

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES
to
CONDUCT ENVIRONMENTAL REVIEW
for the
THE PIEDMONT HOUSING ELEMENT 6TH CYCLE / 2023-2031**



**CITY OF PIEDMONT
CALIFORNIA**

DATE ISSUED: June 4, 2021
DATE DUE: Monday, June 28, 2021, at 4 p.m.

CONTACT: Kevin Jackson, Planning & Building Director
PiedmontHousingRFP@piedmont.ca.gov
(510) 420-3039

PROPOSALS: Please see Section IV for the proposal submission and format requirements.
Proposals can be submitted via email to:

Kevin Jackson, AICP
Director of Planning & Building
City of Piedmont
120 Vista Avenue, Piedmont, CA 94611
PiedmontHousingRFP@piedmont.ca.gov / (510) 420-3039

I. OVERVIEW

The City of Piedmont invites your firm to submit a proposal for the preparation and filing of documents necessary to meet the requirements of the California Environmental Quality Act (CEQA) for the City's 6th Cycle Housing Element Update and any resulting zoning modifications to accommodate the City's anticipated Regional Housing Needs Allocation (RHNA). As is consistent with CEQA, the environmental review will generally analyze the broad environmental effects of implementing the components in the Housing Element Update, related amendments to other General Plan elements, and updates to implementing tools such as the Zoning Ordinance, Subdivision Ordinance and the City of Piedmont Design Guidelines. The environmental review shall consider the maximum build-out allowed by the 6th Cycle Housing Element, related General Plan amendments, and related City Code amendments over the course of the 2023-2031 term. The environmental review is to be completed by October 14, 2022 in accordance with the proposed Scope of Services and the sample Consultant Services Agreement (Attached).

II. INTRODUCTION

Located in Alameda County, approximately 10 miles east of San Francisco, Piedmont is completely encircled by the City of Oakland and has no opportunities for annexation. Since incorporation in 1907, Piedmont's "landlocked" setting has influenced its development patterns and significantly affects its potential for new housing and employment today. The City encompasses 1.7 square miles—virtually all of it developed with mostly single-family residential homes. Piedmont is regarded within the region as a desirable residential community and is currently comprised primarily of architect-designed well-maintained single-family detached residences sited along tree-lined streets, most of which were constructed prior to 1960. The City's proximity to employment centers, coupled with its excellent schools, low crime rate, historic architecture, and beautiful parks contribute to this image. More than 90 percent of the land is developed with housing and 9 percent consists of schools, parks, and houses of worship. Piedmont has less than 4 acres of commercial land. The largest employers are the Piedmont Unified School District and the City of Piedmont municipal organization. The City has no industrial land and no Planned Unit Development zones.

Since the 1990s and because of the lack of vacant lots, the City has found that the most effective housing program is to actively encourage the production of accessory dwelling units (ADUs). For the past three decades, the City has had a highly effective design review and planning program to guide remodels and new construction. This program has enabled the City to retain the scale of its neighborhoods and preserve many of its smaller homes. Piedmont currently has a small supply of rental housing, consisting of approximately 50 conventional apartments, approximately 300 accessory dwelling units, and some single family homes.

At the present time, there are fewer than 60 vacant lots in the city. These lots are scattered throughout Piedmont and comprise a combined total of approximately 12 acres of land. The number of undeveloped lots that are actually buildable is much smaller since many of

Piedmont's vacant lots are constrained by steep slopes or inadequate street frontage, and many are owned by adjacent property owners and are in use as yards or gardens. Piedmont has almost no land with the size and availability for conventional redevelopment, nor does it have public land that is readily available for future housing. The City's commercial acreage supports about two dozen active businesses and ancillary storage uses.

In 2013, the City modified its commercial zoning district (Zone D) along Grand Avenue and at the intersection of Highland and Vista Avenues to include mixed-use multi-family development. In 2017, the City updated the development standards for Zone D to better accommodate mixed-use multi-family development. Zone C, multi-family zoning district, consists of a cluster of parcels near the intersection of Oakland and Linda Avenues and a few lots amongst those in the Zone A district.

Housing Element and RHNA

Under California law every jurisdiction in the State is required to update the Housing Element of its General Plan every eight years to reflect the jurisdiction's Regional Housing Needs Allocation (RHNA) numbers. The update must identify the locations where the RHNA housing allocations might be developed, and the supporting policies and strategies that the jurisdiction has developed to ensure achievement of their RHNA target within the current cycle (Government Code Sections 65580-65589.8). The Bay Area is currently in RHNA Cycle 5, and in the process of planning for RHNA Cycle 6, known as "RHNA 6." The deadline for State certification of Bay Area jurisdiction Housing Elements is January 2023. In January, 2021 the Association of Bay Area Governments ("ABAG") approved a draft methodology by which to allocate the region's gross RHNA number of approximately 441,000 new units. In April, 2021 that methodology was approved by the California Department of Housing and Community Development ("HCD").

Piedmont's 6th Cycle RHNA includes:

- 163 very low income units (0-50% AMI)
- 94 low income units (51-79% AMI)
- 92 moderate income units (80-119% AMI)
- 238 above moderate income units (120% AMI+)
- 587 units TOTAL

To ensure adequate inventory of adequate sites, we anticipate the element update will necessitate modifications to the uses and regulations for each of the five zones. Respondents should be aware that Section 9.02 of the Charter of the City of Piedmont provides that certain changes to the City's zoning require voter approval. Section 9.02 states "The Council may classify and reclassify the zones established, but no existing zones shall be reduced or enlarged with respect to size or area, and no zones shall be reclassified without submitting the question to a vote at a general or special election. No zone shall be reduced or enlarged and no zones reclassified unless a majority of the voters voting upon the same shall vote in favor thereof..."

The City has engaged the services of a consulting team led by Lisa Wise Consulting, Inc, to prepare its 6th Cycle Housing Element Update. Information on Piedmont's housing policy development, including the Housing Element Update and its schedule, is provided on the project's website, www.piedmontishome.org.

III. SCOPE OF SERVICES

The precise scope of services in the Consultant Services Agreement will be negotiated between the City and the successful proposing consultant. Rather than present in this RFP an all-inclusive scope of services for the consultant to perform, interested firms should develop their own specific scope of work, deliverables and schedule based on the information found in this request, and following the most up-to date industry practices.

Please note that the format and number of documents listed as deliverables in your proposal may need to be modified pursuant to Executive Order N-80-20, signed on September 23, 2020, or any other Executive Order pertaining to certain requirements for filing, noticing, and posting of CEQA documents.

At a minimum, the scope of services will include completion of the CEQA compliance process and required documentation and noticing for the project, pursuant to §16053 of State CEQA Guidelines, which includes preparation of all required notices and environmental impact assessments, any necessary consultations with resource agencies, and identification of applicable permits and approvals required, if any. The selected consultant will also be expected to attend at all CEQA-related meetings, including community meetings and meetings of the Planning Commission and the City Council.

Type of CEQA Document

An initial study shall be prepared in consultation with other relevant agencies. Depending on the results of the initial study, an Environmental Impact Report (EIR) or a Negative Declaration may need to be prepared in order to consider the environmental effects of maximum build-out allowed by the 6th Cycle Housing Element. The resulting work product will consider the effects related to the City's update of the following documents:

General Plan Elements

- Housing
- Land Use (including Land Use Map) (as needed)
- Environmental Hazards (Safety) (as needed)
- Natural Resources and Sustainability Element (Conservation) (as needed)

Related Implementing Tools

- Zoning Ordinance
- Subdivision Ordinance
- Design Guidelines

Timeline

The State Department of Housing & Community Development ("HCD") has set an estimated deadline of January 2023 for submittal of the City's Housing Element updated for RHNA 6. Prior to this submittal all related updates to the City's General Plan must be approved by the City Council, as well as the related CEQA document. Given the lead time needed for preparation of packets for the Planning Commission and City Council, the CEQA document must be completed no later than **October 14, 2022**. *Missing the State RHNA 6 certification deadline would have significant and severe consequences for the City. The selected consultant must be able to ensure that the CEQA analysis will be completed on time.*

Project Coordination Meetings and Project Management.

The Consultant shall provide effective project management throughout the entire environmental review process to ensure that a quality document is prepared on time and within the budget. In addition, the Consultant shall coordinate with the Lisa Wise Consulting team preparing the Housing Element Update and participate in periodic project coordination meetings throughout the duration of the document preparation process.

IV. PROPOSAL SUBMISSION REQUIREMENTS AND FORMAT

If interested in this RFP, please notify Planning & Building Director Kevin Jackson by email at PiedmontHousingRFP@piedmont.ca.gov so you may be added to the notification list for addendums. Failure to notify could result in missing important and required information and could result in disqualification.

Format

All submittals must follow the format described in this section. Respondents are encouraged to submit clear and concise responses to the RFP. The City of Piedmont reserves the right to include or exclude any part of the submittals in the final agreement with the selected consultant.

Proposals must be provided electronically (pdf format). *PAPER SUBMISSIONS ARE NOT REQUIRED*. Pages should be formatted to 8½" x 11" size with font no less than 10 point. All pages shall be numbered. Drawings and tables provided with the submittal shall not exceed 11" x 17."

To be considered for selection, submittals must arrive by the date and time specified in Section VI. Email or otherwise submit proposals to:

PiedmontHousingRFP@piedmont.ca.gov.

It is the sole responsibility of the Proposer to ensure timely delivery. Late proposals shall not be considered.

Content

The successful proposal will describe the approach, the process and costs to prepare and conduct the deliverables outlined in Section III Scope of Services. The content of your proposal should include the following in summary form:

Part 1: Cover Letter

Part 2: Project Approach, Scope of Work and Deliverables

Part 3: Consultant Identification and Team

Part 4: Related Project Examples and References

Part 5: Fee Proposal and Billing Rate Sheet

Part 1 | Cover Letter

In no more than three (3) pages, the Cover Letter shall include:

1. The names of the key members of the consultant team;
2. The mailing address, telephone number, email address and the name of the main point of contact for the consultant team;
3. A summary of the consultant's experience and qualifications and the significant advantages to selecting the consultant; and
4. An acknowledgement of receiving any addendum(s) to the RFP document sent out by the City.

Part 2 | Project Approach, Scope of Work, Timeline and Deliverables

Describe the strategy for achieving the goals and deliverables of the project. Include a detailed scope of work noting applicable deliverables as noted in this RFP. Outline the consultant's proposed approach to the services contemplated, including a general timeline demonstrating successful completion of the services. The City seeks final environmental clearance for the Housing Element Update and related amendments to other General Plan elements by October 14, 2022 in order for the final Draft Housing Update, related General Plan amendments and CEQA determination to be considered by the Planning Commission and City Council in November 2022. The environmental document should also provide clearance for amendments to the Zoning Ordinance, Subdivision Ordinance and the Piedmont Design Guidelines that are drafted to implement the goals and actions of the 6th Cycle Housing Element after the Housing Element's adoption by the City Council and certification by HCD.

Part 3 | Consultant Identification and Team

Provide the name of the consultant, the consultant's principal place of business, and the name and telephone number of the contact person. Clearly identify team members, their roles, qualifications and relevant experience. Include a resume of each key staff member identified. Any professional services required but not proposed by the qualified consultant firm shall be listed and reasons should be provided for not including them as part of the proposal.

Part 4 | Related Project Examples and References

Provide recent (within the past 10 years) examples of relevant projects completed by the consultant that exhibit the team's ability to successfully complete a range of services as

listed above. Discuss whether the CEQA documentation was completed on time and within budget. Along with each example, please include descriptive information such as location of the project, date, scope and scale, contract amount, name of the team member(s) involved in the project and their roles, name of the client, and email address and telephone number of the client contact.

Part 5 | Fee Proposal and Billing Rate Sheet

Provide an estimated cost to complete the project and itemized billing rate schedule that identifies hourly rates for each proposed staff members and expenses. Include any proposed cost-plus charges on sub-consultant work, if any.

V. SELECTION PROCESS

The City will evaluate proposals based on the following criteria:

- Clarity and conformance of proposal to RFP;
- Content of the proposal, including project approach;
- Consultant's experience and performance;
- Key Team members' experience and performance;
- Cost proposal; and
- Comments from references.

The selected consultant will be asked to enter into a Consultant Services Agreement with the City of Piedmont and comply with the insurance requirements set forth therein. The City's Planning & Building Department will supervise the project and coordinate the work. The selected consultant is also expected to consult and coordinate with the Lisa Wise Consulting team assisting the City with the preparation of the Housing Element update.

The Consultant will be selected based on demonstrated competence and professional qualifications. Negotiations shall begin with the most qualified consultant. Should negotiations not result in a price the City considers to be fair and reasonable, negotiations shall be formally terminated and the City shall then undertake negotiations with the second most qualified consultant. If the negotiation with the second most qualified firm is not successful, negotiation shall be formally terminated and the City shall then undertake negotiations with the third most qualified consultant, etc. until the price is determined to be fair and reasonable by the City.

VI. TENTATIVE RFP SCHEDULE

The City reserves the right to add, remove or combine steps in the schedule, and/or compress or extend the schedule as the City, in its sole discretion, sees fit. The tentative schedule for the subject RFP process is as follows. In the event of a change of this schedule, the City will notify responders via email.

RFP Issued	June 4, 2021
Pre-Bid Conference Call & Question Submittal	June 16, 2021 at 10 a.m.
Posting of Answers from Pre-Bid Conference	June 18, 2021 at 10 a.m.
Final Submittal	June 28, 2021, at 4 p.m.
Consultant Interviews (if needed)	July 14, 2021, time TBD
City Council Authorization of Contract	August 2, 2021
Contract Execution/Kick-Off Meeting	August 18, 2021

The schedule may be modified and/or extended upon the City's discretion.

VII. PROPOSAL TERMS AND CONDITIONS

1. Examination of Proposal Materials

The submission of a proposal shall be deemed a representation and warranty by the proponent that it has investigated all aspects of the RFP, that it is aware of the applicable facts pertaining to the RFP process and its procedures and requirements, and that it has read and understands the RFP. No request for modification of the provisions of the proposal shall be considered after its submission on the grounds the proponent was not fully informed as to any fact or condition.

2. Addenda Interpretations

If it becomes necessary to revise any part of this RFP, a written addendum will be provided to each firm that requested to be added to the notification list and said addenda will be uploaded to the City website. The City of Piedmont is not bound by any oral representations, clarifications or changes made in the RFP by the City or its agents, unless such clarification or change is provided in written addendum from the City of Piedmont.

3. Designated Contact

For the purposes of this RFP, the Director of Planning & Building is designated as the contact person. Any questions concerning the scope of work and the selection process shall be directed to Kevin Jackson at PiedmontHousingRFP@piedmont.ca.gov. Any and all questions and responses concerning this RFP will only be accepted in writing, via email. All questions must be received by June 16, 2021 by 10 a.m.

Responses to questions will be posted on the City's website, https://piedmont.ca.gov/services_departments/public_works/city_projects, and will become part of the RFP. It is the consultant's responsibility to check the website for updates.

4. Public Records

This RFP document and all submittals in response thereto are public records. Prospective consultants are cautioned not to include any material into the proposal that is strictly proprietary in nature.

5. Proposal Costs

All costs associated with the preparation of RFP submittals shall be borne by the respondent. This RFP does not constitute any form of offer to contract.

6. Reservation of Rights

The City reserves the right, for any reason, to accept or reject any one or more proposals; to negotiate the terms and specifications of the proposal; to modify any part of the RFP; or issue a new RFP.

7. Product Ownership

Any documents resulting from the contract will be the property of the City of Piedmont, CA.

8. Consultant Services Agreement

All Proposers must identify in their proposal any terms and conditions of the sample Consultant Services Agreement (Attachment 1) that they wish to negotiate. Insurance is required as outlined in Section 5.3 of the sample agreement. The City reserves the right to negotiate the terms and specifications of the Consultant Services Agreement and to vary from the sample Consultant Services Agreement attached.

9. Causes for Disqualification

Any of the following may be considered cause to disqualify a proponent without further consideration:

- Evidence of collusion among proponents;
- Any attempt to improperly influence any member of the evaluation panel;
- A proponent's default in any operation of a professional services agreement which resulted in termination of that agreement; and/or
- Existence of any lawsuit, unresolved contractual claim, or dispute between proponent and the City.

ATTACHMENTS

1. Consultant Services Agreement Sample

ATTACHMENT 1

AGREEMENT FOR CONSULTANT SERVICES

This Agreement for Consultant Services (the "Agreement") is made and entered into this _____ day of _____, ____, by and between THE CITY OF PIEDMONT, a municipal corporation (hereinafter referred to as "CITY") and _____ [a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation] (hereinafter referred to as "CONSULTANT"). CITY and CONSULTANT may be referred to individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, CITY requires _____ services in connection with the _____;

WHEREAS, CONSULTANT is qualified to perform such services; and

WHEREAS, CONSULTANT has agreed to provide CITY with such services on the terms and conditions set forth herein.

NOW, THEREFORE, for the considerations hereinafter set forth, CONSULTANT and CITY agree as follows:

ARTICLE 1 - SCOPE OF SERVICES

- 1.1. **Scope of Work.** CONSULTANT agrees to furnish the services set forth in Exhibit A, Scope of Work, which is attached hereto and incorporated herein (the "Services").
- 1.2. **Compliance with Law.** The Services shall be performed in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and orders.
- 1.3. **Time is of the Essence.** CONSULTANT agrees to diligently prosecute the Services. In the performance of this Agreement, time is of the essence.
- 1.4. **Professional Competence.** CONSULTANT represents that it has the professional skills necessary to perform the Services and that it will perform the Services in a skillful and professional manner. CONSULTANT represents that it has all the necessary licenses to perform the Services and shall maintain them throughout the term of this Agreement. CONSULTANT agrees that the Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged, in the same or similar geographical area in which CONSULTANT practices its profession, and will prepare all work products required by this Agreement in accordance with such standards. CITY and CONSULTANT agree that CONSULTANT is in responsible charge of the Services and CITY shall have no control over the method or means of performance of the Services. Acceptance by CITY of the Services does not operate as a release of CONSULTANT from professional responsibility for the Services performed.

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- 1.5. **Independent Contractor.** CONSULTANT is an independent contractor and not an employee of CITY. CONSULTANT expressly warrants that it will not represent that it is an employee of CITY. Persons employed or utilized by CONSULTANT in the performance of the Services will not be employees or agents of CITY. CONSULTANT is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 1.6. **Confidentiality.** CONSULTANT agrees to maintain in confidence and not disclose to any person, firm, governmental entity, or corporation, without CITY's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of CITY. CONSULTANT further agrees to maintain in confidence and not to disclose to any person, firm, governmental entity, or corporation any data, information, technology, or material developed or obtained by CONSULTANT during the performance of the Services. The covenants contained in this Section 1.6 shall survive the termination of this Agreement for whatever cause.
- 1.7. **Ownership of Material.** Any reports and other material prepared by or on behalf of CONSULTANT under this Agreement (collectively, the "Documents") shall be and remain the property of CITY. All Documents not already provided to CITY shall be delivered to CITY on the date of termination of this Agreement for any reason. The Documents may be used by CITY and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes CITY may deem appropriate without further employment of or payment of any compensation to CONSULTANT.
- 1.8. **Documentation.** CONSULTANT shall keep and maintain full and complete documentation and accounting records, employee time sheets, and correspondence pertaining to the performance of the Services, and CONSULTANT shall make such documents available for review and/or audit by CITY and CITY's representatives at all reasonable times for at least four years after the termination of this Agreement or completion of the Services.
- 1.9. **Testimony.** CONSULTANT agrees to testify at CITY's request if litigation is brought against CITY in connection with the Services. Unless the action is brought by CONSULTANT or is based upon CONSULTANT's negligence, CITY will compensate CONSULTANT for the preparation and the testimony at CONSULTANT's standard hourly rates.

ARTICLE 2 - COMPENSATION

- 2.1. **Compensation.** Compensation for the Services shall be in accordance with Exhibit B, Compensation, attached hereto and incorporated herein. It is agreed that the compensation for the Services shall not exceed \$_____ ("Cost Ceiling").
- 2.2. **Invoices.** CONSULTANT shall submit monthly invoices in a form satisfactory to CITY on or before the tenth day of each month for Services provided during the preceding month. CONSULTANT shall submit time and cost records as necessary to substantiate performance of the Services. Within 35 days after receipt of each such invoice, CITY

ATTACHMENT 1

shall verify the accuracy of the invoice, correct the charges where appropriate and as discussed and mutually agreed with CONSULTANT, and make payment to CONSULTANT in an amount equal to the amount of such invoice, as verified or corrected by CITY. No payment hereunder shall be construed as evidence of acceptance of any of CONSULTANT's work. CITY reserves the right to withhold payment from CONSULTANT on account of Services not performed satisfactorily, delays in CONSULTANT's performance of Services, or other defaults hereunder. CONSULTANT shall not stop or delay performance of the Services under this Agreement on account of payment disputes with CITY.

- 2.3. **Status Reports.** Together with each monthly invoice, CONSULTANT shall submit a status report detailing the amount expended on the Services to that date and the remaining amount to be expended before the Cost Ceiling is reached. CONSULTANT shall notify CITY in writing when payments have reached 90 percent of the Cost Ceiling.
- 2.4. **Withholding.** In lieu of holding retention, CITY shall withhold CONSULTANT's final payment until the Services are complete and CITY has received all Documents. CONSULTANT shall diligently continue and complete performance of the Services if the Services are not complete at the time CONSULTANT has performed services up to the Cost Ceiling.

ARTICLE 3 - TIME OF PERFORMANCE

- 3.1. **Effective Date.** This Agreement shall become effective upon execution of the second signature and shall remain in full force and effect until the Services are completed (the "Term"). CONSULTANT agrees to complete all services by _____.
- 3.2. **Termination.** This Agreement may be terminated at any time by CITY upon written notice to CONSULTANT.
- 3.3. **Final Payment.** CONSULTANT shall be entitled to compensation for Services performed up to the time of such termination, it being understood that any payments are full compensation for the Services rendered under this Agreement.
- 3.4. **Other Remedies.** Nothing in this Article 3 shall be deemed to limit the respective rights of the parties to terminate this Agreement for cause or otherwise to exercise any rights or pursue any remedies which may accrue to them.

ARTICLE 4 - DESIGNATED CONTACTS

- 4.1. **CITY Contact.** CITY designates _____, its _____, as its contact who shall be responsible for administering and interpreting the terms and conditions of this Agreement, for matters relating to CONSULTANT's performance under this Agreement, and for liaison and coordination between CITY and CONSULTANT. In the event CITY wishes to make a change in CITY's representative, CITY will notify CONSULTANT of the change in writing.

ATTACHMENT 1

- 4.2. **CONSULTANT Contact.** CONSULTANT designates _____ as its contact, who shall have immediate responsibility for the performance of the Services and for all matters relating to performance under this Agreement. Any change in CONSULTANT's designated contact shall be subject to written approval by CITY.

ARTICLE 5 - INDEMNIFICATION AND INSURANCE

- 5.1. **Indemnification.** CONSULTANT shall, to the fullest extent allowed by law, with respect to claims, liability, loss, damage, costs, or expenses, including reasonable attorney's and expert witness fees, awards, fines, penalties, or judgments, arising out of or relating to the Services (collectively "Claims"), defend, indemnify, and hold harmless CITY, its Officials, officers, employees and agents (the "CITY Parties"), except to the extent the Claims are attributable to CITY Parties' gross negligence or willful misconduct. CONSULTANT shall defend the CITY Parties as required by California Civil Code Section 2778, and with counsel reasonably acceptable to those parties. CONSULTANT shall have no right to seek reimbursement from the CITY Parties for the costs of defense.

If CONSULTANT is a "design professional," as defined in California Civil Code Section 2782.8(c), CONSULTANT shall indemnify, defend, and hold the Indemnitees harmless against Liability only to the extent such Liability arises out of, pertains to, or relates to CONSULTANT's negligence, recklessness, or willful misconduct. In such an event, the cost to defend charged to CONSULTANT shall not exceed CONSULTANT's proportionate percentage of fault.

The obligations contained in this Section 5.1 shall survive the termination of this Agreement for whatever cause for the full period of time allowed by law and shall not in any way be limited by the insurance requirements of this Agreement.

- 5.2. **Health and Safety.** CONSULTANT may perform part of the Services at sites which contain unknown working conditions and contaminated materials. CONSULTANT shall be solely responsible for the health and safety of CONSULTANT's employees during the performance of the Services.
- 5.3. **Insurance.** CONSULTANT shall, at minimum, maintain the following levels of insurance during the term of this Agreement, with insurers licensed to do business in the State of California and with a Best's rating of no less than A:VII. Prior to the execution of the Agreement, CONSULTANT shall provide proof of insurance to CITY demonstrating compliance with requirements specified herein. CONSULTANT shall provide CITY thirty (30) days prior written notice of termination or material change in coverage and ten (10) days' prior written notice of cancellation for non-payment. The City of Piedmont, its Council Members, directors, officers, agents and employees shall be named as additional insureds. CONSULTANT shall provide CITY with an additional insured certificate for each such insurance coverage.
- A. Professional Liability Insurance (or E&O - Errors and Omissions). \$2,000,000 (per claim)

ATTACHMENT 1

- B. Worker's Compensation Insurance. \$1,000,000
- C. Automobile Insurance (CA 00 01). \$2,000,000
- D. General Liability and Property Damage Insurance (ISO CGL CG 00 01).
\$2,000,000 (single limit per occurrence)

CONSULTANT shall notify CITY within one (1) business day after it has been served or notified of any claim or legal action that in any way involves CONSULTANT and CITY, even if CITY is not named in the claim or as a defendant in any legal action, if such notification comes to Independent Contractor from any source other than the City. Independent Contractor shall also promptly provide City, within the same time period set forth in the prior sentence, with copies of any document or information it has regarding such claim or legal action. If CONSULTANT fails to maintain insurance coverage or provided insurance documentation which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. CITY, at its sole option, may terminate this Agreement and obtain damages from CONSULTANT resulting from said breach. Alternatively, CITY may purchase the required insurance coverage, and without further notice to CONSULTANT, may deduct from sums due to CONSULTANT any premium costs advanced by CITY for such insurance. These remedies shall be in addition to any other remedies available to CITY.

ARTICLE 6 - NOTICES

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by facsimile or reputable overnight courier and shall be deemed received upon the earlier of: (1) if personally delivered, the date of delivery to the address of the person to receive such notice; (2) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day; (3) if sent by facsimile, with the original sent on the same day by overnight courier, the date on which the facsimile is received, provided it is before 5:00 P.M. Pacific Time; or (4) if sent electronically, the date of delivery on the confirmed read receipt. Notice of change of address shall be given by written notice in the manner described in this Article 6. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

If to CITY:	City Administrator
	[ADDRESS]
	Phone:
	Facsimile:
	Email:

ATTACHMENT 1

If to CONSULTANT: _____

Phone: _____
Facsimile: _____
Email: _____

ARTICLE 7 - MISCELLANEOUS

- 7.1. **Conflict of Interest Prohibition.** CITY and CONSULTANT will comply with the requirements of the CITY's Conflict of Interest Code adopted pursuant to California Government Code §87300 et seq., the Political Reform Act (California Government Code §81000 et seq.), the regulations promulgated by the Fair Political Practices Commission (Title 2, §18110 et seq. of the California Code of Regulations), California Government Code §1090 et seq., and any other ethics laws applicable to the performance of the Services and/or this Agreement. CONSULTANT may be required to file with the CITY Clerk a completed Form 700 before commencing performance of the Services unless the CITY Clerk determines that completion of a Form 700 is not required, pursuant to CITY's Conflict of Interest Code. Form 700 forms are available from the CITY Clerk.

CONSULTANT may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to CONSULTANT's obligations pursuant to this Agreement. CONSULTANT agrees to cooperate fully with CITY and to provide any necessary and appropriate information requested by CITY or any authorized representative concerning potential conflicts of interest or prohibitions concerning CONSULTANT's obligations pursuant to this Agreement.

CONSULTANT may not employ any CITY official, officer or employee in the performance of the Services, nor may any official, officer or employee of CITY have any financial interest in this Agreement that would violate California Government Code §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 CITY. If CONSULTANT was an employee, agent, appointee, or official of 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 CONSULTANT's performance of the Services, including reimbursement of expenses, and CONSULTANT will be required to reimburse CITY for any sums paid to CONSULTANT under this Agreement. CONSULTANT understands that, in addition to the foregoing, penalties for violating Government Code §1090 may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by CONSULTANT of the requirements of this provision will constitute a material breach of this Agreement, and the CITY reserves all its rights and remedies at law and equity concerning any such violations.

ATTACHMENT 1

- 7.2. **Subcontracting.** CONSULTANT may subcontract portions of the Services upon the prior written approval of CITY. CONSULTANT will be solely responsible for payment of such subcontract Services. No contractual relationship will exist between any such subcontractors of CONSULTANT and CITY. CONSULTANT's subcontractors agree to be bound to CONSULTANT and CITY in the same manner and to the same extent as CONSULTANT is bound to CITY under the Agreement. CONSULTANT's subcontractors further agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the CITY indemnity and insurance provisions will be furnished to CONSULTANT's subcontractors upon request.
- 7.3. **Entire Agreement.** This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by an amendment in writing signed by each party.
- 7.4. **No Assignment.** The Services are deemed unique and neither party shall assign, transfer, subcontract or otherwise substitute its interest in this Agreement or any of its obligations hereunder without the prior written consent of the other party. As limited by this Section 7.2, this Agreement is to be binding on the successors and assigns of the parties hereto.
- 7.5. **Severability.** If any part of this Agreement is determined to be unconstitutional, invalid or beyond the authority of either party, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.
- 7.6. **Counterparts.** This Agreement may be signed in counterparts and, when fully signed, such counterparts shall have the same effect as if signed in one document.
- 7.7. **Choice of Law.** This Agreement and all matters relating to it shall be governed by the laws of the State of California without reference to its choice of laws principles and venue shall be in the appropriate court in San Mateo County, California.
- 7.8. **Waiver.** No failure on the part of either Party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. A waiver by either CITY or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other further breach.
- 7.9. **Mediation.** In the event the parties are unable to resolve a dispute arising under this Agreement through good faith negotiations, the parties agree to submit the matter to mediation with a mutually agreeable mediator. Prior to the mediation, the parties shall exchange any documents reasonably necessary to resolve the matter to be mediated.

ATTACHMENT 1

- 7.10. **Attorney's Fees.** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.
- 7.11. **Interpretation.** In the event this Agreement is ever construed in any dispute between the parties, it and each of its provisions shall be construed without regard to the party or parties responsible for its preparation and shall be deemed to have been prepared jointly by the parties. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement.
- 7.12. **Authority.** Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.
- 7.13. **Third Parties.** Nothing contained in this Agreement shall create a contractual relationship with, or cause of action in favor of, a third party against either the CITY or CONSULTANT. CONSULTANT's Services hereunder are being performed solely for the benefit of CITY. CITY shall be an express third-party beneficiary of all contracts between CONSULTANT and any subcontractors or subconsultants in connection with any services performed in connection with, or in furtherance of, this Agreement.

* * *

[Signatures on following page]

ATTACHMENT 1

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CITY OF PIEDMONT

By: _____
Sara Lillevand, City Administrator

Date: _____

CONSULTANT

By: _____

Date: _____

By: _____

Date: _____

Attest

By: _____
John Tulloch, City Clerk

Approved As To Form

By: _____
Michelle Marchetta Kenyon, City Attorney

ATTACHMENT 1

EXHIBIT A

SCOPE OF WORK

ATTACHMENT 1

EXHIBIT B

Compensation

CITY shall pay CONSULTANT for the Services on a cost reimbursement basis, up to the Cost Ceiling (as defined in Section 2.1 of the Agreement). CONSULTANT agrees to use appropriate methods to contain its fees and costs under this Agreement. Compensation shall include only the following costs, which shall all count toward the Cost Ceiling:

1. Direct Labor

Direct labor costs shall be the total number of hours worked on the job by each employee times the agreed hourly rate for such employee's labor as set forth on the attached Exhibit B-1. CITY will pay all personnel at their regular straight-time rate, including any work performed on overtime or on holidays or weekends.

2. Subconsultant Costs

Subconsultant services shall be billed at cost plus a 10 percent markup. CONSULTANT shall provide a copy of each subconsultant's invoice for which it seeks payment from CITY with any invoice in which such payment is requested.

3. Other Direct Costs

The following categories of costs are eligible for reimbursement, which shall be made at the actual cost to CONSULTANT without any additional mark-up:

a. Reasonable living and traveling expenses of employees when away from home office on business in its prosecution of the Services. CONSULTANT must have prior approval of CITY to be reimbursed for these expenses.

b. Automobile expenses for personal vehicle use, if necessary, at the IRS approved mileage rate.

c. Reproduction of drawings and specifications by CONSULTANT as required under this Agreement, at rates prevailing in this community for bulk reproduction or at other reasonable rates approved by CITY.

d. Special overnight delivery or messenger services.

Payments to CONSULTANT for reimbursable costs/expenses will be made only after the specific costs/expenses have been incurred and CONSULTANT has submitted substantiating documentation, such as copies of paid invoices or other documentation confirming that such costs/expenses have been incurred.

ATTACHMENT 1

EXHIBIT B-1