor, construction manager, geotechnical consultant, testing consultant, and applicable utilities and agencies
- 8) Prepare reports that summarize observations, present recommendations, estimate costs of implementation, and make conclusions
- 9) Assist City in submittal of CEQA documents
- 10) Assist City in applications for all necessary permits, including permits addressed in the San Francisco Bay Area Joint Aquatic Resource Permit Application (JARPA)
- 11) Deliver products in both hard copy (4 copies) and digital read/write format, including all calculations and other deliverables per contractual agreement and Section VI, H
- 12) The following services are provided by other on-call consultants for the City, or are not needed:
 - a. Geotechnical investigations
 - b. Borings
 - c. Hazardous materials assessments
 - d. Laboratory testing for soil characteristics, contaminants, etc.
 - e. Stream water quality and floodway impacts
- 13) The following items are infrequently needed, but the proposers should note in their proposals if they have the in-house capabilities to provide these services:
 - a. Historical resources
 - b. Air quality
 - c. Visual resources
 - d. Land use impacts
- 14) Typical projects include the maintenance, repair, replacement, enlargement or addition of:
 - a. Storm drain outfalls
 - b. Shoreline bike and pedestrian facilities
 - c. Dikes
 - d. Docks and boardwalks

- e. Boating facilities
 - f. Bridges
 - g. Ferry terminals (landside only)
 - h. Shoreline protection, including seawalls, rip rap, and matting
 - i. Tree and other vegetation removal
- 15) Typical projects may be:
- a. Near raptor nests
 - b. Below low water, in the intertidal zone or within 100' of high water
 - c. In Elsie Roemer Bird Sanctuary, Crown Memorial Beach, or other parklands

Sample projects to address in this proposal:

PROJECT 1. Storm Drain Outfall Program.

This is an example of the most complex project likely to be in need of an on-call environmental consultant. The City is currently assessing over 100 storm drain outfalls that drain into the San Francisco Bay, the City's internal lagoon systems, or the wetlands on Oakland International Airport. Some of these will need to be repaired or replaced if damaged. Some will need to be enlarged pursuant to the City's Storm Drain Master Plan recommendations. The City may also choose to add manholes near the high water mark for ease of maintenance. The City's storm water consultant for the current work is visiting each outfall in the field, and will produce descriptions and photos for each outfall, suitable for use as exhibits for permits. The storm water consultant will develop three generic sections for typical repair/replacement.

The City proposes to complete environmental work for all of the outfalls needing work, including CEQA and permits, at one time. The project is locally funded. The outfall construction program will take place over several years, once permits are acquired, and continue on a yearly basis. Some of the outfalls drain into potentially sensitive habitats and parklands, such as Elsie Roemer Bird Sanctuary, Crown Memorial Beach, Chuck Corica Golf Course, and the wetlands on Oakland International Airport. The City of Alameda has enlarged in the past 100 years, so most of the outfalls are on made-ground, but excavation for some manholes may be within archeological resources.

PROJECT 2: Ballena Bridge Abutment

This is an example of a fairly small, straightforward project. Most of the projects will be like this. City proposes to place rip rap at the abutments of Ballena Bridge, to replace the existing slope protection that has deteriorated over the years. The rip rap footprint for each end of the bridge will be approximately 70' (the width of the bridge plus 5' each side) by about 33' (from the abutment down to 2 feet below MLLW). The project is locally funded. The geotechnical consultant has provided a typical section suitable for permit acquisition.

CONSULTANT AGREEMENT

THIS AGREEMENT, entered into this ____ day of _____, 2013, by and between CITY OF ALAMEDA, a municipal corporation (hereinafter referred to as "City"), and COMPANY NAME, a (California corporation, partnership, sole proprietor, individual) whose address is ADDRESS, hereinafter called the Consultant, 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. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

D. City and Consultant desire to enter into an agreement for on-call annual environmental services, 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 _____, 2013, and shall terminate on the 30th day of June, 2014, unless terminated earlier as set forth herein.

This contract may be mutually amended on a year-by-year basis, for up to three (3) additional years, at the sole discretion of the Public Works Director, based, at a minimum, upon satisfactory performance of all aspects of this contract. The Public Works Director may submit written notice that the contract is to be extended at the same terms and costs as the existing contract.

2. **SERVICES TO BE PERFORMED:**

Consultant shall perform each requested service set forth in the list of services detailed in Exhibit "A", as directed by the City, which is attached hereto and incorporated herein by this reference. The Plans, Specifications, and Special Provisions referred to in Exhibit "A" are those Plans, Specifications, and Special Provisions that were included in the City's solicitation for this work and are incorporated into this agreement by reference. The consultant acknowledges that the work plan included in Exhibit "A" is tentative and does not commit the City to perform all tasks included therein.

3. COMPENSATION TO CONSULTANT:

Consultant shall be compensated for services performed pursuant to this Agreement in the amount set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference. Payment shall be made by checks drawn on the treasury of the City, to be taken from CIP _____.

Payment will be made by the City in the following manner: On the first day of each month, Consultant shall submit a written estimate of the total amount of work done the previous month. Payment will be for time and direct costs and are not to exceed budget. Pricing and accounting of charges are to be according to the fee schedule in Exhibit "B" unless mutually agreed upon in writing. Extra work must be approved to in writing by City prior to performance and shall be paid on a Time and Material basis using Exhibit "B" schedule.

Total compensation under this contract shall not exceed \$70,000.

4. TIME IS OF THE ESSENCE:

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

5. STANDARD OF CARE:

Consultant agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals 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 nor have any contractual relationship with City.

6. INDEPENDENT PARTIES:

City and Consultant intend that the relationship between them created by this Agreement is that of employer-independent consultant. The manner and means of conducting the work are under the control of Consultant, 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 Consultant'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 Consultant, 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 fees due Consultant. Payments of the above items, if required, are the responsibility of Consultant.

7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):

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

8. NON-DISCRIMINATION:

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Consultant agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Consultant or Consultant's employee or subcontractor 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. Consultant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. HOLD HARMLESS:

Indemnification:

Consultant shall indemnify, defend, and hold harmless 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 Consultant'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 Consultant, Consultant shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Consultant. However, Consultant shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

Indemnification For Claims for Professional Liability:

As to Claims for professional liability only, Consultant's obligation to defend Indemnitees (as set forth above) is limited to the extent to which its professional liability insurance policy will provide such defense costs.

10. INSURANCE:

On or before the commencement of the term of this Agreement, Consultant shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 10A, B, C, D and E. Such certificates, which do not limit Consultant'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 thirty (30) days' advance written notice to the City of Alameda by certified mail, Attention: Risk Manager." It is agreed that Consultant 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 as additional insured shall be submitted with the insurance certificates.

A. COVERAGE:

Consultant 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 \$1,000,000 will be considered equivalent to the required minimum limits shown above.

(3) Automotive:

Comprehensive automotive liability coverage 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 Consultant in the amount of at least \$2,000,000.

B. SUBROGATION WAIVER:

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

C. FAILURE TO SECURE:

If Consultant 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 Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant 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 and commissions, officers, and employees shall be named as an additional insured under all insurance coverages, except any professional liability insurance, required by this Agreement. 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 Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

11. CONFLICT OF INTEREST:

Consultant warrants that it is not a conflict of interest for Consultant to perform the services required by this Agreement. Consultant may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant 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:

Consultant 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 City. 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 by Consultant from City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to City by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Consultant is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

13. SUBCONTRACTOR APPROVAL:

Unless prior written consent from City is obtained, only those people and subcontractors whose names and resumes are attached to this Agreement shall be used in the performance of this Agreement.

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in reasonable conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

14. PERMITS AND LICENSES:

Consultant, at his/her sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License, that may be required in connection with the performance of services hereunder.

15. REPORTS:

A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Consultant pursuant to or in connection with this Agreement, shall be the exclusive property of City. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to City the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of City, and all publication rights are reserved to City.

B. All Reports prepared by Consultant may be used by City in execution or implementation of:

- (1) The original Project for which Consultant was hired;
- (2) Completion of the original Project by others;
- (3) Subsequent additions to the original project; and/or
- (4) Other City projects as appropriate.

C. Consultant shall, at such time and in such form as City may require, furnish reports concerning the status of services required under this Agreement.

D. All Reports required to be provided by this Agreement shall be printed on recycled paper. All Reports shall be copied on both sides of the paper except for one original, which shall be single sided.

E. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement shall be made available to any individual or organization by Consultant without prior approval by City.

16. RECORDS:

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement.

Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to such books and records to the representatives of City or its designees at all proper times, and gives City the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, 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 for a period of three (3) years after receipt of final payment.

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 contract or failure to act in good faith, then Consultant shall reimburse City for all reasonable costs and expenses associated with the supplemental examination or audit.

17. NOTICES:

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Consultant to City shall be addressed to City at:

City of Alameda
Public Works Department
950 West Mall Square, Room 110
Alameda, CA 94501
Ph: (510) 747-7930 / Fax: (510) 769-6030

All notices, demands, requests, or approvals from City to Consultant shall be addressed to Consultant at:

18. TERMINATION:

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

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 Consultant as provided herein. Upon termination of this Agreement, 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.

19. PURCHASES OF MINED MATERIALS REQUIREMENT:

Consultant shall ensure that all purchases of mined materials such as construction aggregate, sand and gravel, crushed stone, road base, fill materials, and any other mineral materials must originate from a surface mining operation identified on the AB3098 List per the Surface Mining and Reclamation Act of 1975 (SMARA).

Within five days of award of contract, Consultant shall submit a report to City which lists the intended suppliers for the above materials and demonstrates that the suppliers are in compliance with the SMARA requirements. The AB3098 List is maintained by the Department of Conservation’s Office of Mine Reclamation (OMR) and can be viewed at: www.conservation.ca.gov/OMR/ab_3098_list/index.htm. Note that the list changes periodically and should be reviewed accordingly.

20. COMPLIANCES:

Consultant shall comply with all state or federal laws and all ordinances, rules and regulations enacted or issued by City.

21. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting 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.

22. ADVERTISEMENT:

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from City to do otherwise.

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:

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 Consultant.

25. INSERTED PROVISIONS:

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

26. 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.

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

CONSULTANT
(Type of Corporation)

CITY OF ALAMEDA
A Municipal Corporation

Name
Title

John A. Russo
City Manager

Name
Title

RECOMMENDED FOR APPROVAL:

Matthew T. Naclerio
Public Works Director

APPROVED AS TO FORM:
City Attorney

Stephanie Garrabrant-Sierra
Assistant 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 CONTRACTORS 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.

