

REQUEST FOR STATEMENT OF QUALIFICATIONS

for

AS-NEEDED ENVIRONMENTAL REVIEW SERVICES

in

Millbrae, California

Response due by February 8, 2019 at 4:00 PM

REQUEST FOR STATEMENT OF QUALIFICATIONS (RFQ)

AS-NEEDED ENVIRONMENTAL REVIEW SERVICES

A. PURPOSE OF THIS RFQ

The City will use this selection process as follows:

- Establish Consultant lists for each Discipline, depending on the City's needs, valid for three (3) years. The validity of the established list(s) may be extended by two (2) more years upon City approval.
- Execute "on call" professional services contracts for selected Disciplines.
- Based on specific needs, City will use these established lists for further development of project specific contracts.
- The contracts will be in the form of a Standard Agreement for Professional Consulting Services.
- The Agreements(s) may have an initial term of up to three (3) years and may be extended by an additional two (2) years with City approval.
- Each Agreement will include a negotiated rate schedule established at the time of its execution. The rates established at the time of contract execution will be valid for the initial term of one (1) year. Revised rates may be re-negotiated annually. No travel time or mileage costs will be entertained in the negotiated fees. Firms are expected to absorb these costs as part of its overhead costs.
- City, at any time, may abolish the list(s) established using this process prior to the expiration period and initiate a new Consultant selection process to establish new list(s).
- City may issue separate future solicitations for similar services for project specific professional services outside this process.
- City is not obligated to issue any contract(s) with this process.

The City of Millbrae reserves the right to reject any or all responses received as a result of this solicitation; to extend the submission due date for; to modify, amend, reissue or rewrite this document; and to procure any or all services by other means.

B. BACKGROUND

Millbrae, incorporated in 1948 as a General Law City, encompasses approximately 3.5 square miles and is located in the mid San Francisco peninsula in San Mateo County. The City is governed by a five-member City Council with members selecting a Mayor for a one year term and has an appointed City Manager. The City population of 22,000 has high property values and a high median household income. There has been a great emphasis on economic development particularly surrounding the Millbrae BART Station and along the El Camino Real corridor. Other information regarding the City of Millbrae can be found on the City's website at www.ci.millbrae.ca.us

The City of Millbrae is a full service city providing water, wastewater collection and treatment, storm water collection and other typical municipal services to its residents. The City also has 12 parks and over 68 acres of open space.

The City of Millbrae, Community Development Department desires to obtain professional and technical consultants to provide as-needed specialized in municipal environmental review services, in compliance with the California Environmental Quality Act (CEQA), to supplement staff in the implementation of projects and in conjunction with new development reviews. The desired services include, but are not limited to, preparation of initial studies, negative declarations, mitigated negative declarations, and full environmental impact reports and mitigation monitoring report preparation and compliance review. The contract for these services will be established for a period not to exceed three years.

The Consultant selected will provide professional consulting services as specified in this STATEMENT OF QUALIFICATIONS (SOQ), supplemented by specific scope of work for each task, by direct assignment of Consultant's personnel or its Sub-Consultants. Consultants who wish to be considered for multiple disciplines must submit a separate response for each Discipline in accordance with the submittal procedures outlined in this solicitation.

The City intends to enter into master agreements with several consultants that will allow the City to select the appropriate consultants for specific task orders when the needs arise.

Interested firms should submit three (3) copies of their proposal to: City of Millbrae, Community Development Department, Attention: Bradley J. Misner, AICP, Interim Community Development Director, 621 Magnolia Avenue, Millbrae, CA 94030 no later than February 8, 2019.

The proposal should be in a format identified in Section V of this SOQ and limited to a total of twenty (20) double-sided pages.

The following scope of work is not intended to be exhaustive, but a representative requirement of the work. The proposer is encouraged to develop a more detailed or appropriate scope of work that it believes will ensure more successful completion of the work.

C. QUALIFICATIONS

Under general qualifications, the Consultant must have the following:

1. Demonstrated experience and knowledge of applicable local, state, and federal codes, laws, and acceptable practices applicable to the City.
2. Demonstrated ability to coordinate and manage the work between various disciplines as required. Demonstrate sufficient resources to be able to respond to the City's request in a timely and efficient manner.
3. Possess appropriate and valid State of California-issued license or registration to practice in specific area of discipline.
4. Demonstrated knowledge and capability and capacity to produce project documents in electronic format compatible with the City's system.

This City of Millbrae is an Equal Opportunity Employer. Firms that are shortlisted, as part of the selection process, shall comply with all applicable laws. Respondents to this RFQ should be aware that certain projects contemplated under the City's Annual CIP are also funded in part by federal aid funds and must comply with Disadvantaged Business Enterprise (DBE) program. There are no M/WBE and/or DBE requirements for this RFQ, but maybe for subsequently issued project specific requests for proposals resulting from this solicitation.

D. SCOPE OF SERVICES

This professional services contract would enable the City to obtain professional and technical assistance on a short notice, on an as-needed basis from the selected Consultants. The City intends to select more than one firm with whom the City would contract for services on an as-needed basis. The City may enter into master agreements with selected firms for all or specified disciplines in accordance to consultants' qualifications. The master agreements will be valid for three years. The City will issue specific task orders to specific firms as the needs arise. Anticipated task orders include review of proposed development projects for compliance with the California Environmental Quality Act (CEQA), including but not limited to, preparation of Initial Studies, Negative Declarations, Mitigated Negative Declarations, and Environmental Impact Reports, along with associated Mitigation Monitoring Programs and noticing and filing requirements. Consultant would also be expected to assist the City with the overall strategic approach related to the preparation of the aforementioned documentation including, but not limited to, ensuring consistency with previously approved or in-progress environmental analysis, ensuring all Environmental Factor areas of Appendix G of the CEQA guidelines are reviewed consistent with local or regional thresholds of significance and/or best practices. Consultant could also be engaged to help with project management related to the preparation of environmental documents including the management, creation, and monitoring of contracts, other consultants, and sub-consultants, peer review of reports, and representation the City in project meetings, at public hearings, and at community engagement and outreach meetings.

The City will appoint designated City Staff and/or Consultants to provide contract support services under the direction of the Director of Community Development or designated City Project Manager. The Consultant must be able to provide a broad range of environmental report review and preparation services and staff to complete task/project orders issued by the City by direct assignment of its own personnel or through Sub-Consultants, including, but not limited to consultation, planning, administration, specialized analytical studies, and other miscellaneous municipal report writing.

Task/project orders may be directly assigned to a selected Consultant or assigned after review of competitive letter proposals from the selected firms who will be under contract with the City. The task/project may include, but is not limited to:

- **Environmental Report Services:** The qualified firms will provide consulting services on as needed, on call basis for projects to be determined during the term of the agreement. The scope of work for this contract will vary and will be requested on a task order basis as need arises and will be at the discretion of the City. Consultant will provide services for various projects at the request of City Staff. Environmental Report Service requests may be, but not limited to the preparation of:
 - Environmental Impact Reports
 - Mitigated Negative Declarations
 - Negative Declarations
 - Initial Studies
 - Exemption Determinations and supporting documentation
 - Categorical Exemptions and supporting documentation
 - Mitigation Monitoring Reports
 - Legal Notices

E. PROJECT CONTROLS:

The Consultant shall be available for consultation with the City's Project Manager at all reasonable times and shall immediately advise the City's Project Manager of requirements, technical decisions, or problems that may materially affect the project scope, schedule, or cost of an assignment.

The Consultant shall be paid by the City per Section 10 "Compensation" and Section 11 "Manner of Payment" of the AGREEMENT. The Consultant shall not accept any payment from private parties for work assigned by the City without the prior written consent of the City. Typically, private parties needing the services contained within this scope of work are required to provide the City with a minimum deposit to cover the cost of the Consultant's work. The City will consult the Consultant to determine the amount of the deposit needed. The Consultant is paid by the City from these deposited funds. The unused amount of the deposit is returned by the City to the private party.

In performing the scope of services, the Consultant shall execute, as a minimum, the management and project controls described below:

The Consultant shall designate a Project Manager, acceptable to the City, who will be responsible for initiating and implementing the work and maintaining effective communications among the Consultant, the City, and other involved agencies and organizations.

During the course of the project and to support each and every invoice, the Consultant shall furnish Control Reports that shall include the following:

- A. A Narrative Progress Report must include:
 - Specific accomplishments during the reporting period.
 - Problems encountered or anticipated.
 - Accomplishments scheduled for the next reported period.
 - Results of any significant activities.

- B. A Cost Report for each task showing:
 - Current period and cumulative expenditures to date.
 - Estimated cost at completion.
 - Approved budget.
 - A comparison of the estimated cost at completion with the approved budget to show any variance.
 - Estimated date to complete.

Control Reports are to be submitted monthly, together with invoice submittal, unless directed otherwise by the City's Project Manager. The invoice shall be accompanied by a cost breakdown showing specific persons and classifications being billed for the period. Failure of Consultant to submit and update plans or furnish required reports as directed shall constitute cause for suspension of payment of invoices.

F. CONSULTANT SELECTION PROCESS:

Selection Process

All responses to this RFQ meeting the submittal requirements will be evaluated by a review committee. The names of the review committee members *will not* be revealed. Individual or composite ratings by the review committee members *will not* be revealed. Written qualifications will be reviewed and ranked by the review committee and ranked in accordance with the rating criteria reflected in this RFQ. All firms will be notified, if they have been shortlisted via email. Following the selection committee's evaluation process and determination of firms short-listed the City may contact persons involved in former or current projects by responding firms, including but not limited to reference contacts.

Based on City needs, the City may choose to invite one or more firms to prepare a fee proposal for specific projects immediately or during the duration of the established list. If negotiations with the top ranked firm are not completed within ten (10) days, the City will move to negotiate with the second top ranked firm. The negotiations process will be completed when a contract is agreed upon and executed.

The City reserves the right to modify the scopes of the projects and the related services at any time based on the best interests of the City. The City may, at its option, choose to issue a master services agreement with one or more qualified firms.

All cost associated with the preparation and responses, including presentation materials for interviews, if conducted, related to this RFQ shall be borne solely by the Consultant and at no cost to the City.

Business License Requirements: The consultant and their subconsultants must hold or obtain business licenses in the City for any work within City limits.

Selection Criteria

Some of the criteria for selection of the consultant team for each of the various disciplines being solicited for are listed below, not necessarily in order of importance and include but are not limited to:

- 1) The firm's qualifications and the organization and qualifications of the proposed project team members to perform the Services described in the SOQ including comparable experience on projects of similar scope and magnitude.
- 2) Success and range of experience of each firm, especially with Cities or clients with similar projects, including quality of work, success in meeting project deadlines, success in meeting project budget, and related criteria
- 3) Firm's overall professional qualifications in discipline. Firms with less than 5 years as a business will NOT be considered
- 4) Work program for carrying out assignments and ability to adhere to schedules and budgets
- 5) Ability to adapt to changes and factors throughout the process that may affect the delivery of projects or program outcome

G. PROPOSAL CONTENTS:

The City is interested in information to address the points below. Brief responses are acceptable and encouraged.

- 1) Date of Submittal
- 2) Firm's structure, legal name, type of entity, background, general qualifications, include employee count by title and profession, year firm was established, contact information
- 3) How consultant delivers successful, high quality projects while working with low bid contractors, including quality control
- 4) Please attach individual resumes, with relevant experience working with public entities, specific role and responsibility, number of similar projects completed within the last 5 years. Also include the primary point of contact's name, address, telephone number and email address, as well as an alternate point of contact for each qualification submitted
- 5) Firm's current work load and backlog

- 6) Recent experience of the firm in providing services for representative projects identify costs and project complexities that distinguishes your firm's services. Provide the name, address and phone number for owner/client, contractor, operator/facilities manager, or other person that may serve as references
- 7) Subconsultants that would be utilized and their specific role. Include firm qualifications
- 8) Location of the office(s) where work will be performed. Professional license and registration to practice specific discipline in the State of California
- 9) Please identify any recent or pending litigation
- 10) Confirmation that the required City standard /insurance levels are acceptable

To demonstrate its qualifications and its ability to perform the Consultant services scoped, Consultant shall submit a proposal containing the information listed below. Extensive and elaborate proposals are not needed. Complete but concise and clear proposals are desired. Please limit the proposal to no more than 20 double-sided pages with no less than 10 point font. Appendices are limited to a maximum of 10 double-sided pages.

- A. Executive Summary - A brief summary containing highlights of Consultant's proposed approach to the services described in the SOQ, including a statement of its understanding
- B. of the requested services. If the General Approach is not long and complex, an Executive Summary is not essential.
- C. General Approach - A presentation of the proposed approach for performing the services, describing how the firm would be organized and an approach structured to ensure:
 1. Quality Performance.
 2. Responsiveness to City's staff and Project Requirements.
- D. Management Plan - A Management Plan describing how the services would be organized, including:
 1. An organization chart showing the proposed relationships among design personnel, key employees for the project, field personnel, and any Sub- Consultants.
 2. Name, position, summary of qualifications, and related experience and proposed responsibilities of the Project Manager and key personnel on the proposed project team. Provide references with phone numbers for Project Manager.
 3. Proposed plan for quality and cost control to enhance the service, responsiveness to project needs, and to reduce project costs.
 4. Task Schedules - for each specified task, the Consultant shall prepare a Preliminary Task Schedule showing the work to be completed. At key points in the project design, allow five (5) working days for City review and formal response.
- E. Consultant Firm Information - Consultant shall present information listed above about the firm and to demonstrate its experience on similar projects to that contemplated in the RFP. Information presented should be brief, should not include any unnecessary promotional material, and should be presented in the sequence listed herein:

- F. Compensation - The Consultant's fee shall be set out in Section 10 of the City's Standard Agreement for Professional Engineering Consultant Services. The Consultant shall submit a fee schedule with the proposal. The hour rates shall include overhead, contingencies, local travel, in-house reproduction, local communications including faxes, readiness to serve and profit. Payment will be on a time and material basis with a budget not to exceed figure for each project assigned, or lump sum as determined in advance based on scope of work.

Reimbursement for any approved direct non-salary expenses shall be paid separately from Direct Labor at rates in the Agreement or at actual invoiced cost, plus a 10% processing charge. The proposal shall be explicit in identifying the kinds of costs that will not be included in the multiplier.

Markup on Subconsultant work shall be limited to a maximum of 10% of the Subconsultant Cost. The proposal should indicate the proposed mark-up.

- G. Standard Terms and Conditions - Consultant shall state its willingness to accept the terms and conditions in the Standard Agreement for Professional Consulting Services. A copy of which is attached. Consultant shall list items to which it takes exception, and provide alternate working, if needed. Insurance and other essential requirements are set out in the Standard Agreement.

- H. Proposal Submittal Procedure - Consultant shall submit its proposal in accordance with the following requirements:

1. The proposal shall be transmitted with a cover letter that conforms to the following:
 - (a) Is signed by an officer authorized to bind the Consultant contractually.
 - (b) Confirms the receipt of the SOQ and all Addenda thereto.
 - (c) States that the proposal is firm for a 90-day period.
 - (d) Provides the name, title, address and telephone number of the individual to whom correspondence and other contacts should be directed during the consultant selection process.
 - (e) Provides the name, title, address and telephone number of the individual who will negotiate with the City and is authorized to contractually bind the firm.
2. Interested firms shall submit three (3) copies of the proposal.
3. The proposal shall be addressed to:
Bradley J. Misner, AICP, Interim Community Development Director
City of Millbrae
621 Magnolia Avenue, Millbrae, CA 94030

4. The proposal must be received at the above address no later than February 8, 2019.
5. Questions pertaining to the RFP, the Scope of Services or the Consultant's proposal should be addressed in writing to Bradley J. Misner, AICP, Interim Community Development Director, at Bmisner@ci.millbrae.ca.us no later than January 21, 2019.

Attachment: Exhibit 1 – Agreement for Consultant Services
Exhibit 2 – Acknowledgement Form

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of the _____ day of _____, 20____, by and between the City of Millbrae ("CITY") and _____("CONSULTANT").

WHEREAS, the CITY desires to obtain professional services for _____ and has issued a Request for Proposals dated _____, 20__, a copy of which is attached and incorporated as Exhibit A.

WHEREAS, the CONSULTANT desires to furnish such services and has submitted a Proposal dated _____, a copy of which is attached and incorporated as Exhibit B.

NOW, THEREFORE, the parties agree as follows:

1. RENDITION OF SERVICES. The CONSULTANT agrees to provide professional services to the CITY in accordance with the terms and conditions of this Agreement ("Services"). In the performance of its Services, CONSULTANT represents that it has and will exercise that degree of professional care, skill, efficiency and judgment ordinarily employed by consultants providing similar services. CONSULTANT further represents and warrants that it holds currently in effect all licenses, registrations, and certifications in good standing that may be required under applicable law or regulations to perform these services and agrees to retain such licenses, registrations, and certifications in active status throughout the duration of this engagement.

SCOPE OF SERVICES. The scope of the CONSULTANT's Services shall consist of the services set forth in Exhibit A, as supplemented by Exhibit B except when inconsistent with Exhibit A.

2. TERM. The term of this Agreement will be for a term of ___years commencing upon the Effective Date of the Agreement. The CONSULTANT shall furnish the CITY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Contract Specifications.

The CITY reserves the right, in its sole discretion, to exercise up to ___one- year option term(s) to extend the Agreement, pursuant to the terms of Section 4, Compensation. If the CITY determines to exercise the option term(s), the CITY will give the CONSULTANT at least 30 days' written notice of its determination.

It is understood that the term of the Agreement, and any option term granted thereto as specified herein are subject to the CITY's right to terminate the Agreement in accordance with Section 13 of this Agreement.

3. COMPENSATION. [USE THIS CLAUSE FOR NOT-TO-EXCEED/LUMP SUM COMPENSATION]

The CONSULTANT agrees to perform all of the services included in Section 2 for a total all-inclusive sum not-to-exceed fee of _____

6. CITY REPRESENTATIVE. Except when approval or other action is required to be given or taken by the City Council, the CITY Manager, or such person or persons as he shall designate in writing from time to time, shall represent and act for the CITY.

7. CONSULTANT'S STATUS. Neither the CONSULTANT nor any party contracting with the CONSULTANT shall be deemed to be an agent or employee of the CITY. The CONSULTANT is and shall be an independent contractor, and the legal relationship of any person performing services for the CONSULTANT's shall be one solely between said parties.

8. OWNERSHIP OF WORK. All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for the services to be performed by CONSULTANT shall be and are the property of the CITY. The CITY shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the CONSULTANT or in the hands of any subconsultant upon completion or termination of the work shall be immediately delivered to the CITY. If any materials are lost, damaged, or destroyed before final delivery to the CITY, the CONSULTANT shall replace them at its own expense and the CONSULTANT assumes all risks of loss, damage, or destruction of or to such materials. The CONSULTANT may retain a copy of all material produced under this Agreement for its use in its general business activities.

Any and all rights, title, and interest (including without limitation copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to the CITY. The CONSULTANT agrees to execute any additional documents which may be necessary to evidence such assignment.

The CONSULTANT represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

The CONSULTANT may retain a copy of all material produced under this agreement for its use in its general business activities.

9. CHANGES. The CITY may, at any time, by written order, make changes within the scope of work and Services described in this Agreement. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed shall be made in the limit on compensation as set forth in Section 4 or in the time of required performance as set forth in Section 3, or both. In the event that CONSULTANT encounters any unanticipated conditions or contingencies that may affect the scope of work or Services and result in an adjustment in the amount of compensation specified herein, CONSULTANT shall so advise the CITY immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in compensation. Such notice shall be given the CITY prior to the time that CONSULTANT performs work or services related to the proposed adjustment in compensation. Any and all pertinent changes shall be expressed in a written supplement to this Agreement prior to implementation of such changes. Failure to provide written notice and receive CITY approval for extra work prior to performing extra work may, at the CITY's sole discretion, result in nonpayment of the invoices reflecting such work.

10. RESPONSIBILITY; INDEMNIFICATION. Where the law establishes a standard of care for CONSULTANT's professional services, and to the extent the CONSULTANT breaches or fails to meet such established standard of care, or is alleged to have breached or failed to meet such standard of care, CONSULTANT shall, to the fullest extent allowed by law, with respect to all services performed in connection with the Agreement, indemnify, defend, and hold harmless the CITY and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT or CONSULTANT's employees, officers, officials, agents or independent contractors. CONSULTANT shall not be obligated under this Agreement to indemnify CITY to the extent that the damage is caused by the active negligence or willful misconduct of CITY, its agents or employees. Such costs and expenses shall include reasonable attorneys' fees of counsel of CITY's choice, expert fees and all other costs and fees of litigation. This indemnity shall survive the termination of this Agreement.

11. INSURANCE. The insurance requirements specified in this Section shall cover CONSULTANT's own liability and any liability arising out of work or services performed under this Agreement by any subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") that CONSULTANT authorizes to work under this Agreement. CONSULTANT is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. CONSULTANT is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks. To the extent that any Agent does not procure and maintain such insurance coverage, CONSULTANT shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONSULTANT's indemnity obligation as to itself or any of its Agents in the absence of coverage.

(i) Workers' Compensation. CONSULTANT shall procure and maintain at all times during the performance of work Workers' Compensation Insurance in conformance with the laws of the State of California, and federal laws where applicable. Employee's Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease. Such policy shall contain a waiver of subrogation in favor of the CITY and its Councilmembers, officers, employees, and agents and their successors and assignees, as they now or as they may hereafter be constituted, singly, jointly or severally.

(ii) Bodily Injury, Death and Property Damage Liability Insurance.

(a) Commercial General Liability. CONSULTANT also shall maintain at all times during the performance of this Agreement General Liability Insurance providing bodily injury and property damage coverage with a combined single limit for each occurrence or claim of One Million Dollars (\$1,000,000) and a general aggregate limit of One Million Dollars (\$1,000,000, naming as additional insureds, in connection with CONSULTANT's activities, the CITY and its Councilmembers, officers, employees, and agents. This insurance shall include premises and operations, broad form contractual liability, personal injury, products and completed operation, and broad form property damage coverage.

(b) Business Automobile Liability. CONSULTANT shall maintain business automobile liability insurance of not less than One Million Dollars (\$1,000,000) per occurrence.

(c) The Commercial General Liability and Automobile Liability Insurance policies will be primary insurance and the insurance companies providing such policies will be liable for the full amount of any loss or claim which CONSULTANT is liable up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the City. The Commercial General Liability and Automobile Liability Insurance policies shall include a cross liability endorsement or separation of interest clause and shall stipulate that the inclusion of the City of Millbrae and its Councilmembers, officers, employees, engineer and agents as additional insureds shall not in any way affect their rights as respects to any claim, demand, suit or judgment made, brought or recovered against CONSULTANT. Said policies shall protect CONSULTANT and City in the same manner as if a separate policy had been issued to each, but nothing in said policy policies shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

(iii) Professional Liability Insurance. CONSULTANT also shall maintain Professional Liability Insurance covering Consultant's performance under this Agreement with a limit of liability of One Million Dollars (\$1,000,000) for any one claim. This insurance shall be applicable to claims arising out of or related to the performance of this Agreement.

(iv) Evidence of Insurance. Prior to commencement of work hereunder, CONSULTANT shall deliver to City a Certificate of Insurance evidencing compliance with the insurance requirements of this Section. The Certificate shall stipulate that thirty (30) days advance written notice of cancellation, non-renewal or material reduction in limits of the required policy shall be given to the City.

(v) General Insurance Conditions. All policies will be issued by insurers acceptable to the City. The insurance will be issued by an insurance company authorized to do business in the State of California with a minimum "Best's" rating of A-:VII, or equivalent, or as otherwise approved by the City. Worker's Compensation coverage requirements may be met with the California State Compensation Fund.

In the event a claim is made, the City reserves the right to request certified duplicate copies of all insurance policies required under this Section.

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

(a) Policy retroactive date coincides with or precedes the CONSULTANT's start of work (including subsequent policies purchased as renewals or replacements).

(b) CONSULTANT shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all named insureds.

(c) If insurance is terminated for any reason, CONSULTANT agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.

(d) Policy allows for reporting of circumstances or incidents that might give rise to future claims.

3. The right to terminate the Agreement for default.

CONSULTANT shall be responsible for all errors and omissions and is expected to pay for all re-design and re-construction work as a result of errors and omissions.

15. CLAIMS OR DISPUTES. The CONSULTANT shall be solely responsible for providing timely written notice to CITY of any claims for additional compensation and/or time in accordance with the provisions of this Agreement. It is the CITY's intent to investigate and attempt to resolve any CONSULTANT claims before the CONSULTANT has performed any disputed work. Therefore, CONSULTANT's failure to provide timely notice shall constitute a waiver of CONSULTANT's claims for additional compensation and/or time. The CONSULTANT shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the CITY, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given the CITY due written notice of a potential claim. The potential claim shall set forth the reasons for which the CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

If based on an act or failure to act by the CITY, such notice shall be given to the CITY prior to the time that the CONSULTANT has started performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice shall be given within 10 days after the happening of the event or occurrence giving rise to the potential claim.

If there is a dispute over any claim, the CONSULTANT shall continue to work during the dispute resolution process in a diligent and timely manner as directed by the CITY, and shall be governed by all applicable provisions of the Agreement. The CONSULTANT shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached which resolves the CONSULTANT claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the CONSULTANT claim, they may choose to pursue a dispute resolution process or termination of the Agreement.

16. REMEDIES. In the event the CONSULTANT fails to comply with the requirements of this Agreement in any way, the CITY reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

17. TEMPORARY SUSPENSION OF WORK. The CITY, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as the CITY may deem necessary. The suspension may be due to the failure on the part of the CONSULTANT to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of the CONSULTANT. The CONSULTANT shall comply immediately with the written order of the CITY to suspend the work wholly or in part. The suspended work shall be resumed when the CONSULTANT is provided with written direction from the CITY to resume the work.

If the suspension is due to the CONSULTANT's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the CONSULTANT, all costs shall be at CONSULTANT's expense and no schedule extensions will be provided by the CITY.

In the event of a suspension of the work, the CONSULTANT shall not be relieved of the CONSULTANT's responsibilities under this Agreement, except the obligations to perform the work which the CITY has specifically directed CONSULTANT to suspend under this section.

If the suspension is not the responsibility of the CONSULTANT, suspension of all or any portion of the work under this Section may entitle the CONSULTANT to compensation and/or schedule extensions subject to the Agreement requirements.

18. AUDIT OF RECORDS. All CONSULTANT and subconsultant costs incurred in the performance of this Agreement will be subject to audit. The CONSULTANT and its subcontractors/subconsultants shall permit the CITY, or its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy the CONSULTANT's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the CONSULTANT pursuant to this Agreement. The CONSULTANT shall also provide such assistance as may be required in the course of such audit. The CONSULTANT shall retain these records and make them available for inspection hereunder for a period of three (3) years after expiration or termination of the Agreement. If, as a result of the audit, it is determined by the CITY's auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the CONSULTANT agrees to reimburse the CITY for those costs within sixty (60) days of written notification by the CITY.

19. CONFLICT OF INTEREST.

(i) General

Depending on the nature of the work performed, a CONSULTANT of the CITY may be subject to the same conflict of interest prohibitions established by California law that govern the CITY's employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.). During the term of the Agreement, CONSULTANT and its employees may be required to disclose financial interests.

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

Depending on the nature of the work performed, CONSULTANT may be required to publicly disclose financial interests pursuant to the CITY's Conflict of Interest Code. Upon receipt, the CONSULTANT agrees to promptly submit a Statement of Economic Interest on the form provided by CITY.

(ii) Organizational Conflict of Interest

CONSULTANT shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement and other solicitations. An organizational conflict of interest occurs when, due to

other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the CITY; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

CONSULTANT shall not engage the services of any Subconsultant or independent consultant on any work related to this Agreement if the Subconsultant or independent consultant, or any employee of the Subconsultant or independent consultant, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONSULTANT immediately shall provide the CITY with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest.

If at any time during the term of this Agreement, CITY becomes aware of an organizational conflict of interest in connection with CONSULTANT's performance of the work hereunder, CITY shall similarly notify CONSULTANT.

In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by CITY, the CITY will consider the conflict presented and any alternatives proposed and meet with the CONSULTANT to determine an appropriate course of action. The CITY's determination as to the manner in which to address the conflict shall be final.

During the term of this Agreement, CONSULTANT must maintain lists of its employees, and the Subconsultants and independent consultants used and their employees. CONSULTANT must provide this information to the CITY upon request. However, submittal of such lists does not relieve the CONSULTANT of its obligation to assure that no organizational conflicts of interest exist. CONSULTANT shall retain this record for five (5) years after the CITY makes final payment under this Agreement. Such lists may be published as part of future CITY solicitations.

CONSULTANT shall maintain written policies prohibiting organizational conflicts of interest and shall ensure that its employees are fully familiar with these policies. CONSULTANT shall monitor and enforce these policies and shall require any subconsultants and affiliates to maintain, monitor and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the CONSULTANT to damages incurred by the CITY in addressing organizational conflicts that arise out of work performed by CONSULTANT, or to termination of this Agreement for breach.

20. EQUAL EMPLOYMENT OPPORTUNITY. In connection with the performance of this Agreement the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, gender identity, disability or national origin. The CONSULTANT shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability or national origin. Such actions shall include, but not be limited to, the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT further agrees to include a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

21. CITY WARRANTIES. The CITY makes no warranties, representations or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

22. CONFIDENTIALITY. CONSULTANT shall not release any reports, information or promotional materials prepared in connection with this Agreement without the approval of the CITY Manager.

23. USE OF SUBCONTRACTORS. CONSULTANT shall not subcontract any Services to be performed by it under this Agreement without the prior written approval of the CITY, except for service firms engaged in drawing, reproduction, typing and printing. CONSULTANT shall be solely responsible for reimbursing any subcontractors and the CITY shall have no obligation to them.

24. NO ASSIGNMENT. CONSULTANT shall not assign any of the rights nor transfer any of its obligations under the Agreement without the prior written consent of the CITY.

25. ATTORNEY'S FEES. If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonable legal fees.

26. APPLICABLE LAW. This Agreement, its interpretation and all work performed thereunder, shall be governed by the laws of the State of California.

27. COMPLIANCE WITH LAWS AND REGULATIONS

During the progress of the work, CONSULTANT shall fully adhere to all applicable State and Federal laws and county, municipal or CITY ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials and equipment used in work, or which in any way affect the conduct of the work. CONSULTANT, and any subcontractors performing any work under this Agreement, shall hold such licenses and certifications as may be required by the State of California or any local jurisdiction for the performance of the work specified in this Agreement.

28. BINDING ON SUCCESSORS. All of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

29. WAIVER. Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the parties of a breach or covenant of this Agreement shall not be construed to be a waiver of any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

30. ENTIRE AGREEMENT; MODIFICATION. This Agreement, including any attachments, constitutes the entire Agreement between the parties with respect to the subject

matter hereof, and supersedes any prior understanding or agreement, oral or written, with respect to such subject matter. It may not be amended or modified, except by a written amendment executed by authorized representatives by both parties. In no event will the Agreement be amended or modified by oral understandings reached by the parties or by the conduct of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the day and year first above written.

CITY OF MILLBRAE:

CONSULTANT:

(See footnote below)*

By: Tom Williams
City Manager

By: _ Name: _____
Title: _____

APPROVED AS TO FORM:

By: _ Name: _____
Title: _____

City Attorney

*Note: This Agreement must be executed by two Corporate Officers, consisting of:

- (1) the President, Vice President or Chair of the Board, and
- (2) the Secretary, Assistant Secretary, Chief Financial Officer, Assistant Chief Financial Officer, Treasurer, or Assistant Treasurer.

In the alternative, this Agreement may be executed by a single Officer or a person other than an Officer provided that evidence satisfactory to the City is provided demonstrating that such individual is authorized to bind the Corporation (e.g. a copy of a certified resolution from the Corporation's Board or a copy of the Corporation's bylaws).

EXHIBIT 2 - ACKNOWLEDGEMENT FORM

**ACKNOWLEDGEMENT FORM FOR CITY OF MILLBRAE
AGREEMENT FOR PROFESSIONAL SERVICES
CITY OF MILLBRAE REQUEST FOR PROPOSALS FOR AS-NEEDED
ENVIRONMENTAL REVIEW SERVICES.**

By signing below, the consultant acknowledges that it has examined the enclosed City of Millbrae “AGREEMENT FOR PROFESSIONAL SERVICES”. If the City accepts the proposal, the agreement, **without any changes**, shall be executed by the consultant within three (3) working days of notification by the City and consultant shall comply with applicable insurance requirements.

Legal Name of the Firm:

Business address:

Name of Authorized Person:

Signature of Authorized Person:

_____ **Date:** _____

Telephone Number: _____

Email Address: _____

If requesting changes to the City’s Standard Agreement for Professional Services, do not sign this page. Return this page with an outline of requested change to the City’s Standard Agreement including section number and requested language.