

**CITY OF PINOLE
REQUEST FOR PROPOSALS (RFP)**

STORM DRAIN MASTER PLAN (SDMP)

Issue Date: June 1, 2023

Proposals Due: July 6, 2023 (2:00 p.m.)



City of Pinole
2131 Pear Street
Pinole, California 94564
<https://www.ci.pinole.ca.us>

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Attachment A - City of Pinole Consultant Services Agreement

CITY OF PINOLE**REQUEST FOR PROPOSALS (RFP)
STORM DRAIN MASTER PLAN (SDMP)****SECTION 1 BACKGROUND**

The City of Pinole is a diverse community of approximately 19,400 residents located on the east side of the San Francisco Bay in West Contra Costa County. Pinole is approximately 30 miles northeast of San Francisco and 20 miles north of Oakland along highway I-80. Pinole has a lovely natural setting and is noted for its architectural heritage. Pinole is a full-service city, with a total budget of \$46.4 million, that provides public safety, public works, community services (including recreation programs and Pinole community television), community development, and general administration services. The City is seeking professional services from licensed professional engineering firms to develop the City's Storm Drain Master Plan (SDMP) to identify, analyze, and prioritize the capital improvement needs of the City's storm water management system to drastically reduce flood risks, enhance public safety, and protect the City's assets.

SECTION 2 SCOPE OF WORK / TASKS / DELIVERABLES

The Consultant shall furnish all services as required in order to prepare a comprehensive SDMP. The City will be adopting the SDMP and use it as the guide to establish policies, funding levels, identify capital improvement projects (CIPs), and allocate resources to operations and maintenance. The Consultant shall research and collect all data necessary to complete the SDMP. The Scope of Work described herein is the minimum necessary to meet the City's objectives.

The Consultant is encouraged to propose modifications to the individual tasks listed below or the entire Scope of Work with innovative and advanced methodologies to produce a cost-efficient SDMP that the City may not have specifically identified in the scope of services. These proposed additions shall be identified as optional items and priced out separately. The Scope of Work may be modified through negotiation and/or by written addendum issued by the City and will become a part of any contract or agreement between the City and the selected Proposer. The SDMP, at a minimum, will include flow monitoring, system condition assessment, hydrologic and hydraulic modeling, model calibration and verification, peak flow attenuation, potential future pumping needs, evaluate options for pure gravity flow operations, climate change impacts, and development of a CIP to address these needs. A financial analysis plan is also required to determine and justify funding strategies and operation and maintenance needs. The Consultant shall carefully control costs and resources and complete assigned work on schedule.

The Consultant shall assign a project manager who will be the City's primary contact, will be entirely responsible for the Consultant's work and sub-Consultant work, if applicable, and have authority to direct the Consultant's staff and sub-contractors to meet the City's needs. To ensure the project remains on track, the Consultant shall provide a monthly progress report, which shall include a brief status of completed work, work anticipated to be completed in the next reporting period, problems or obstacles identified during the reporting period, and any other issues. The Consultant shall meet with City staff on a bi-weekly basis. The Consultant shall prepare a detailed report summarizing the entire drainage network and flood control network conditions and needs and present the draft SDMP to both the City staff and the City Council. The Consultant shall revise the draft report based on feedback received and prepare a final draft of the report for adoption by the City Council.

Task 1: Project Management and Quality Control**Scope**

The Consultant will prepare monthly status reports and invoices, and will closely monitor project budget, labor hours expended, and schedule on a monthly basis throughout the project. The monthly status reports will describe the work completed during the previous month, anticipated work for the following month, current budget and schedule status, and any project issues requiring discussion or resolution. The Consultant will attend scheduled meetings or workshops with the City's project manager and other City staff as needed to discuss project progress and issues related to key project tasks. The first workshop will be a kickoff meeting to review the goals and objectives of the Master Plan, details of the work effort, and discuss how City staff would be involved in the project. It is envisioned that the kickoff meeting would involve both the Public Works Staff, as well as targeted staff of other City divisions (e.g., GIS, Planning) with the Consultant acting as facilitator to help focus the discussion on the key issues and information needs for the Master Plan. Bi-Weekly virtual meetings with the project engineer to maintain project pace and goals and to resolve and track issues. The Consultant will perform internal quality assurance and quality control on all project work products. Quality control will include careful checking of data, calculations, and model results, as well as review of proposed criteria, recommendations, and key deliverables by the Consultant experts in storm system planning, evaluation, and design.

Deliverables

- Monthly progress reports and invoices
- Meeting presentation materials, agendas, and minutes
- Summary e-mail of biweekly meetings with list of action items

Task 2: System Inventory, Pipe Condition Assessment, and GIS Database Development**Scope**

The Consultant shall review available information related to the City's drainage facilities, identify any data gaps and inconsistencies in the City's paper and electronic databases, and provide an accurate inventory and assessment of the City's flood control network. The Consultant shall propose a strategy to update and obtain additional necessary data for approval by the City. Once approved, the Consultant shall be responsible for implementing and managing the data collection effort. All new information generated from this task will be incorporated into the City's geodatabase. The Consultant will be responsible for the accuracy of new data entered into the geodatabase and for verifying the accuracy of existing data based on the Consultant's professional judgment. The Consultant shall utilize office and field methods to establish reasonable assumptions for the various pipe conditions within the network. Where needed, a portion of the pipe segments will require field reconnaissance to perform visual inspections, photo documentation, and measurements. In addition, a smaller subset of critical or concerning pipes will require a more detailed review involving closed circuit television (CCTV) and potentially pipeline flushing.

Deliverables

- A comprehensive electronic system inventory (i.e., GIS layer)
- A comprehensive Pipe Condition Assessment report to discuss and map the pipe conditions and list and rank the identified deficiencies.

Task 3: Identify Basins, Develop Models, & Evaluate Existing Hydraulic Capacity**Scope**

The Consultant shall delineate urban and natural watersheds with their overall flow paths within the City's boundary. The Consultant shall develop a calibrated hydrologic-hydraulic model for a range of return periods by utilizing an approved software by the City (e.g., HEC-HMS, HEC-RAS, EPA-SWMM) and generate watershed runoff hydrographs. The Consultant shall be responsible for obtaining all input data, including precipitation, flow, and water surface level data from credible sources. The Consultant shall identify and review the existing and proposed land use patterns within the City along with the surrounding tributary areas. Population and development patterns shall be investigated for the present day and future growth. The model output shall be calibrated and verified against appropriate historical storm events. Additionally, the Consultant shall review maintenance records and resident complaints to "ground truth" model outputs. The Consultant shall use the model to evaluate the performance of the stormwater system, identify and map the locations of capacity deficiency. Dry and wet weather flow monitoring should be considered as part of this assessment. The Consultant shall route the individual hydrographs within the sub-watersheds to quantify and map the performance of the existing drainage network components under different storms (with a specific consideration to climate change impacts and potential hydrological intensifications in the region) and identify problematic locations and key issues that pertain to the existing drainage system. Key issues might include the Pinole Creek flooding and erosion, local drainage capacity issues, structurally and hydraulically inadequate system components, etc.

Deliverables

- A technical memorandum documenting all modeling assumptions, inputs, utilized data sets and their sources, model calibration methods, model outputs (including but not limited to water surface profiles, flood inundation maps for various storms, etc.) and narrative interpretations of the results, along with an uncertainty analysis.
- A comprehensive report discussing the hydraulic deficiencies of the City's drainage network, providing detailed flood inundation maps, and a ranking list of the most critical sections, zones, and neighborhoods within the City.

Task 4: Propose Capital Improvement Projects (CIPs) for System Improvements**Scope**

The Consultant shall identify, provide, and discuss the need for additional storm drain easements or right-of-way, enhanced maintenance of creeks and drainage facilities, recommended CIPs that will reduce or eliminate flooding and/or repair failing infrastructure and provide a prioritized schedule for implementation of CIPs. The proposed improvements should be categorized as high, medium and low need based on the extent and nature of the problem identified along with potential impacts of not addressing i.e., damage from flooding and sink holes. The Consultant shall develop preliminary engineering alternatives for identified projects that have pipe sizes, materials, methods, for improvements to the City's system. Review and consideration of regulatory requirements are essential. The Consultant shall complete a preliminary cost estimate (planning-level) for each project, and present cumulative costs for each CIP year and overall program. Once the City approves SDMP, the Consultant shall present a recommended set of prioritized capital projects to be included in the final deliverable.

Deliverables

- A technical memorandum presenting proposed, prioritized CIPs and the preliminary designs & cost estimates.

SECTION 3 PROPOSAL REQUIREMENTS

Proposals must meet the following requirements, in the sequence listed, to be considered responsive to this RFP:

3.1 Cover Letter

Include a cover letter signed by a person authorized by the firm to submit the proposal and bind the firm to contract obligations. The cover letter shall include the person's name and title; firm name, address, telephone number, email address, and website; and name, telephone number, and email address of the firm's point of contact for the proposal. The cover letter must contain a statement indicating that the proposal is valid for ninety days following the proposal due date. The cover letter shall be written to "Sanjay Mishra, Public Works Director".

3.2 Qualifications

Describe the firm's qualifications to perform the scope of work, including a brief history of the firm; location of headquarters and field offices; length of time in business providing relevant services; pertinent experience; special expertise; and resources that the firm can bring to the project.

3.3 Key Personnel

Include the names, qualifications, and experience of the staff that the firm proposes to assign to the project and the role that everyone will play in providing services, including specifically identifying the firm's principal-in-charge and project manager for the project. If the firm operates from more than one location, the proposal shall specify the office to which this project will be assigned. The proposal shall also identify all subconsultants that the firm proposes to engage, including their specific role.

3.4 Method for Executing Scope of Work

Include the firm's proposed method for accomplishing the scope of work with key tasks, deliverables, and timeline. The City is open to various methodologies and approaches to the scope of work that can help the City achieve its goals for this project.

3.5 Fee Proposal

Include the fee proposed by the firm to complete the scope. The fee proposal shall include a schedule showing the hourly rates for staff and any other direct costs that are likely to occur. The fee proposal shall also include the number of hours and resulting staff cost as well as non-staff costs for each key task/deliverable.

3.6 References

Provide a minimum of three organizations, to serve as references, for which the firm has completed a project similar to this project within the last five years. For each of the three organizations, the proposal shall include the name of organization (client) and project; name, title, telephone number, and email address of the project manager at the client organization; and a brief description of the scope of work and deliverable, date and duration of the project, and fee. Also, include a listing of the firm's California municipal agency clients during the past five years.

3.7 Conflicts and Termination

Describe any existing or potential conflicts of interest that may arise from the firm’s work on this project. The proposal shall also describe any instances in which the firm’s work on a contract with a public agency has been terminated by the agency within the past five years.

3.8 Standard Agreement

Include a statement by the firm that it has reviewed the City’s Standard Consulting Services Agreement (see Attachment A) and is willing to execute an agreement with those terms, including insurance requirements, for this project. If the firm has any reservations about the terms of the Standard Consulting Services Agreement, the proposal shall include a description of the firm’s reservations and the firm’s proposal to address the term of concern through an alternate approach.

SECTION 4 PROPOSAL EVALUATION SCHEDULE

4.1 Proposal Evaluation Schedule

The following is City of Pinole’s estimate of the schedule that will be followed regarding the selection of the Consultant:

Date	Action
June 1, 2023	Issuance of RFP
June 15, 2023	RFP questions due
June 22, 2023	Reponses to RFP questions posted on CITY OF PINOLE website
July 6, 2023 (2 pm)	Proposals due
July 6, 2023 – July 13, 2023	Staff completes review of proposals, which may include virtual interviews with selected proposers. The Interviews would occur on July 11-12, 2023.
August 15, 2023	Consultant contract executed. Commencement of work.

SECTION 5 QUESTIONS REGARDING RFP, ADDENDUM AND SUBMITTAL INSTRUCTIONS

5.1 Questions Regarding RFP

Any questions or issues that may arise regarding the scope of the RFP, the RFP process, and/or the award process prior to the RFP proposal submittal shall be directed in writing to pwrfp@ci.pinole.ca.us no later than June 15, 2023. Please only include “**Storm Drian Master Plan**” in the email subject line. Responses to such inquiries will be posted in the Procurement section of the City of Pinole website by June 22, 2023.

5.2 Addendum/Addenda to RFP

City of Pinole reserves the right to interpret or change any provisions of this RFP at any time. Such amendments, if any, shall be issued as written Addendum/Addenda to this RFP. Any Addendum shall be posted in the Procurement of the City of Pinole website.

5.3 Proposal Submittal Requirements

Proposals must be submitted by emailing the PDF copy to pwrfp@ci.pinole.ca.us by July 06, 2023, at 2:00 p.m. Pacific Time. Proposals received by City of Pinole after the closing date and time will not be opened. Please only include “**Storm Drian Master Plan**” in the email subject line.

SECTION 6 PROPOSAL EVALUATION AND SELECTION PROCESS

6.1 Evaluation of Proposals

A selection review panel (Panel), which may be comprised of staff from the City and representatives from outside agencies, will evaluate responsive proposals. The Panel will rank proposals and establish a short list of the most qualified firms based on the following Proposal Criteria, and schedule interviews with the firms on the short list, if deemed necessary. Evaluation of the proposals will include consideration of materials presented in a clear and concise manner (**100 Points Available**):

- 1. Knowledge and Understanding:** Demonstrated understanding of the RFP objectives and work requirements. Methods of approach, work plan, and experience with similar projects related to type of services. **(35 points maximum)**
- 2. Management Approach and Staffing Plan:** Qualifications of project staff (particularly key personnel such as the project manager), key personnel’s level of involvement in performing related work and the team’s experience in maintaining schedule. **(25 points maximum)**
- 3. Qualifications of the Proposer Firm:** Technical experience in performing work related; record of completing work on schedule; strength and stability of the firm; technical experience and strength and stability of proposed subconsultants; demonstrated communications quality and success; and assessments by client references. **(20 points maximum)**
- 4. Capacity and Schedule:** Demonstrated capacity and ability to provide quality personnel in a timeframe that meets the needs of City. **(10 points maximum)**
- 5. Cost Proposal:** Labor and material rates, and hours assigned to each task. **(10 points maximum)**

SECTION 7 CONDITIONS GOVERNING RFP

7.1 Right regarding RFP process

The City reserves the right to accept or reject any or all proposals or to waive any defects or irregularities in the proposals or selection process. No representation is made hereby that any contract will be awarded pursuant to this RFP. Receipt of a proposal by the City does not constitute a contract with the City. The City retains the right to abandon the proposal process at any time prior to the actual execution of a contract with no financial or other responsibility in the event of such abandonment.

7.2 Public record

All quotes, inquiries, responses correspondence, proposals, reports, charts, displays, schedules, exhibits, and other documentation or other information submitted to the City in response to this RFP will become the property of the City and a matter of public record.

7.3 Terms of Agreement / Consultant investigations

The City reserves the right to negotiate all final terms and conditions of any agreement entered into. The City further reserves the right to make such investigation as it deems necessary to determine the ability of proposers to furnish the required services, and proposers shall furnish all such information for this purpose as the City may request.

7.4 City of Pinole Business License

The firm awarded the contract will be required to secure a City of Pinole business license prior to the commencement of work.

LIST OF ATTACHMENTS

Attachment A City of Pinole Consultant Services Agreement

Attachment A

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF PINOLE AND
[NAME OF CONSULTANT]**

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

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

- 1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on _____, and Consultant shall complete the work described in Exhibit A by that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a professional manner and shall conform to the standards of quality normally observed by a person practicing in Consultant’s profession.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant’s obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed _____, for all work set forth in Exhibit A and all reimbursable expenses incurred in performing the work. In the event of a conflict between this Agreement and Consultant’s proposal regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement.

Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. City shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

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

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

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B.
- 2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed _____ (\$ _____). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in Exhibit C, and only under the terms and conditions set forth therein.

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

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

4.2 **Commercial General and Automobile Liability Insurance.**

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

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

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

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

4.3 **Professional Liability Insurance.**

4.3.1 **General requirements.** Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence or claim covering the Consultant's errors and omissions.

4.3.2 **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

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

4.4 **All Policies Requirements.**

4.4.1 **Submittal Requirements.** Consultant shall submit the following to City prior to beginning services:

- a. Certificate of Liability Insurance in the amounts specified in this Agreement; and
- b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.

4.4.2 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.3 **Deductibles and Self-Insured Retentions.** Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than ONE HUNDRED THOUSAND DOLLARS (\$100,000).

4.4.4 **Wasting Policies.** No policy required herein shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

- 4.4.5 **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- 4.4.6 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.
- 4.4.7 **Excess Insurance.** If Consultant maintains higher insurance limits than the minimums specified herein, City shall be entitled to coverage for the higher limits maintained by the Consultant.
- 4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

- 5.1 **General Indemnification.** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City or its directors, officials, officers,

employees, agents or volunteers. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor. This Section 5.1 shall survive any expiration or termination of this Agreement.

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

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Pinole Business License.** Consultant shall obtain a City of Pinole business license according to the terms of Title 5 of the City of Pinole Municipal Code and deliver to City proof of such business license prior to beginning work under this Agreement. Work under this Agreement cannot begin until the City receives proof that Consultant has obtained a City of Pinole business license.
- 7.6 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that if City issues such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the City.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall included, but not be limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3** Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.6.4** Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that

Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term

of this Agreement.

- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California. Consultant will comply with all conflict of interest laws and regulations including, without limitation, City’s Conflict of Interest Code (on file in the City Clerk’s Office). It is incumbent upon the Consultant or Consultant’s firm to notify the City pursuant to section 10.10 Notices of any staff changes relating to this Agreement.

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

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

10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by _____ who shall act as the City’s representative. All correspondence shall be directed to or through _____ or his or her designee.

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

Any written notice to City shall be sent to:

10.11 Professional Seal. Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

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

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

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

CITY OF PINOLE

CONSULTANT

Andrew Murray, City Manager

[NAME, TITLE]

Consultant's City of Pinole Business
License #: _____

Attest:

Heather Bell, City Clerk Approved

as to Form:

Eric S. Casher, City Attorney

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION SCHEDULE AND HOURLY FEES

EXHIBIT C
CITY-FURNISHED FACILITIES

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.