



CITY OF PINOLE

REQUEST FOR PROPOSALS (RFP)

**POOL MAINTENANCE SERVICES
RFP No: PW - 2022-01**

Date released: Tuesday, August 16, 2022

City of Pinole
2131 Pear Street
Pinole, CA 94564

RFP Submission Deadline:

Proposals are due prior to 4:00 PM, Pacific Standard Time

Wednesday, September 7, 2022

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SECTION I - INTRODUCTION

The City of Pinole (“City”) has issued this request for proposals (RFP) for pool maintenance services.

The proposals submitted in response to this RFP will be used as a basis for selecting the Service Provider (Contractor) for this maintenance service. The Contractor’s proposal will be evaluated and ranked according to the criteria provided in Appendix B, “Proposal Evaluation,” of this RFP.

It shall be the Contractor’s responsibility to check their email and to obtain any addenda that may be issued.

The Contractor’s attention is directed to Appendix A, “Proposal Requirements.”

Submit two (2) hard copies or one (1) electronic copy in PDF format on a CD/DVD/USB Flash drive of the Contractor’s proposal. Alternatively, the proposal (in PDF format) can be emailed to jbingaman@ci.pinole.ca.us. The hard copies and CD/DVD/USB Flash drive shall be mailed or submitted to the City of Pinole, 2131 Pear St, Pinole, CA 94564. Proposal submission in any of the methods as described above must reach us prior to **4:00 PM (local), September 7, 2022**. Hard copy proposals shall be submitted in a sealed package clearly marked **“RFP No. PW-2022-01 – POOL MAINTENANCE SERVICES”** and addressed as follows:

Sanjay Mishra
Public Works Director
City of Pinole
Pinole, CA 94564

RFP No. PW_2022-01

Proposals received after the time and date specified above will be considered nonresponsive and will be rejected.

Any proposals received prior to the time and date specified above may be withdrawn or modified by written request of the Contractor. To be considered, however, the modified **Proposal must be received prior to 4:00 PM (local), September 7, 2022**.

Unsigned proposals or proposals signed by an individual not authorized to bind the prospective Contractor will be considered nonresponsive and rejected.

Non-commitment of City

This RFP does not commit the City to award a contract, to pay any costs incurred in the preparation of a proposal in response to this request or the negotiation of a contract, or to procure or contract for services. The City reserves the right to accept or reject any or all proposals received or to waive any irregularity or informality in any proposal or in the RFP procedure, and to be the sole judge of the responsibility of any proposer and of the suitability of the services to be rendered. Further, City reserves the right to negotiate with

any qualified Contractor, or to modify or cancel in part or in its entirety the RFP if it is in the best interests of the City to do so. Furthermore, a contract award may not be made based solely on price.

The prospective Contractor is advised that should this RFP result in recommendation for award of a contract, the contract will not be in force until it is approved and fully executed by the appropriate authority and/or City Council.

All products used or developed in the execution of any contract resulting from this RFP will remain in the public domain at the completion of the contract.

PROCUREMENT SCHEDULE

Issue Date	August 16, 2022
Deadline for Submitting Written Questions	2:00PM (local) August 30, 2022
Answers to Written Questions Posted	September 1, 2022
Mandatory Pre-Bid Job Walk	By Appointment before September 1, 2022
Deadline for Proposal Submittal	4:00 PM (local), September 7, 2022
Final Selection	September 3 rd week
Tentative Contract Award	October 3 rd week

Any questions related to this RFP shall be submitted in writing to Joe Bingaman, Public Works Manager, via email at jbingaman@ci.pinole.ca.us. Response to all questions submitted will be answered in accordance with the Procurement Schedule for this RFP. **Questions shall be submitted before 2:00PM (local) August 30, 2022.**

No oral question or inquiry about this RFP shall be accepted.

SECTION II – SERVICE NEEDS DESCRIPTION AND BACKGROUND

The City invites qualified firms to provide maintenance and repair services for the City of Pinole Swim Center at 2450 Simas Avenue, Pinole, California. This agreement will be for a period of 3 years starting from October 2022 with two optional one-year extensions.

Mandatory Pre-Bid job Walk: The proposers are required to attend a mandatory pre-bid job walk by scheduling an appointment with Public Works Manager – Joe Bingaman (via email at jbingaman@ci.pinole.ca.us). Failure to attend a job-walk will result in bid disqualification.

SECTION III - SCOPE OF WORK

A. SERVICES TO BE PROVIDED

Services shall be performed at a minimum of three (3) days per week up to seven (7) days per week as need to meet all health requirements when the pool is open (April thru October) and one (1) day per week when the pool is closed (October thru April).

The scope of work to be completed for this project includes but is not limited to the following:

1. Take daily pool water chemistry and log on a mutually agreed form. Adjust, as necessary.
2. Take daily temperature of water and log on a mutually agreed form. Adjust, as necessary.
3. Report all maintenance problems to Public Works Department (Public Works Manager or Public Works Maintenance Supervisor).
4. Monitor and maintain automated chemical computer system as needed.
5. Do preventative maintenance on all circulation pumps.
6. Maintain all piping.
7. Do preventative maintenance on heater systems (Large and Small Pools).
8. Maintain chemical levels in the chlorine and acid dispensers, clean and flush system as per manufacturer recommendations. Notify Public Works Department in advance when chlorine and acid bulk storage tanks require refilling.
9. Maintain pump strainers as needed.
10. Maintain pool skimmers daily.
11. Backflush pool filters to maintain peak performance as needed. Log all dates and pressure readings prior to and after service performed on mutually agreed upon form.
12. Maintain pool water levels.
13. Do a full water analysis twice a month and make recommendations to Public Works Department.
14. Keep pools clean and vacuumed as necessary to maintain a clean and healthy environment.
15. Emergency repair response time not to exceed two hours per call.
16. Ensure that all Contra Costa County Environmental Health Department requirements are met for annual inspections.
17. Perform all maintenance required to keep pools in peak operational condition.
18. Keep the Public Works Department informed about all repairs, discuss recommended repairs, and obtain approvals before proceeding.

The Contractor shall perform maintenance and repair services at the Swimming pools at the above-mentioned facility. The Contractor must possess a valid C61 / D35 Pool Specialty license.

Additional services may be needed on hourly basis for any repairs.

B. PRICING

Please provide the proposed price for the maintenance and repair services described in Scope of Work in the prescribed format in APPENDIX C.

C. TERM

It is anticipated that the Agreement resulting from this solicitation, if awarded will be firm fixed-price contract for a period of three (3) years effective from October 2022 through June 2025, with two one-year optional extensions at the City's discretion.

SECTION IV - AWARD

In accordance with City's Procurement Policies and Procedures Manual, the City will review and evaluate the proposals based on the criteria established in Appendix B. The City will enter negotiations with the highest ranked proposer(s). Again, City reserves the right to award without interviews, based only upon the initial proposals. Each initial proposal should be submitted with the most favorable terms from both price and experience. If interviews are held, each proposer's performance in the interview will be evaluated using the criteria in Appendix B. Performance in the interviews will be used to inform the final scoring on the criteria.

SECTION V - NON-DISCRIMINATION

Proposers shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, religious creed, color, national origin, ancestry, denial of family and medical care leave, medical condition (cancer/genetic characteristics) physical handicap, disability (mental or physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation, marital status, age (40 and above), in the performance of City contracts. Proposers and any subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

Proposers shall include the non-discrimination and compliance provisions of the above clause in all subcontracts to perform work under this contract.

SECTION VI - LEVINE ACT

Proposers will be required to disclose on the record any contribution of more than \$250 which they have made to a City Council Member within the twelve-month period preceding the submittal deadline of this RFP, and within the twelve-month period preceding any subsequent procurement based on this RFP. This applies to your company, any member of your team, any agents for you or other team members and to the major shareholders of any closed corporation, which is part of your team. If you have made a contribution which needs to be disclosed you must provide written notice of the date, amount and receipt of the contribution(s) to City Manager. This information will need to be provided before the City can approve any contract.

SECTION VII - DISADVANTAGED BUSINESS ENTERPRISE (DBE)

City has adopted a Disadvantage Business Enterprise (DBE) Policy, pursuant to which the City encourages all prime proposers to utilize qualified DBE subcontractors on City Projects. City promotes the direct purchase of goods from qualified DBEs by utilizing DBE vendors when such vendors are available and the price of the goods sought is reasonable, and, for professional services contracts, City seeks the utilization of qualified DBEs when such DBEs are available. All prime proposers are required to report on DBE usage during the term of each contract.

For purposes of City's DBE Policy, a DBE shall be a "Disadvantage Business" within the meaning of 13 CFR Part 121 and California Government Code Section 14837. In the event that the City's DBE Policy conflicts with any Federal, State or other funding source's programs, policies, regulations or requirements, City shall make the DBE Policy consistent with said funding source's programs, policies, regulations and requirements to the extent permissible by law. City's DBE Policy is neutral as to race, ethnicity, national origin, age, sex, religion, sexual orientation and other protected classes. **The DBE goal for this contract is 0%.**

SECTION VIII - INDEMNIFICATION, INSURANCE, AND BONDING REQUIREMENTS

Insurance and bonding requirements for this maintenance service are set forth in attached *General Contractor Services Agreement* (Attachment 1).

APPENDIX A – PROPOSAL REQUIREMENTS

These guidelines are provided for standardizing the preparation and submission of Proposal/Proposals by all Contractors. The intent of these guidelines is to assist Contractors in preparation of their proposals, to simplify the review process, and to help assure consistency in format and content.

Proposals shall contain the following information in the order listed:

1. Introductory Letter

The introductory (or transmittal) letter shall be addressed to:

Sanjay Mishra
Public Works Director
City of Pinole
2131 Pear St, Pinole, CA 94564

RFP No. PW_2022-01

The letter shall be on Contractor letterhead and include the Contractor's contact name, mailing address, telephone number, facsimile number, and email address. The letter will address the Contractor's understanding of the services being requested and any other pertinent information the Contractor believes should be included. All addendums received must be acknowledged in the transmittal letter.

The letter shall acknowledge the acceptance to the terms and conditions of the General Contractor Services Agreement (Attachment 1) and shall contain a statement that the proposal is valid for One hundred and twenty (120) days.

2. Qualifications: Related experience and references of Proposer

This section of the proposal should establish the ability of the Proposer to satisfactorily perform the required work by reasons of experience in performing work of a similar nature, demonstrated competence in the services to be provided, strength and stability of the firm, staffing capability, workload and supportive client references. Please feel free to add as many sheets of paper as you would like to your proposal to describe your qualifications and other sections covered in this RFP.

The Proposer shall:

- I. Provide a brief profile of the firm such as the types of services offered, the year founded, form of the organization (corporation, partnership, and sole proprietorship), number, size, location of offices and number of employees.
- II. Provide a general description of the firm's financial condition and identify any conditions (i.e., bankruptcy, pending litigation, planned office closures,

impending merger) that may impede the Proposer's ability to complete the work.

- III. Describe the firm's experience in providing similar work and highlight the participation in such work by the proposed staff for this RFP.
- IV. Identify subcontractors, by company name, address, contact person, telephone number and their function in relating to the work under this RFP (if applicable).
- V. Provide as a minimum three (3) references for the service cited as related experience and furnish the name, title address, telephone number and email address of the person(s) at the client organization who is most knowledgeable about the work performed. The Proposer may also supply references from other work not cited in this section as related experience.

3. Staffing

The Proposer shall:

1. Identify key personnel proposed to perform the work.
2. Provide brief descriptions of key personnel, detailing applicable experience.
3. If applicable, list any required licenses of key personnel needed to perform the work under this RFP.
4. Include a statement that identified key personnel will be available for the duration of the work and acknowledge that no key personnel shall be removed or replaced without the prior written concurrence of the City.

4. Work Plan

The Proposer shall provide a brief narrative, which addresses the Scope of Work described herein, understanding requirements, and approach to completing the work.

5. Cost and Price

Proposers shall submit pricing inclusive of all direct costs, indirect costs, and profit for maintenance services. Any costs not stated will not be paid by the City. Pricing shall be provided under Cost and Price Form. Proposers will submit hourly rates for repairs work that may be needed from time to time.

If applicable, Proposers shall submit a cost breakdown identifying items such as quantities, labor categories and rates, equipment rates, unit prices, material costs, applicable taxes, shipping, and delivery charges.

6. Exceptions/Deviations

The Proposer shall state any exceptions to or deviations from the requirements of this RFP. Where the Proposer wishes to propose alternative approaches to meeting the City's requirements, these should be thoroughly explained. Include a detailed Scope of Work Statement describing all services to be provided and how maintenance cost and servicing schedule could be minimized while maintaining the level and quality of services.

7. Conflict of Interest Statement

The Contractor shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of the service contract. The Contractor shall also list current clients who may have a financial interest in the outcome of this contract or the construction Project that will follow. The Contractor shall disclose any financial interest or relationship with any construction company that might submit a bid on the construction Project.

8. Contract Agreement

The Contractor shall provide a brief statement affirming that the proposal terms shall remain in effect for one hundred and twenty (120) days following the date proposal submittals are due.

APPENDIX B – PROPOSAL EVALUATION

1. Evaluation Process

City will review and evaluate all proposals deemed responsive to this RFP in accordance with City’s Procurement Policies and Procedures Manual. Each of the Contractors will be ranked based on the criteria listed in this section.

All proposals will be evaluated by a City Evaluation Review Committee (Committee). The Committee may be composed of City staff and other parties that may have expertise or experience in the services described herein. The Committee will review the submittals and will rank the proposers. The evaluation of the Contractor’s proposal shall be within the sole judgment and discretion of the Committee.

The selection process may include oral interviews, if so, Contractor will be notified of the time and place of oral interviews and if any additional information that may be required to be submitted.

The Committee will review the submittals and will rank the Contractors based on the Evaluation Criteria. References will be used in evaluating the Contractor. A short list of top ranked Contractors will be compiled. All Contractors that submit proposals will be informed of the ranking. City may award a contract solely based on this ranking.

If interviews are desired the Committee will interview the top ranked Contractor. An interview will include the elements of the Evaluation Criteria as well as negotiations of the cost proposal and scope. If negotiations with the top ranked Contractor are unsuccessful, then negotiations will proceed to the next most qualified Contractor, and so on. The goal of negotiations is to agree on a final contract that delivers the services and products required at a fair and reasonable cost to City.

Upon acceptance of a cost proposal and successful contract negotiations, the Committee will recommend a contract be awarded. An award would be by the City Council.

2. Evaluation Criteria

The City will evaluate and award based on the following criteria and weights:

CRITERIA	MAX POINTS
Experience and Qualifications	35%
Staffing	20%
Work Plan	25%
Cost of Service	20%
Total	100%

APPENDIX C- COST PROPOSAL

Enter below the proposed price for the maintenance and repair services described in Scope of Work. The City intends to award a firm fixed-price contract, therefore all pricing listed below shall include direct costs, indirect costs, tax, and profit.

	TERM	FIRM FIXED-PRICE PER YEAR
YEAR 1 (<12mos)	10/31/2022 – 6/30/2023	
YEAR 2	7/1/2023 – 6/30/2024	
YEAR 3	7/1/2024 – 6/30/2025	
YEAR 4 (Option)	7/1/2025 – 6/30/2026	
YEAR 5 (Option)	7/1/2026 – 6/30/2027	

1. I acknowledge receipt of this RFP and __NA / #_____ addenda(s) for Pool Maintenance and Repair Services of City Swimming Pools at the address mentioned in the RFP.
2. I agree to submit monthly invoices and NET 30 payment terms.
3. This proposal shall remain firm for 120 days from the date of proposal.

NAME OF PROPOSER

ADDRESS

TELEPHONE

SIGNATURE OF PERSON

AUTHORIZED TO BIND PROPOSER

SIGNATURE'S NAME AND TITLE

DATE SIGNED

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ATTACHMENT 1: GENERAL CONTRACTOR SERVICES AGREEMENT

GENERAL CONTRACTOR SERVICES AGREEMENT BETWEEN THE CITY OF PINOLE AND

This agreement for General Services ("Agreement") is entered into on [REDACTED], 2022 between the CITY OF PINOLE, a municipal corporation, with offices located at 2131 Pear Street, Pinole, California ("City") and [REDACTED]. ("Contractor") (together sometimes referred to as the "Parties").

Section 1. SERVICES. In accordance with the terms and conditions set forth in this Agreement, Contractor agrees to perform all services described in the Scope of Services, attached as Exhibit A, which is incorporated herein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

1.1 Term of Services. This Agreement shall begin on the Effective Date and shall end thirty (30) calendar days from the date this Agreement was signed by City, unless the term of the Agreement is otherwise terminated or modified, as provided for herein.

1.1.1 Allowable Schedule: Work shall be performed within thirty (30) calendar days of the notice to proceed.

1.2 Standard of Performance. Contractor shall diligently perform all services required in connection with this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged in the geographical area in which Contractor practices its profession.

1.3 Assignment of Personnel. Contractor shall assign only competent personnel to perform services in connection with this Agreement.

1.4 Termination. City may cancel this Agreement at any time and without cause upon written notification to Contractor. In the event of termination, Contractor shall be entitled to compensation for services satisfactorily completed as of the date of written notice of termination; City, however, may condition payment of such compensation upon Contractor delivering to City documents and records identified in Section 10.1 of this Agreement.

Section 2. COMPENSATION. City hereby agrees to pay Contractor for the Scope of Services, whether by fixed price, hourly rates subject to a fixed rate schedule, pursuant to the fee schedule attached as Exhibit A, which is incorporated herein. Total compensation for work performed under this Agreement, **NOT TO EXCEED \$** [REDACTED].

2.1 Invoices. Contractor shall submit invoices once a month, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Contractor shall have ninety (90) days after the completion of work to invoice City for all amounts due and outstanding under each governed by this Agreement. In the event Contractor fails to invoice City for all amounts due within such ninety (90) day period, Contractor shall waive its right to collect payment from City.

2.2 Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred.

- 2.3 Reimbursable Expenses.** No expenses, costs, or liabilities of Contractor shall be reimbursable unless the obligation and manner of reimbursement is expressly set forth in the scope of services (Exhibit A) and in the fee schedule (Exhibit A).
- 2.4 Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

Section 3. CHANGES AND EXTRA SERVICES.

- 3.1** Provided that City gives reasonable advance notice to Contractor, City may propose in writing changes to Contractor's work within the Scope of Services described. If Contractor is of the opinion that any proposed change causes an increase or decrease in the cost, or a change in the schedule for performance, of the services, Contractor shall notify City in writing of that fact within five (5) days after receipt of written proposal for changes. Contractor may also initiate such notification, upon identifying a condition which may change the Scope of Services as agreed at the time of execution of this Agreement covering such Scope of Services. When and if City and Contractor reach agreement on any such proposed change and its effect on the cost and time for performance, they shall confirm such agreement in writing as an amendment to this Agreement. In the event the Parties cannot reach agreement as to the proposed change, at the City's sole discretion, Contractor shall perform such work and will be paid for labor, materials, equipment rental, etc., actually used to perform the work.
- 3.2** City shall not be liable for payment of any changes under Section 3.1, nor shall Contractor be obligated to perform any such changes, except upon such written amendment or supplement; provided that if, upon City's written request, Contractor begins work in accordance with a proposed change, City shall be liable to Contractor for the amounts due with respect to Contractor's work pursuant to such change, unless and until City notifies Contractor to stop work on such change.

Section 4. PROJECT SITE. Contractor shall perform the Services in such a manner as to cause a minimum of interference with City's operations and the operations of other contractors at each Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Services at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish. Each Project site may include all buildings, offices, and other locations where Services are to be performed, including any access roads. Contractor shall be solely responsible for the safe transportation and packing in proper containers and storage of any equipment required for performing the Services, whether owned, leased or rented. City will not be responsible for any such equipment which is lost, stolen or damaged or for any additional rental charges for such equipment. Equipment left or stored at a Project site, with or without permission, is at Contractor's sole risk. City may assume that anything left on the work site an unreasonable length of time after said work is completed has been abandoned. Any transportation furnished by City shall be solely as an accommodation and City shall have no liability therefore. Contractor acknowledges and agrees that it shall assume the risk and is solely responsible for its use of any City owned equipment and property provided by City for the performance of Services. City shall have no liability to Contractor therefore. In addition, Contractor further acknowledges and agrees that it shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tolls, or other property which is utilized by Contractor on each Project site.

Section 5. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the Agreement.

- 5.1 **Workers' Compensation.** If Contractor employs any person, Contractor shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor with limits of not less than One Million Dollars (\$1,000,000.00) per accident.
- 5.2 **Commercial General and Automobile Liability Insurance.** Contractor shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles. The City shall be named as an additional insured and insurance shall provide primary coverage with respect to the City by written endorsement to the policy.
- 5.3 **General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
- 5.4 **Professional Liability Insurance.** (Required for all Licensed Contractors performing design work) Contractor shall maintain professional liability insurance for licensed professionals performing work in connection with this Agreement in an amount not less than One Million Dollars (\$1,000,000.00) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed Two Hundred Fifty-Thousand Dollars (\$250,000.00) per claim.
- 5.5 **All Policies Requirements.**
 - 5.5.1 **Verification of Coverage.** Prior to beginning any work under this Agreement, Contractor shall, at the sole option of the City, provide City with (1) certified Certification of Insurance that demonstrates compliance with all applicable insurance provisions contained herein; and (2) upon request by the City, complete certified copies of all policies and/or complete certified copies of all endorsements that demonstrate compliance with this Section 5.
 - 5.5.2 **Notice of Reduction in or Cancellation of Coverage.** A certified endorsement must be attached to all insurance obtained in accordance with this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- 5.6 **Waiver of Subrogation.** Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of

subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Contractor, its employees, agents and subcontractors.

Section 6. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

- 6.1 Contractor shall to the fullest extent allowed by law, with respect to all services performed in connection with this Agreement, indemnify, defend and hold harmless the City and its officials, commissioners, officers, employees, agents and volunteers from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Contractor. Contractor will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the City shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the City.

Section 7. STATUS OF CONTRACTOR. At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent.

Section 8. LEGAL REQUIREMENTS.

- 8.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 8.2 **Compliance with Applicable Laws.** Contractor and any subcontractors shall comply with all laws applicable to the performance of the work in connection with this Agreement.
- 8.3 **Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.
- 8.4 **Nondiscrimination and Equal Opportunity.** In compliance with federal, state and local laws, Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement.
- 8.5 **Work Requiring Payment of Prevailing Wages.** In accordance with California Labor Code § 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which these services are to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code shall be paid to all workers engaged in performing the services under this Agreement. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall

be made available on request. Consultant is required to comply with the provisions of the Labor Code applicable to public works, including Labor Code section 1720 *et seq.* Consultant shall waive, indemnify, hold harmless, and defend City concerning any liability arising out of Labor Code Section 1720 *et seq.*

- 8.6** **DIR Registration.** Contractor shall be currently registered with the Department of Industrial Relations and qualified to perform public work consistent with Labor Code section 1725.5, except in limited circumstances as set forth in Labor Code section 1771.1. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code Section 1725.5. Contractor agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Section 9. **MODIFICATION.**

- 9.1** **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 9.2** **Assignment.** Contractor may not assign this Agreement or any interest therein without the prior written approval of the City.
- 9.3** **Subcontracting.** Contractor shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City. Where written approval is granted by the City, Contractor shall supervise all work subcontracted by Contractor in performing the Services; shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work; the subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Services; and Contractor is obligated to ensure that any and all subcontractors performing any Services shall be fully insured in all respects and to the same extent as set forth under Section 5, to City's satisfaction.
- 9.4** **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.
- 9.5** **Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 9.5.1** Immediately terminate the Agreement;
 - 9.5.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor in accordance with this Agreement;
 - 9.5.3** Retain a different Contractor to complete the Services not finished by Contractor;
or

- 9.5.4** Charge Contractor the difference between the costs to complete the work at the time of breach and the amount that City would have paid Contractor in accordance with Section 2 if Contractor had completed the Work.

Section 10. KEEPING AND STATUS OF RECORDS.

- 10.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains in accordance with this Agreement and that relate to the matters covered under the terms of this Agreement shall be the property of the City.
- 10.2 Contractor's Books and Records.** Contractor shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.
- 10.3 Confidential Information and Disclosure.** During the term of this Agreement, either party (the "Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other party (the "Receiving Party"). The Receiving Party shall hold the Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. Contractor understands that City is a public City and is subject to the laws that may compel it to disclose information about Contractor's business.

Section 11. WARRANTY.

- 11.1** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Services (including but not limited to all equipment and materials supplied in connection therewith) shall be free from defects in design and workmanship, and that Contractor shall perform all Services in accordance with all applicable engineering, construction and other codes and standards, and with the degree of high professional skill normally exercised by or expected from recognized professional firms engaged in the practice of supplying services of a nature similar to the Services in question. Contractor further warrants that, in addition to furnishing all tools, equipment and supplies customarily required for performance of work, Contractor shall furnish personnel with the training, experience and physical ability, as well as adequate supervision, required to perform the Services in accordance with the preceding standards and the other requirements of this Agreement. In addition to all other rights and remedies which City may have, City shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further services which may be required to correct any deficiencies which result from Contractor's failure to perform any Services in accordance with the standards required by this Agreement. Moreover, if, during the term of this Agreement (or during the one (1) year period following the term hereof), any equipment, goods or other materials or Services used or provided by Contractor under this Agreement fail due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable notice from City, replace or repair the same to City's satisfaction. Unless otherwise

expressly permitted, all materials and supplies to be used by Contractor in the performance of the Services shall be new and best of kind.

- 11.2 Contractor hereby assigns to City all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Services.

Section 12. HEALTH AND SAFETY PROGRAMS. The Contractor shall establish, maintain, and enforce safe work practices, and implement an accident/incident prevention program intended to ensure safe and healthful operations under their direction. The program shall include all requisite components of such a program under Federal, State and local regulations and shall comply with all City site programs.

- 12.1 Contractor will be responsible for acquiring job hazard assessments as necessary to safely perform all duties of each Project and provide a copy to City upon request.
- 12.2 Contractor will be responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of Project and provide copies of the certified training records upon request by City. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3 Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4 City, or their representatives, shall periodically monitor the safety performance of the Contractor working on the Project. All Contractors and their subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from City to Contractor under this Agreement at any time when, or for any Services performed when, Contractor is not in full compliance with this Section 10.
- 12.5 Contractor shall immediately report any injuries to the City site safety representative. Additionally, the Contractor shall investigate and submit to the City site safety representative copies of all written accident reports, and coordinate with City if further investigation is requested.
- 12.6 Contractor shall take all reasonable steps and precautions to protect the health of their employees and other site personnel with regard to their Scope of Services. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the City site safety representative upon request.
- 12.7 Contractor shall develop a plan to properly handle and dispose of all hazardous wastes they generate within the Scope of Services.

- 12.8 Contractor shall advise its employees and subcontractors that any employee, who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Project.
- 12.9 Contractor shall, at the sole option of the City develop and provide to the City a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials to include diesel fuel used for trucks owned or leased by the Contractor.

Section 13. MISCELLANEOUS PROVISIONS.

- 13.1 **Attorneys' Fees.** If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2 **Venue.** In the event that either Party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 13.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect.
- 13.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 **Contract Administration.** This Agreement shall be administered by the City Manager or her designee, who shall act as the City's representative. All correspondence shall be directed to or through the representative.
- 13.6 **Notices.** Any written notice to Contractor shall be sent to:

[INSERT CONTRACTOR CONTACT INFORMATION]
- Any written notice to City shall be sent to:
- Andrew Murray, City Manager
City of Pinole
2131 Pear Street
Pinole, CA 94564
- 13.7 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction

drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

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

13.9 Alternative Dispute Resolution. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, City and Contractor agree to resolve the dispute in accordance with the following:

Each Party will designate a senior management or executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute by any means within their authority. If dispute remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both Parties. Mediation will begin within thirty (30) days of the selection of this disinterested third party, and will end fifteen (15) days after commencement. The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, et. seq.

13.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the date signed by the City.

CITY OF PINOLE

CONTRACTOR: [Insert Name of Contractor]

Andrew Murray, City Manager

[Insert Name of Signatory, Title]

Date: _____

Date: _____

Attest:

Heather Bell, City Clerk

Date: _____

Approved as to Form:

Eric Casher, City Attorney

Date: _____

EXHIBIT A
SCOPE OF SERVICES AND FEES