Date: June 15, 2017

REQUEST FOR PROPOSALS

For: As needed Plan Check and Building Inspection Services

Submit Responses to:

Building and Planning Department
1600 Floribunda Avenue
Hillsborough, California 94010

Responses Must Be Received by:

Thursday July 6, 2017 4:00 p.m.

PROPOSALS WILL NOT BE ACCEPTED AFTER THIS DATE AND TIME

REQUEST FOR PROPOSALS FOR

As Needed Plan Check and Building Inspection Services
Note regarding the Public Records Act:

Government Code Sections 6250 et seq., the California Public Record Act, defines a public record as any writing containing information relating to the conduct of the public's business. The Public Record Act provides that public records shall be disclosed upon written request and that any citizen has a right to inspect any public record unless the document is exempted from disclosure.

Be advised that any contract that eventually arises from this Request for Proposals is a public record in its entirety. Also, all information submitted in response to this Request for Proposals is itself a public record **without exception**. Submission of any materials in response to this Request for Proposals constitutes a waiver by the submitting party of any claim that the information is protected from disclosure. By submitting materials, (1) you are consenting to release of such materials by the Town of Hillsborough ("Town") if requested under the Public Records Act without further notice to you and (2) you agree to indemnify and hold harmless the Town for release of such information.

If the Town receives a request for any portion of a document submitted in response to this RFP, the Town will not assert any privileges that may exist on behalf of the person or entity submitting the proposal, and the Town reserves the right to disclose the requested materials without notice to the party who originally submitted the requested material. To the extent consistent with the Public Records Act and applicable case law interpreting those provisions, the Town and/or its officers, agents, and employees retain discretion to release or withhold any information submitted in response to this RFP.

Submission of a proposal constitutes a complete waiver of any claims whatsoever against the Town and/or its officers, agents, or employees that the Town has violated a Proposer's right to privacy, disclosed trade secrets, or caused any damage by allowing the proposal to be inspected.

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1 GENERAL INFORMATION

1.1 Statement of Intent

The Town of Hillsborough, through this Request for Proposals ("RFP") seeks a qualified consultant to provide as needed plan check and building Inspection services for the Town of Hillsborough. **Please see Section 4, below, for a full description of the services required**. It is a Proposer's responsibility to review the entire RFP in order to submit a complete and responsive proposal. The highest ranked Proposer, based on the written response to the RFP, as well as any interviews, if scheduled, will be invited to negotiate a contract with the Town. The target start date and contract duration for the proposed services is a two year term from August 2017 to July 2019, with an optional one-year extension to July 2020, subject to negotiation of a final agreement.

2 RFP PROCEDURE

This section describes the general RFP procedure used by the Town of Hillsborough. This RFP seeks the submission of proposals from interested and qualified Proposers. The Town of Hillsborough seeks to obtain the listed services in a manner that maximizes the quality of services while also maximizing value to the Town and, by extension, its residents. Proposers must be able to show that they are capable of performing the services requested. Such evidence includes, but is not limited to, the respondent's demonstrated competency and experience in delivering services of a similar scope and type and local availability of the Proposer's personnel and equipment resources.

2.1 Tentative Schedule of Events

The following schedule is tentative, and the Town may amend the tentative schedule as necessary by addenda.

Table 1: Tentative Schedule of Events

Event	Target Date
1. RFP Release Date	June 15, 2017
4. Proposal Deadline – Proposals Must Be RECEIVED by 4:00 p.m. on this Date	July 6, 2017
5. Interviews [If Required]	July 20 – July 21, 2017
7. City Council Authorization	August 14, 2017

2.2 Submission of Proposals

2.2.1 Method of Submission

Proposals must be submitted by the submittal deadline, as follows:

NUMBER 5 printed copies of proposal delivered by mail or hand to the following address:

Town of Hillsborough
Attn: Tim Anderson, Building Official
Building and Planning Department
1600 Floribunda Avenue
Hillsborough, California 94010

The back of submitted envelope(s) shall be labeled “As needed plan check and building inspection services”. Proposals shall be in the format required in Section 5 below. There will not be a public opening of proposals. All proposals shall be firm offers, and will so be considered by the Town of Hillsborough, although the Town of Hillsborough reserves the right to negotiate terms upon evaluation of the proposals. Proposals will be considered valid offers for a period of ninety (90) days following the close of the RFP.

2.2.2 No Collusion

By submitting a proposal, each Proposer certifies that its submission is not the result of collusion or any other activity that would tend to directly or indirectly influence the selection process. The proposal will be used to determine the Proposer's capability of rendering the services to be provided. The failure of a Proposer to comply fully with the instructions in this RFP may eliminate its proposal from further evaluation as determined in the sole discretion of the Town. The Town reserves the sole right to evaluate the contents of proposals submitted in response to this RFP and to select a contractor, if any.

2.2.3 Late Proposals

Proposals received late will not be opened or given any consideration for the proposed services unless doing so is deemed to be in the best interest of the Town, as determined in the sole discretion of the Town. All proposals will be date/time stamped upon receipt. All proposals received prior to the deadline for proposals will be kept in a secure place.

2.3 Proposal Evaluation

All proposals received will be evaluated by an RFP Evaluation Committee. During the evaluation process, the Town may require a Proposer's representative to answer specific questions orally and/or in writing. The Town may require interviews. The Town may also require a visit to the Proposer's offices, other field visits or observations by Town representatives, or demonstrations as part of the overall RFP evaluation. Once a finalist or group of finalists is selected, additional interactions or information may be required.

Responses to this RFP must adhere to the format for proposals detailed in Section 5. The criteria used as guidelines in the evaluation will include, but not be limited to, the following:

A. Proposer qualifications and experience, including capability and experience of key personnel and experience with other public or private agencies to provide these services

B. Proposed approach, including clarity of understanding of the scope of services to be provided and appropriateness of the proposed solution/services

C. Customer service

D. History of successfully managing other contracts with public or private agencies

E. Ability to meet any required timelines or other requirements

F. Claims and violations against responding organization or its agents

G. References

H. Compliance with Town’s RFP and contractual requirements

The Town may consider any other criteria it deems relevant, and the Evaluation Committee is free to make any recommendations it deems to be in the best interest of the Town. Inaccuracy of any information supplied within a proposal or other errors constitute grounds for rejection of the proposal. However, the Town may, in its sole discretion, correct errors or contact a Proposer for clarification.

The Town reserves the right to evaluate proposals solely based on each proposer's written submission. In relation to written materials, evaluation will be performed only on the material included directly in the proposal itself unless otherwise indicated or requested by the Town. The Town will not access company web sites or read sales brochures, marketing materials, or white

papers in evaluating proposer's experience or proposed methodology unless doing so is in the Town's best interest. Proposer may submit additional materials or reference on-line information as part of its proposal, but these will not necessarily be considered during the proposal evaluation process.

2.4 Proposal Recommendation

The Evaluation Committee will recommend a provider or providers to the Director of Building and Planning or may recommend that all proposals be rejected. The most qualified proposer(s) will be recommended to the Director of Building and Planning based on the overall strength of each proposal, and the evaluation is not restricted to considerations of any single factor such as cost. The Director of Building and Planning will then make his/her own decision as to whether to accept or reject the Evaluation Committee's recommendations. Ultimate acceptance or rejection of the recommended proposal(s) and execution of a contractual agreement(s) is the independent prerogative of the Town, notwithstanding any recommendations made by the Evaluation Committee.

2.5 Notice to Proposers

The Town is not required to give notice to Proposers in any specific format or on any particular timeline. At some point prior to execution of a final agreement for the requested services, the Town will notify those who submitted proposals of their non-selection. Proposers may be notified at different times depending on the needs of the Town.

2.6 Protest Process

If a Proposer desires to protest the selection decision, the Proposer must submit a written protest within five (5) business days after the delivery of the notice about the decision. The written protest must be submitted to the Town's City Clerk, as outlined below. Protests received after the deadline will not be accepted. Protests must be in writing, must include the name and address of the Proposer and the RFP title, and must state all the specific ground(s) for the protest. A protest that merely addresses a single aspect of the selected proposal (for example, comparing the cost of the selected proposal in relation to the non-selected proposal) is not sufficient to support a protest. A successful protest will include sufficient evidence and analysis to support a conclusion that the selected proposal, taken as a whole, is an inferior proposal.

The Director of Building and Planning will respond to a protest within ten (10) business days of receiving it, and the Town may, at its election, set up a meeting with the Proposer to discuss the concerns raised by the protest. The decision of the Director will be final. The protest letter must be sent or hand-delivered to:

Town of Hillsborough
Attn: City Clerk
1600 Floribunda Avenue
Hillsborough, California 94010

3 GENERAL TERMS AND CONDITIONS

3.1 Read All Instructions

Please read the entire RFP and all exhibits before preparing your proposal.

3.2 Proposal Includes the RFP

This RFP constitutes part of each proposal and includes the explanation of the Town's needs, which must be met.

3.3 Proposal Costs

Costs for developing proposals are entirely the responsibility of the Proposer and may not be charged to the Town of Hillsborough.

3.4 Proposal Becomes Town Property

The RFP and all materials submitted in response to this RFP will become the property of the Town. Proposer must sign Exhibit B, Intellectual Property Rights.

3.5 Questions and Response Process

Submit all questions relating to this RFP to Tim Anderson, Building Official, at the following email address:

E-mail to: tanderson@hillsborough.net
Subject Line: As needed plan check and building inspection

If changes to the RFP are warranted, they will be made in writing, clearly marked as addenda to the RFP, per Section 3.6 below.

3.6 Alteration of Terms and Clarifications

No alteration or variation of the terms of this RFP is valid unless made or confirmed in writing by the Town. Likewise, oral understandings or agreements not incorporated into the final contract are not binding on the Town.

If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the Proposer must immediately notify the Town of such error in writing and request modification or clarification of the document. If a Proposer fails to notify the Town of an error in the RFP prior to the date fixed for submission, the Proposer shall submit a response at his/her own risk, and if the Proposer enters into a contract, the Proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

Modifications or clarifications to the RFP will be posted on the Town's website as outlined in Section 3.5, above, without divulging the source of the request for same. The Town may, at its discretion, also give electronic notice by email to all parties on the proposers list, pre-proposal meeting list and/or who have notified the Town of their electronic contact information in

response to this RFP, but no party that fails to receive email notice has any basis for protest given that all clarifications will be available online. It is the obligation of all proposing parties to check the Town website for updates regarding the RFP if they wish to be kept advised of clarifications prior to submitting a proposal. Failure to do so will not provide a ground for protest.

3.7 Selection of Provider(s)

The selection of a provider will be memorialized in the form of a “Town of Hillsborough Standard Professional Services Agreement” (see the sample template in Exhibit A), authorized by the City Manager and signed by both parties. Submission of a proposal constitutes the Proposer’s approval and agreement to execute an Agreement in the form of Exhibit A.

The Town reserves the right to reject any or all proposals without penalty. The Town’s waiver of an immaterial deviation in the proposal shall in no way modify the RFP documents or excuse the Proposer from full compliance with the specifications if the Proposer enters into a contract.

Selection of a proposal and eventual submission to the Town’s authorized representative by way of an Agreement does not constitute an offer, and Proposers acknowledge by submission of a proposal that no agreement is final unless and until an agreement with the Town is fully executed.

3.8 Amendments to the RFP

The Town may modify this RFP by written Addendum emailed to all Proposers. Any Addenda will be also posted on the Town’s website. It is the responsibility of all interested Proposers to check the Town’s website for Addenda. The Town will not be responsible for failed receipt of Addenda by any interested Proposer in any case. All Addenda will be furnished no less than 5 days prior to the submittal deadline and must be referred to by number and date on the proposal.

3.9 Examination of Site and RFP Documents

Attention is directed to proposer’s obligation to examine the work site and RFP documents to determine any site variation that may affect the proposal, and investigate the conditions of existing clearances, restrictions, or limitations that may affect access to the work (see Section 4 for a list of reference documents). The Proposer's failure to do any and all of the above shall not become a basis for claim of additional monies or extension of time.

3.10 Insurance

The Town has certain insurance requirements that must be met. Insurance requirements are described in “Exhibit A: Standard Professional Services Agreement”.

3.11 Incomplete Proposals May be Rejected

Failure to satisfy any of the requirements identified in this RFP may result in the rejection of the proposal.

3.12 Contact with Town/Department Employees

As of the issuance date of this RFP and continuing until the final date for submission of proposals, all Proposers are specifically directed not to hold meetings, conferences, or technical

discussions with any Town employee for purposes of responding to this RFP except as otherwise permitted by this RFP. Any Proposer found to be acting in any way contrary to this directive may be disqualified from entering into any contract that may result from this RFP.

Proposers shall submit questions or concerns about the process as outlined in Section 3.5, above. The Proposer shall not otherwise ask any Town/Department employees questions about the RFP or related issues, either orally or by written communication, unless invited to do so.

3.13 Miscellaneous

The Town reserves the right to reject any and all proposals and/or terminate the RFP process if deemed in the best interest of the Town. Further, while every effort has been made to ensure the information presented in this RFP is accurate and thorough, the Town assumes no liability for any unintentional errors or omissions in this document. The Town reserves the right to waive or modify any requirements of this RFP when it determines that doing so is in the best interest of the Town. The selected contractor will be required to have or obtain a Hillsborough Business License issued by the Town's Finance Department.

4 SCOPE OF WORK

4.1 Background

The Town of Hillsborough is seeking a contract for consulting services to include external plan review and inspection of building projects, and provide other similar services such as the services identified in this RFP. The selected consultant shall provide building inspection and plan check services as requested by the Town. Such services shall include review of construction drawings to assure compliance with City and State adopted laws and codes; interacting with permit applicants and Town Staff; and conducting inspections for purposes of certifying code compliance. Specific projects may include residential or non-residential projects. Any single job may require one or subsequent reviews of submitted plans. Types of proposed plan check work may include new construction, remodel, additions, green building, LEED construction and disabled access compliance.

The Town desires a high level of customer service and professionalism to residents through continuity of plan check services, the provision of comprehensive early plan check and inspection comments to avoid unexpected project requirements late in the process, streamlined review processes, a problem solving approach, coordination of activities with the Building Official or his/her designee, maintenance of records of plans in process, and provision of electroni**c** plan check comments.

While the Town may select a primary consultant to perform the activities identified in this RFP, the Town may select more than one consulting firm to perform the requested services.

4.2 Plan Checking Services

Consultant, upon request by the Town, shall review plans, calculations, reports and specifications for compliance with the most recently adopted federal, state and local codes and ordinances. When satisfied that the plans comply with the applicable Building laws of the Town and State, Consultant shall approve plans and forward plans to Town for issuance of permit. Plan review letter comments shall be specific, detailed, complete, and reference plan sheet numbers and code sections where applicable. All plan check services shall be performed by or under the responsible charge of a California licensed professional eligible to prepare and sign such plans.

The selected firm shall provide pickup and delivery return for all plans requested to be reviewed. The first plan check turn around shall be no more than 15 business days from pickup and the second review if needed shall be no more than 5 business days from pickup.

4.3 Building Inspection

Consultant, upon request of the Town, shall provide building inspection and certification services during the course of construction to enforce compliance with the conditions of approval, provisions of the Town's Building laws and the Code requirements set forth on the approved plans for which a permit was issued. In the performance of such duties Consultant shall observe each project at the completion of the various stages of construction for compliance with the appropriate City and State code.

4.4 As Needed Additional Professional Services

Additional Professional Services are services that may be needed beyond those provided for plan check and inspection services. The need for additional professional services may be driven by peak workload periods and/or special expertise needed. The need for these services will be determined by the Director of Building and Planning.

4.5 Length of Agreement

The target start date and contract duration for the proposed services is a three year term from August 2017 to July 2019, with an optional one-year extension to July 2020, subject to negotiation of a final agreement.

5 PROPOSAL SUBMISSION REQUIREMENTS

5.1 Specified Content and Detailed Sequence of Information in the RFP

Each proposal shall include sections addressing the following information in the listed order. The Proposer shall be sure to include all information that it feels will enable the Evaluation Committee and, ultimately, the Town to make a decision. Failure of the Proposer to provide specific, detailed information may result in its proposal being rejected in favor of a sufficiently detailed proposal.

Any necessary exhibits or other information, including information not specifically requested by this RFP but deemed as helpful, shall be attached to the end of the proposal. The party submitting the materials should keep in mind the limitations on confidential information described in the “Note Regarding the Public Records Act” section, above.

5.1.1 Cover Letter (1 page maximum)

Provide a one page cover letter on your letterhead which includes the address, voice and fax numbers, and email address of the contact person or persons and an indication of who is authorized to represent the Proposer in negotiations.

Unless the Proposer is an individual, all proposals must be signed with a firm/company/ partnership/entity name and by a responsible officer or employee indicating that officer or employee’s authorization to commit the Proposer to the terms of the proposal. Obligations assumed by such signature must be fulfilled.

5.1.2 Qualifications and Experience (2 page maximum)

5.1.2.1 Company Background

Provide a statement of qualifications for your organization, including a statement of the size of firm (if the Proposer is not an individual), a description of the types of services provided by your organization, a statement of the extent of experience/history providing the services requested by this RFP, and number of years in business.

5.1.2.2 Staffing

Provide total number of employees employed. Indicate the number of full time employees (FTEs) that will be assigned to this project. Indicate the number of part-time employees (and their FTE bases: e.g., .5 FTE) that will be assigned to this project. State if subcontractors will be used, and provide the number of subcontractor FTEs that will be assigned to the project.
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5.1.2.3 References

Provide references for each of the project examples provided above, including the name, title, and role of the contact person; the agency or company name, and contact Information including a telephone number and email address for the contact person.

5.1.2.4 Required Licensing

A copy of required licenses and other pertinent licenses should be attached to the back of the submittal. The provision of licenses does not count towards page restrictions.

5.1.3 Team Structure (3 pages, not including staff resumes)

5.1.3.1 Project Team

Provide a description of the probable team including any subconsultants.

5.1.3.2 Project Manager

Designate a project manager who will be the primary contact with the Town. The proposal must contain the qualifications and experience of the project manager, who should have the authority to make decisions for his/her organization. The project manager must have the ability to commit the necessary periods of time to conduct the work as described in the RFP.

5.1.3.3 Organizational Chart

Include all key project team members and explain their role and responsibility throughout the project. Identify the project team members who are the daily contacts.

5.1.3.4 Staff Qualifications

Provide a biography describing the key project team members' individual qualifications and history and role of key staff that will be committed to these services. You may attach a resume at the end of the submittal. Resumes do not count towards page limitation.

5.1.4 Proposed Approach (5 pages maximum)

This section describes your proposed approach for meeting the services required by the Town, as described in Section 4, above. Relevant considerations include the quality and feasibility of your approach to meeting these needs, the manner in which you plan to provide adequate staffing (including planning for absences and back-up coverage, training and monitoring, etc.), and equipment, sub-consultant(s) or other resources provided by you (if applicable). The proposed approach description should also:

A. Describe how you will fulfill the needs of the Town included in this RFP. Please provide a plan providing specific tasks and associated schedule.

B. Identify how you will meet all other aspects of the scope of work and related requirements listed in Section 4, above, and list any items you cannot provide.

C. Describe the measurements/metrics/deliverables and/or assessments you will provide to allow the Town to assess the services you will provide.

D. Provide information on any other pertinent services, if any, you can offer that will reduce costs or enhance your service.

5.1.5 Customer Service (1 page maximum)

A. How will your services meet the needs of the Town's customers and/or the public?

B. In the event of a routine problem, who is to be contacted within your organization?

5.1.6 Fee Proposal (1 page maximum)

Provide a fee proposal, as follows:

A. Using the tasks outlined in the proposer's project plan, as provided per Section 5.1.4, A., above, provide a detailed cost sheet.

B. All anticipated reimbursable expenses as a separate line item, the charge rates of the people who will perform the work (please identify tasks to be performed by sub-consultants), and a standard hourly rate schedule.

C. Indication of whether or not travel time is billable, and how it will be calculated. Generally, proposals that do not include travel time or expenses are preferred.

D. Description of the key assumptions used to calculate the fees.

E. Description of the firm's method of, and experience in, controlling project costs.

5.1.7 Claims and Violations against Your Organization (1 page maximum):

List any current violations or claims against you/your organization and those having occurred in the past five years, especially those resulting in claims or legal action against you.

5.1.8 Statement of Compliance with the Town's Contractual Requirements: (1 page maximum)

A sample of the Town's Professional Services Agreement is attached to this RFP as Exhibit A. Proposals must advise the Town of any objections to any terms in the Town's contract template and provide an explanation for the inability to comply with the required term(s). Submission of a proposal without objections constitutes the proposer's approval and agreement to execute an Agreement in the form of Exhibit A.

6 EXHIBITS AND ATTACHMENTS

Exhibit A: Intellectual Property Rights

Exhibit B: Hillsborough's Standard Professional Services Agreement

Exhibit A: Intellectual Property Rights

1. The Town of Hillsborough ("Town") shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively "Vendors") for the Town under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the Town.
2. "Work Products" are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.
3. Contractor shall not dispute or contest, directly or indirectly, the Town's exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the Town, shall assign to the Town all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting Town's titles, rights or interests in any Work Product, including prompt execution of documents as presented by the Town.
4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the Town commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the Town and the copyright of which is vested in the Town.
5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be "work-made-for-hire" or not owned by the Town, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the Town all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the Town requests cooperation of Contractor to perfect the Town's titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the Town in the Work Products with no additional charges to the Town beyond that identified in this Agreement or subsequent change orders. The Town, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.
6. Contractor agrees that before commencement of any subcontract work it will incorporate this Exhibit to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the Town's titles, rights, and interests in Work Products are preserved and protected as intended herein.

_____

Name of Authorized Company Representative

_____ _____

Signature of Authorized Company Representative Date

EXHIBIT B

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of the ____ day of_____, 201__, by and between the TOWN OF HILLSBOROUGH (hereinafter referred to as "TOWN") and _____ _____ (hereinafter referred to as "CONSULTANT").

WHEREAS, the TOWN desires to obtain professional services in connection with requirements related to these matters and has issued a Request for Proposals therefore, a copy of which is attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, the CONSULTANT, desires to provide such services and has submitted a Statement of Qualifications and a Proposal titled _____, Dated:_____ _____, a copy of which is attached hereto and incorporated herein as Exhibit "B";

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. RENDITION OF SERVICES

The CONSULTANT agrees to provide professional services to the TOWN in accordance with the terms and conditions of this Agreement.

2. SCOPE OF SERVICE

The scope of the CONSULTANT's service shall be as set out in the Request for Proposal titled _____, Dated:_____, Exhibit "A" (Modify to include RFP info if applicable, if no RFP Exhibit B shall be used only) attached to hereto and incorporated herein.

3. SCHEDULE AND TIME OF COMPLETION

A. General: The services contemplated in the Agreement are to be provided on an as needed basis in response to direct TOWN needs and the needs of the TOWN associated with reviewing plans and reports from property owners, engineers, contractors and developers planning or accomplishing work in Hillsborough. The term of this AGREEMENT shall continue until suspended or terminated pursuant to Section 16 hereof. The provision of specific services shall be on a reasonable, timely and responsive

basis within the specific requirements set out in this section.

B. Delays in Completion; Damages for Delay: The CONSULTANT shall provide a schedule which, when accepted by the TOWN, will become the schedule for the work. In the event the CONSULTANT fails to commence performance within the time set forth in the schedule, the TOWN may cancel this agreement. Once performance commences, if CONSULTANT fails to perform in general conformance with the schedule without good cause, the TOWN may give 10 days notice to perform and, if CONSULTANT does not comply with the schedule, the TOWN may withhold payments and/or cancel the Agreement, in addition to other remedies it may have.

4. OWNERSHIP OF WORK

All reports, designs, drawings, plans, specifications, schedules, work product 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 TOWN, and the TOWN shall be entitled to full access thereto, and copies thereof, during the progress of the work. Any such remaining in the hands of the CONSULTANT or in the hands of any subcontractor upon completion or termination of the work shall be forthwith delivered to the TOWN. If any materials are lost, damaged or destroyed before final delivery to the TOWN, the CONSULTANT shall replace them at its own expense and the CONSULTANT hereby 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 not in conflict in terms of this agreement. Any and all copyrightable subject in all reports, designs, drawings, plans, specifications, schedules, work product and other materials is hereby assigned to the TOWN by CONSULTANT. The CONSULTANT agrees to execute any additional documents which may be necessary to evidence such assignment at no additional cost to the TOWN.

5. USE OF SUBCONTRACTORS

CONSULTANT shall not subcontract any services to be performed by it under this Agreement without the prior written approval of the TOWN, except for service firms

engaged in drawing, reproduction, typing and printing. CONSULTANT shall be solely responsible for reimbursing any subcontractors and the TOWN shall have no obligation to them.

6. CHANGES

The TOWN may, at any time, by written order, make changes within the scope of work and services described in this Agreement. Upon request by TOWN, CONSULTANT shall promptly and within a reasonable time period prescribed by the TOWN provide a detailed time and cost estimate for accomplishing any change. If such changes cause a change in the fee schedule or 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 consistent with compensation as set forth in Section 9 or in the time of required performance as set forth in Section 3, or both. If agreement on cost or time cannot be reached in a reasonable time to avoid delay of the project or other unfavorable impacts on the project as determined by the TOWN, in its sole discretion, TOWN shall have the right to determine, on the basis of information available to TOWN, what TOWN considers an equitable adjustment in cost and/or time to complete the changed work and direct the CONSULTANT to proceed with such work by Addendum to the Agreement. Such addendum shall be designated an "Approved Addendum". An Approved Addendum which has been signed by CONSULTANT is an "Executed Addendum".

If the CONSULTANT disagrees with any terms or conditions set forth in an Approved Addendum which CONSULTANT has not executed, CONSULTANT shall submit a written protest to the TOWN within 15 calendar days after receipt of such Approved Addendum. The protest shall state the points of disagreement, Contract Document/Agreement references, work elements and costs involved and shall propose a modification of the items with which CONSULTANT does not agree. If a written protest is not submitted within this 15 day period, payment will be made as set forth in the Approved Addendum and such payment will constitute full compensation for all work included therein or required thereby. Approved Addenda which are not protested within 15 calendar days shall be considered as Executed Addenda.

When the protest of an Approved Addendum is related to compensation, the CONSULTANT shall keep full and complete records of such work and shall permit the TOWN to have access to all records relating to the protested Addendum to make determinations relative

to the compensation payable. The CONSULTANT shall cooperate with the TOWN to reach agreement at the earliest practical date on the terms of compensation for the Addendum. When agreement has been reached, a revised Addendum may be approved by the TOWN and issued to the CONSULTANT for signature. Unless and until the TOWN and CONSULTANT agree upon other terms of compensation incorporated in a revised Executed Addendum, the compensation shall be as specified under the protested Approved Addendum.

Disagreement by the CONSULTANT with the TOWN's determination of the need for, or amount of, an adjustment in Agreement price or time associated with an Approved Addendum shall not, under any circumstances, relieve the CONSULTANT from its obligation to continue work or to promptly begin and diligently prosecute the changed work as described in the Approved Addendum.

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 TOWN 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 for the proposed adjustment in compensation resulting therefrom. Such notice shall be given the TOWN 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.

7. RESPONSIBILITY; INDEMNIFICATION

To the maximum extent allowed by law, CONSULTANT shall indemnify, keep and save harmless the TOWN, and TOWN Councilmembers, officers, agents and employees against any and all claims, liability, damage, cost or expense arising out of any injury to persons or property, including death, that may occur, or that may be alleged to have occurred, in the course of the performance of this Agreement by a negligent act or omission or wrongful misconduct of the CONSULTANT or its employees, subcontractors or agents. CONSULTANT further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses arising therefrom or incurred in connection therewith; and if any judgment be rendered against the TOWN or any of the other individuals enumerated above in

any such action, CONSULTANT shall, at its expense, satisfy and discharge the same. CONSULTANT's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

8. INSURANCE

A. Workers' Compensation: If CONSULTANT employs any person to perform work in connection with this Agreement, CONSULTANT shall procure and maintain at all times during the performance of such work Worker's Compensation Insurance in conformance with the laws of the State of California and Federal laws where applicable. Employers' Liability Insurance shall not be less than Two Million Dollars ($2,000,000) per accident or disease.

B. Bodily Injury, Death and Property Damage Liability Insurance: CONSULTANT shall also procure and maintain at all times during the performance of this Agreement General Liability Insurance (including automobile operation) covering CONSULTANT and TOWN for liability arising out of the operations of CONSULTANT and any subcontractors. The policy(ies) shall include coverage for all vehicles, licensed or unlicensed, on or off TOWN's premises, used by or on behalf of CONSULTANT on the performance of work under this Agreement. The policy(ies) shall be subject to a limit for each occurrence of Two Million Dollars ($2,000,000) naming as an additional insured, in connection with CONSULTANT's activities, the TOWN, and it's Councilmembers, officers, employees and agents. The Insurer(s) shall agree that its policy(ies) is Primary Insurance and that it shall be liable for the full amount of any loss up to and including the total limit of liability without right of contribution from any other insurance covering the TOWN.

Inclusion of the TOWN as additional insured shall not in any way affect its rights as respects to any claim, demand, suit or judgment made, brought or recovered against CONSULTANT. Said policy shall protect CONSULTANT and TOWN in the same manner as though a separate policy had been issued to each; but nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest had been named as an insured.

C. Professional Liability Insurance: CONSULTANT shall also maintain Professional Liability Insurance covering CONSULTANT's performance under this Agreement with a limit of liability of Two Million Dollars ($2,000,000) per claim and in annual aggregate. Such insurance shall be renewed annually. D.

Policy Requirements: It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to TOWN as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. The additional insured coverage under the CONSULTANT's policy shall be "primary and non-contributory" and will not seek contribution from TOWN's insurance or self-insurance. In the event contractor fails to obtain or maintain coverage as required by this Agreement, the TOWN at its sole discretion may purchase the coverage required and the cost will be paid by contractor. Failure to exercise this right shall not constitute a waiver of right to exercise later. Each insurance policy

shall include an endorsement providing that it shall not be cancelled, changed, or allowed to lapse without at least thirty (30) days' prior written notice to Town of such cancellation, change, or lapse.

E. Excess Insurance: The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of TOWN (if agreed to in a written contract or agreement) before TOWN's own insurance or self-insurance shall be called upon to protect TOWN as a named insured.

F. Self-Insured Retentions: All self-insured retentions (SIR) and/or deductibles must be disclosed to TOWN for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision and/or deductibles shall provide or be endorsed to provide that the SIR and/or deductibles may be satisfied by either the named insured or TOWN.

G. Certificates of Insurance: Prior to commencement of work hereunder, CONSULTANT shall deliver to TOWN Certificates of Insurance (or certified copies of the insurance policies, if requested) indicating compliance with the insurance requirements of this Paragraph 8.

H. Post-Termination Coverage: If the policies of insurance obtained and maintained by CONSULTANT under this Paragraph 8 provide coverage on a claims-made rather than occurrence-based basis, CONSULTANT shall maintain such coverage, or obtain comparable tail coverage, for the period following termination of this Agreement until the expiration of all applicable statute of limitations.

9. COMPENSATION

A. General: The CONSULTANT agrees to perform all of the services included in Section 2 and shall be paid in full compensation for all services performed under this Agreement in accordance with the fee schedule, including hourly rates and specific service fees, attached hereto and incorporated herein as Fee Schedule and Rates, marked Exhibit "C".

Notwithstanding the forgoing, the combined total of compensation and reimbursement of costs payable hereunder shall not exceed the sum of _____, ($_____), marked in Exhibit "C".

The total salary compensation and Subconsultant fees include full compensation for fringe benefits, profit and any other costs that may be incurred by CONSULTANT hereinunder, including labor and all elements of business overhead such as phone service/calls, facsimile transmissions, local travel in the Bay Area, reproduction, insurance, cost of facilities and utilities and readiness to serve, and excluding only reimbursables approved by the TOWN in advance to be billed at invoice cost plus 5% or as set out in an approved fee schedule. Salary rates and fees specified in Exhibit "C" shall remain in effect for no less than one (1) year after execution of this Agreement. After that time, should the CONSULTANT desire the TOWN to consider fee increases associated with normal increases in the cost of business associated economic trends the CONSULTANT shall approach the TOWN in writing with proposed fee increases the "Fee Increase Notice", or additional elements of compensation with supporting documentation. These changes shall be made by advance agreement and shall be documented in writing for CONSULTANT or Subconsultant work. (OPTIONAL) The Director of Public Works shall have the authority to approve fee increases. In no case shall any percentage

increase in the compensation exceed the percentage increase in the Consumer Price Index for urban wage earners and clerical workers for San Francisco, Oakland, and San Jose areas during the twelve month period preceding the date on which the Fee Increase Notice is delivered to the Town. The terms of Section 6. CHANGES pertain except as herein noted.

B. Specific Task Cost: In the event a specific task is of a nature that the fee schedules contained in Exhibit "C" are not applicable, the cost of such task shall be negotiated and agreed to in writing, including the scope of the task, before beginning work. The CONSULTANT shall provide estimates of labor, materials and equipment and the total cost based on the relevant fee schedules(s) and/or negotiated factors where applicable.

10. MANNER OF PAYMENT

Once a month, or as each task is completed, the CONSULTANT shall submit an invoice to TOWN detailing the services rendered and reflecting compensation due consistent with approved compensation parameters and/or negotiated cost agreements. Invoices shall include and be supported by cost reports and the appropriate documentation specified in Exhibit "A". TOWN shall pay after receipt, verification, and approval of a complete invoice, within 30 days.

11. CONSULTANT'S STATUS

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

The CONSULTANT agrees that he/she shall not accept any work assignments from the TOWN that could create a conflict of interest. Furthermore, the CONSULTANT also agrees not to enter into any agreements for any work/services within TOWN Corporate Limits with any party that could create a conflict of interest for work, past or present, performed by the CONSULTANT for the TOWN. In as much as the TOWN cannot be aware of all work

conducted by the CONSULTANT within TOWN limits, it shall be the CONSULTANT's responsibility to research potential conflicts of interests and notify the TOWN accordingly that they cannot accept a work assignment, if a conflict exists.

12. ASSIGNMENT

CONSULTANT shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of TOWN.

13. RECORDS

During the term of this Agreement, CONSULTANT shall permit representatives of TOWN to have access to, examine and make copies, at TOWN's expense, of its books, records and documents relating to this Agreement at all reasonable times.

14. TOWN WARRANTIES

The TOWN makes no warranties, representations, or agreements, either express or implied, beyond such as are explicitly stated herein.

15. TOWN REPRESENTATIVE

Except when approval or other action is required to be given or taken by the City Council of the TOWN, the Director of Public Works of the TOWN, or such person or persons as he shall designate in writing from time to time, shall represent and act for the TOWN.

16. SUSPENSION AND TERMINATION

The TOWN shall have the right to suspend or to terminate this Agreement at any time by giving written notice to the CONSULTANT. In the event of suspension or termination for any reason other than the fault of the CONSULTANT, the CONSULTANT shall be compensated in accordance with the provisions of Section 9 for the services performed and expenses incurred to the date of such suspension or termination, plus any reasonable costs and expenses which are reasonably and necessarily incurred by CONSULTANT to effect such suspension or termination. If, in the event of suspension, the project is resumed after being suspended for more than three months, the CONSULTANT's compensation may be subject to renegotiation. If the project is resumed within the period of three months following notification of suspension, there shall be no change in the CONSULTANT's compensation. For termination for default the TOWN shall remit final payment to CONSULTANT in an amount to cover only those services performed and expenses incurred in accordance with the terms and conditions of

this Agreement up to the effective date of termination, reserving to the Town all available remedies for such default.

17. NOTICES

All communications relating to the day to day activities of the project shall be exchanged between the TOWN's Project Manager and the CONSULTANT's _____.

All other notices and communications deemed by either party to be necessary or desirable to be given to the other party shall be in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

If to the TOWN: Town of Hillsborough
ATTN: Director of Public Works
1600 Floribunda Avenue
Hillsborough, California 94010

If to the CONSULTANT: _____
_____
_____

ATTENTION: _____

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

18. ATTORNEY'S FEES

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

19. APPLICABLE LAW

This Agreement, its interpretation and all work performed thereunder, shall be

governed by the laws of the State of California.

20. BINDING ON SUCCESSORS

Subject to the provisions of paragraph 12, 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.

21. CONFLICT OF INTEREST

Depending on the nature of the work performed, a consultant for the TOWN is subject to the same conflict of interest prohibitions that govern city employees and officials (Cal. Gov't Code Section 1090 et seq). During the proposal process or the term of this Agreement, the Consultant may be required to disclose financial interests.

22. AMENDMENT

This Agreement may be modified or amended only by a writing signed by both parties.

23. SEVERABILITY

In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforcement of the remaining provisions or portions thereof shall not be affected thereby.

24. ENTIRE AGREEMENT

This Agreement, together with attached exhibits, contains the entire understanding between the parties concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understands, oral or written, between the parties relating to the subject matter of this Agreement that are not fully expressed herein.

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

TOWN OF HILLSBOROUGH

By: Kathy Leroux

_____
City Manager

Approved as to form:

_____
City Attorney

(CONSULTANT)

By: _____

Title: _____

By: _____

Title: _____

Attachments:

Exhibit "A" - Request for Proposals/Scope of Service

Exhibit "B" – Consultant Proposal

Exhibit "C" – Fee Schedule and Rates