

CITY OF PINOLE

REQUEST FOR PROPOSALS

PROFESSIONAL AUDITING SERVICES



Proposals Due By: April 3, 2023 by 4:30 PM

Contact Information:
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REQUEST FOR PROPOSAL FOR PROFESSIONAL AUDITING SERVICES

I. INTRODUCTION

The City of Pinole (“City”) is requesting proposals from qualified firms of certified public accountants for auditing services for the fiscal years ending June 30, 2023 through June 30, 2025, with an option to extend the contract at one-year intervals, not to exceed a total of two additional fiscal years. This Request for Proposal (RFP) outlines the scope of this proposal, information required, evaluation criteria, and other relevant information. Responding firms are solely responsible for any expenses incurred in preparing proposals in response to the request. If your firm would like to consider this engagement, we invite your response due no later than **4:30 PM on April 3, 2023**.

Proposals must be submitted by emailing the PDF copy to Markisha Guillory at mguillory@ci.pinole.ca.us by **4:30 PM on April 3, 2023**. The email subject should be titled “City of Pinole RFP for Auditing Services – *Your Company Name*.”

The City reserves the right to reject any or all proposals submitted. During the evaluation process, the City of Pinole reserves the right, where it may serve the City’s best interest, to request additional information or clarification from proposers, or to allow corrections of errors or omissions.

The City of Pinole reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected.

Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of Pinole and the firm selected.

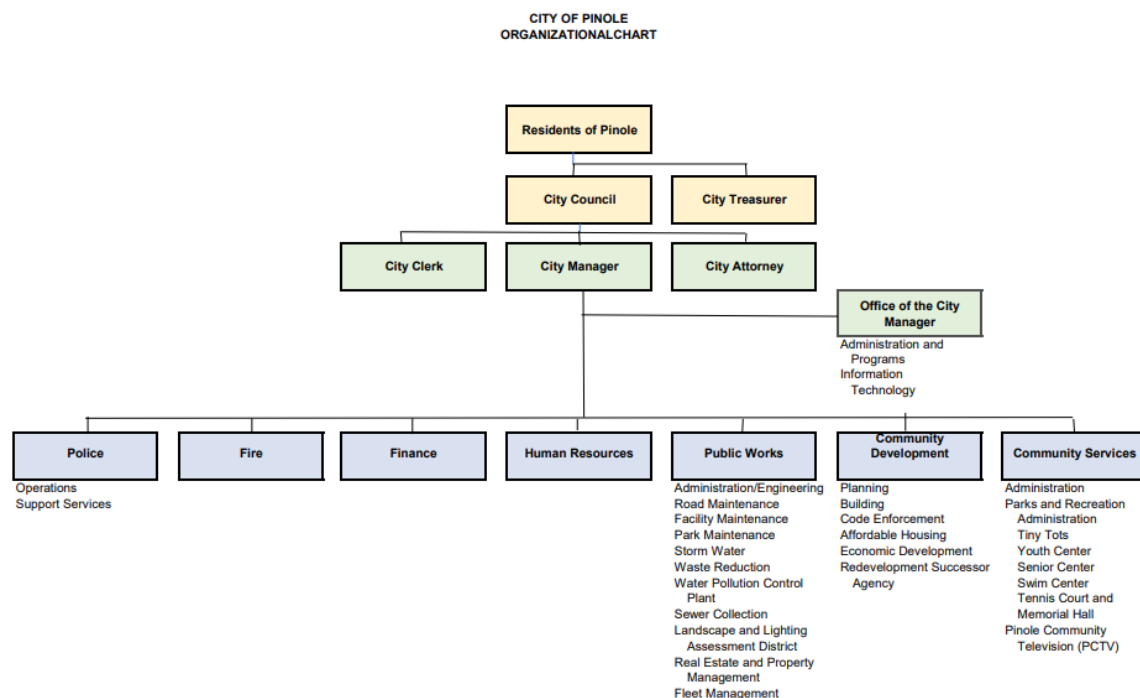
Materials submitted by respondents are subject to public inspection under the California Public Records Act, unless exempt. Any language purposing to render the entire proposal confidential or proprietary will be ineffective and will be disregarded.

II. BACKGROUND INFORMATION

The City of Pinole serves an area of 5 square miles with a population of 18,628. The City was incorporated June 25, 1903. Pinole is a general law city operated under a Council-Manager form of government. The City is governed by a five-member council, who serve four-year overlapping terms, and are elected at large by City residents. The office of the mayor is rotated amongst council members annually. The City provides a full range of municipal services and is organized according to the organizational chart shown below, providing services to its residents for: police and fire protection, community development (including building inspection, planning & zoning), public works (including roads, parks, and facilities maintenance), community services (including parks and leisure services), and general administration. The City operates a Sewer Enterprise for the collection and treatment of sewage. Electric, gas, cable television and refuse services are provided

by franchise agreements. The water utility is operated by an independent Special District (East Bay Municipal Utility District).

The City of Pinole's fiscal year begins on July 1 and ends on June 30. The City has a combined budget of \$58.6 million and approximately 133 full-time equivalent employees. More detailed information on the City government and its finances can be found in the Annual Comprehensive Financial Report (ACFR). Copies of the City's recent audited financial statements and budgets are available online at: https://www.ci.pinole.ca.us/city_government/finance.



The City of Pinole uses the following fund types and account groups in its financial reporting:

Fund Type/Account Group	Number of Individual Funds
General Fund(s)	5
Special Revenue Funds	22
Debt Service Funds	0
Capital Project Funds	8
Enterprise Funds	3
Internal Service Funds	1
Agency Funds	5
Private Purpose Trust funds	1

The City maintains its accounting records in accordance with Generally Accepted Accounting Principles (GAAP) and standards established by the Governmental Accounting Standards Board (GASB). Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenue is recognized when both measurable and available. Expenditures are recognized when the liability is incurred. Debt service obligations are appropriated when due.

Proprietary fund financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenue is recognized when earned and expenses when the liability is incurred regardless of timing of related cash flows.

The basis of budgeting is consistent with the basis of accounting discussed above. Appropriations that are budgeted and not expensed at the end of the year lapse and revert to fund balance.

The City currently uses Tyler Technologies ERP Pro 10 (Incode) financial software.

III. SCOPE OF WORK TO BE PERFORMED

The City of Pinole is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal years ending June 30, 2023 to June 30, 2025, and the two subsequent fiscal years thereafter, with an option to extend the contract two additional years in one-year increments, not to exceed a total of five fiscal years. These audits are to be performed in accordance with the provisions contained in this request for proposals. In addition, the auditor will be required to prepare the City's Annual Comprehensive Financial Report (ACFR) and separate financial statements for the Successor Agency to the Pinole Redevelopment Agency.

The City's goal is to provide its constituents and the general public with an Annual Comprehensive Financial Report (ACFR) that gives complete, accurate and understandable information about the City's financial condition, in conformance with standards established by the Government Accounting Standards Board (GASB) and review standards of the Government Finance Officers Association (GFOA). The City of Pinole desires the Auditor to express an opinion on the fair presentation of its basic financial statements in conformity with generally accepted governmental accounting principles.

The Auditor is not required to audit the combining and individual fund financial statements and supporting schedules. However, the Auditor is to provide an "in-relation-to" report on the combining and individual fund financial statements and supporting schedules based on the auditing procedures applied during the audit of the basic financial statements. The Auditor is not required to audit the introductory section of the report or the statistical section of the report.

The Auditor shall also be responsible for performing certain limited procedures involving management's discussion and analysis (MD&A) and required supplementary information (RSI) required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards.

The Auditor is not required to audit the schedule of expenditures of federal awards. However, the auditor is to provide an "in-relation-to" report on that schedule based on the auditing procedures applied during the audit of the financial statements.

IV. AUDITING STANDARDS TO BE FOLLOWED

To meet the requirements of this request for proposals, the audit shall be performed in accordance with:

- Generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants;
- Standards for financial audits set forth in the U.S. Government Accountability Office's Government Auditing Standards;
- Provisions of the Single Audit Act;
- Provisions of the U.S. Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

V. REPORTS TO BE ISSUED

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue the following reports:

1. **Annual Comprehensive Financial Report (ACFR)** - A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles, including an opinion on the fair presentation of the supplementary schedule of expenditures of federal awards "in relation to" the audited financial statements. The audit firm will provide 10 bound copies and one PDF copy.
2. **Basic Financial Statements of the Successor Agency** – A separate audit report for the financial statements of the Successor Agency to the Pinole Redevelopment Agency, a private-purpose trust fund administered by the City of Pinole. The audit firm will provide 10 bound copies and one PDF copy.
3. **Single Audit Report** – The City may receive federal funds that require a Single Audit Report issued. This report must satisfy all requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) 2 CFR 200.501. The audit firm will provide 10 bound copies and one PDF copy.

4. **Management Letter (SAS 114)** – The auditor shall issue a separate management letter that includes recommendations and disclosures of material and non-material weakness for improvements in the City’s financial operations. The audit firm will provide 10 copies and one PDF copy.
5. **Internal Control Report** - A report on internal controls over compliance and other matters based on an audit of the financial statements performed in accordance with *Government Auditing Standards*. The audit firm will provide 10 copies and one PDF copy.
6. **Agreed Upon Procedures Applied to the Appropriations Limit** – The auditor shall perform agreed-upon procedures recommended by the League of California Cities as presented in the League publication entitled *Article XIII B Appropriations Limitation Uniform Guidelines*. The audit firm will provide 10 copies and one PDF copy.
7. **Agreed Upon Procedures Applied to Measure S 2006 and Measure S 2014** – The auditor shall prepare a report of Agreed Upon Procedures related to the collection and disbursement of local Use Taxes (Measure S 2006 and Measure S 2014) collected separately that augment Bradley Burn Sales Tax Revenue disbursements by the State Board of Equalization. The audit firm will provide 10 copies and one PDF copy.
8. **Other Reports** - As requirements change, additional reports may be added as additional work, as covered in this RFP by the terms for such work.

VI. INTERNAL CONTROL AND COMPLIANCE REPORTS

In the required reports on internal control and compliance and other matters, the auditor shall communicate in a letter to management any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statements. Reportable conditions that are also material weaknesses shall be identified as such in the report.

Non-reportable conditions discovered by the auditors shall be reported in a separate letter to management, which shall be referred to in the reports on internal controls.

Auditors shall be required to make an immediate, written report of all irregularities and illegal acts of which they become aware to the Finance Director, the City Manager, and the City Attorney.

VII. AWARDS

The City of Pinole has obtained the *Certificate of Achievement for Excellence in Financial Reporting* from the Government Finance Officers Association of the United States and Canada for twenty-four consecutive years. It is the City's intention to continue to receive these awards annually and will expect the comprehensive annual financial report to meet the requirements of those programs. The auditor will be expected to review the final draft of the ACFR for compliance with the certificate program checklists.

VIII. WORKING PAPER RETENTION AND ACCESS TO WORKING PAPERS

All working papers and reports must be retained, at the Auditor's expense, for a minimum of five (5) years, following the completion of the audit, unless the firm is notified in writing by the City of Pinole of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designees:

- City of Pinole;
- Oversight or cognizant agencies;
- Parties designated by the federal or state governments or by the City of Pinole as part of an audit quality review process;
- Auditors of entities of which the City of Pinole is a sub-recipient of grant funds;
- State of California, Office of the State Controller.

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

IX. PRINCIPAL CONTACT

The Auditor's principal contact with the City of Pinole will be the Finance Director, Markisha Guillory, who will coordinate the assistance to be provided by the City to the auditor. She can be contacted at 510-724-9823 or mguillory@ci.pinole.ca.us.

X. ASSISTANCE TO BE PROVIDED

The Finance Department staff and responsible management personnel will be available during the audit to assist the auditors by providing information, documentation and explanations. The auditors will be expected to coordinate their services with the Finance Director and should endeavor to accomplish the audit on a phased basis throughout the year to reduce the year-end workload on the City's staff.

1. City Staff will prepare the final closing of the accounting ledgers. The City will provide the auditor with a *Trial Balance by Fund* and all of the accounting transaction detail necessary to perform the audit.
2. City Staff will generate the necessary confirmation letters for the Auditor.
3. City Staff will assist with the preparation of the *Notes Disclosures* for the financial statements and required supplementary schedules.
4. City Staff will prepare the Statistical Section of the ACFR Document, but the Auditor will be required to confirm that these schedules are adequate to meet GFOA Reporting Standards.
5. The City will provide the auditor with reasonable workspace at City Hall for fieldwork, if necessary.

XI. TENTATIVE SCHEDULE FOR THE 2022/23 FISCAL YEAR AUDIT

1. Entrance conference	After May 10, 2023
The purpose of this meeting will be to discuss the interim work to be perform and any prior audit issues. This meeting will also be used to establish overall work plan for the audit and to make arrangements for fieldwork to be done remotely or onsite.	
2. Interim Work	June 2023
3. Detailed Audit Plan	July 31, 2023
The auditor shall provide both a detailed audit plan and a list of all schedules to be prepared by the City of Pinole.	
4. Fieldwork	October 2023
5. Draft Reports	November 2023
The auditor shall have drafts of the audit reports and recommendations to management, available for review. The Finance Director will complete a review of the draft as expeditiously as possible. It is not expected that this process should exceed one week. During that time period, the Auditor should be available for any meetings that may be necessary to discuss the audit reports.	
6. ACFR complete and ready to print	December 29, 2023
7. Auditor presentation to City Council	January 16, 2024
8. Single Audit	March 2024

The auditor shall have final reports of the audit process and recommendations to management available for submission to the GFOA, City Council and State Controller by these dates.

XII. TENTATIVE SCHEDULE FOR SELECTION PROCESS

Request for proposal issued	March 6, 2023
Due date for proposals	April 3, 2023, 4:30 PM
Interview with Finalists *	April 12, 2023
Selected firm notified *	April 17, 2023
Contract date *	May 10, 2023

* Projected dates, subject to change.

XIII. PROPOSAL REQUIREMENTS

All participating firms are requested to provide the following information in their response:

1. **Title Page** - Title page showing the request for proposals subject; the firm's name; the name, address and telephone number, and e-mail address of the contact person; and, the date of the proposal.
2. **Table of Contents**
3. **Letter of Transmittal** - A signed letter of transmittal briefly stating the firm is properly licensed to practice in California (including all the assigned professional staff to the engagement); proposer's understanding of the work to be done; the commitment to perform the work within the time period; a statement why the firm believes itself to be best qualified to perform the engagement; and, a statement that the proposal is a firm and irrevocable offer for a minimum of 60 days.
4. **Detailed Proposal** - The detailed proposal should include information set forth under Auditing Proposal Section XIII A below.

A. Auditing Proposal

1. Summary of Firm's Qualifications
 - a. The proposer shall state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed, and all personnel who may be assigned to work on the audit. Include brief summaries of their background (including if they hold a CPA license) and experience in auditing cities as well as their assigned responsibilities under the proposal.
 - b. The proposer is required to submit a copy of its most recent external quality control review, any findings discovered as part of that review, and actions taken to correct those findings. The firm also must disclose information on the

circumstances and status of any disciplinary action taken or pending against the firm during the firm during the past three (3) years with state regulatory bodies or professional organizations, as well as any pending or settled litigation within the past three (3) years.

2. Independence

The firm shall provide an affirmative statement that is independent of the City of Pinole as defined by the U.S. General Accounting Office's Government Auditing Standards (1994 edition, with all subsequent amendments).

The firm should also list and describe the firm's (or proposed subcontractors') professional relationships involving the City of Pinole or any of its component units for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed audit.

In addition, the firm shall give the City of Pinole written notice of any such professional relationships entered into during the period of this agreement.

3. License to Practice in California

An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in the State of California.

4. List of References

- a. Provide the names, address and telephone numbers of at least three, maximum of five current municipal audit clients served by your local office.
- b. Indicate the scope of work, dates, and total hours for each.

5. Specific Audit Approach

The proposal shall set forth a work plan, including an explanation of the audit methodology to be followed, to perform the services required in Section II of this request for proposal.

Proposers should consider providing the following information on their audit approach:

- a. Proposed segmentation/staging of the engagement;
- b. Level of staff and number of hours to be assigned to each proposed segment of the engagement;
- c. Sample size and the extent to which statistical sampling is to be used in the engagement;
- d. Type and extent of analytical procedures to be used in the engagement;

- e. Approach to be taken to gain and document an understanding of the City of Pinole's internal control structure;
- f. Approach to be taken in determining laws and regulations that will be subject to audit test work;
- g. Approach to be taken in drawing audit samples for purposes of tests of compliance;
- h. Provided By Client (PBC) List

The proposal shall include a list of standard client-prepared audit schedules the firm anticipates City staff will provide as audit support.

B. Dollar Cost Bid

1. Total All-Inclusive Maximum Price

The dollar cost bid shall contain all pricing information relative to performing the audit engagement for each of the three contract years as described in this request for proposal. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs including all out-of-pocket expenses.

The City of Pinole will not be responsible for expenses incurred in preparing and submitting the technical proposal or the dollar cost bid. Such costs shall not be included in the proposal.

The dollar cost bid shall include the following information:

- a. Name of Firm;
 - b. Certification that the person signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with the City of Pinole;
 - c. A Total All-Inclusive Maximum Price for the each year of the engagement.
- ### **2. Rates by Partner, Specialist, Supervisory and Staff Level, Times Hours Anticipated for Each**

The bid shall include a schedule of professional fees and expenses, presented in the format provided in Section XV (page 14), supporting the total all-inclusive maximum price for each year. The cost of special services shall be disclosed as separate components of the total all-inclusive maximum price.

3. Rates for Additional Professional Services

If it should become necessary for City of Pinole to request the auditor to render any additional services to either supplement the services requested in this RFP or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between City of Pinole and the firm. Any such additional work agreed to between City of Pinole and the firm shall be performed at the same rates set forth in the schedule of fees and expenses included in the proposal for auditing services.

4. Manner of Payment

Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's dollar cost bid proposal. Interim billing(s) shall cover a period of not less than a calendar month. Invoices for separate reports should be sufficiently detailed or segregated to facilitate the charging of costs to the programs/activities being audited.

XIV. EVALUATION PROCEDURES

A. Evaluation of Proposals

Proposals submitted will be evaluated by an evaluation committee consisting of City staff with the top three (3) firms invited for proposal interviews.

The City of Pinole reserves the right to retain all proposals submitted and use any idea in a proposal regardless of whether that proposal is selected.

B. Evaluation Criteria

Proposals will be evaluated to ascertain which proposing firm best meets the need of the City. The following criteria will be used to evaluate responses to this proposal:

1. The proposal's responsiveness in clearly stating the understanding of the work to be performed.
2. The firm's indication of its ability to meet timeframes for completing the indicated reports.
3. Reasonableness of hours and level of staff dedicated to complete the audit services as indicted by the schedule of audit hours.

4. The firm's technical support, firm size and structure.
5. Qualifications and Related Experience of the audit team who will serve the City of Pinole (Managing Partner, Audit Manager and Senior Auditor Staff).
6. Experience of the Firm auditing California Cities and former Redevelopment Agencies.

C. Final Selection

The City Council will select a firm based upon City staff evaluation and recommendation.

It is anticipated that a firm will be selected by April 17, 2023. Following notification of the firm selected, it is expected a contract will be executed between both parties by May 10, 2023.

D. Right to Reject Proposals

Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposal unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of Pinole and the firm selected.

The City of Pinole reserves the right without prejudice to reject any or all proposals.

XV. SCHEDULE OF PROFESSIONAL FEES AND EXPENSES

The maximum fees for the audit of the City of Pinole should be provided in the following format for fiscal years ended June 30, 2023, 2024, 2025, 2026 and 2027. The fees should be inclusive of any out of pocket expenses incurred by the audit firm:

A.

	2022-23	2023-24	2024-25	Option Year 2025-26	Option Year 2026-27
Basic Reports to be Issued:					
City Audit, ACFR, Report on Internal Controls & Management Letter	\$	\$	\$	\$	\$
Audit of Pinole Successor Agency including Basic Financial Statements	\$	\$	\$	\$	\$
Single Audit & Related Reports	\$	\$	\$	\$	\$
Agreed Upon Procedures - Local Use Taxes	\$	\$	\$	\$	\$
Agreed Upon Procedures - Appropriations Limit	\$	\$	\$	\$	\$
Report of City Financial Transactions to the SCO	\$	\$	\$	\$	\$
Additional Reports Requested at City Option:					
Street Report to the SCO	\$	\$	\$	\$	\$
TOTAL	\$	\$	\$	\$	\$

B. Hourly Rates of the Firm's Employees should be provided by the firm for services which may be requested outside the scope of the audits as follows:

	2022-23	2023-24	2024-25	Option Year 2025-26	Option Year 2026-27
Partner	\$	\$	\$	\$	\$
Manager	\$	\$	\$	\$	\$
Senior Accountant	\$	\$	\$	\$	\$
Staff Accountant	\$	\$	\$	\$	\$
Clerical	\$	\$	\$	\$	\$

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

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

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

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

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

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

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

- 2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:
- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
 - The beginning and ending dates of the billing period;
 - A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
 - At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
 - The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
 - The Consultant's signature.
- 2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.
- 2.4 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever

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

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

2.5 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B.

2.6 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit B, and shall not exceed _____ (\$ _____). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 Payment upon Termination. In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

2.9 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

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

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

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the City upon

written verification that Consultant is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

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

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

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

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

4.3 Professional Liability Insurance.

- 4.3.1 General requirements.** Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence or claim covering the Consultant's errors and omissions.
- 4.3.2 Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:
- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.
 - c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five (5) years after completion of work under this Agreement.
 - d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

- 4.4.1 Submittal Requirements.** Consultant shall submit the following to City prior to beginning services:
- a. Certificate of Liability Insurance in the amounts specified in this Agreement; and
 - b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.
- 4.4.2 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.3 Deductibles and Self-Insured Retentions.** Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than ONE HUNDRED THOUSAND DOLLARS (\$100,000).
- 4.4.4 Wasting Policies.** No policy required herein shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 4.4.5 Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be

necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

4.4.7 Excess Insurance. If Consultant maintains higher insurance limits than the minimums specified herein, City shall be entitled to coverage for the higher limits maintained by the Consultant.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 General Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City or its directors, officials, officers, employees, agents or volunteers. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of,

pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor. This Section 5.1 shall survive any expiration or termination of this Agreement.

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

Section 6. STATUS OF CONSULTANT.

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

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and
Consulting Services Agreement between _____ [DATE]
City of Pinole and _____ Page 7 of 17

its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

7.5 Pinole Business License. Consultant shall obtain a City of Pinole business license according to the terms of Title 5 of the City of Pinole Municipal Code and deliver to City proof of such business license prior to beginning work under this Agreement. Work under this Agreement cannot begin until the City receives proof that Consultant has obtained a City of Pinole business license.

7.6 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

Section 8. TERMINATION AND MODIFICATION.

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

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

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that if City issues such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized

by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the City.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall included, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and

agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

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

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

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

Consultant will comply with all conflict of interest laws and regulations including, without limitation, City's Conflict of Interest Code (on file in the City Clerk's Office). It is incumbent upon the Consultant or Consultant's firm to notify the City pursuant to section 10.10 Notices of any staff changes relating to this Agreement.

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

Initialed by City Attorney's Office

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

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

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

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

Any written notice to City shall be sent to:

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

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

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

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

CITY OF PINOLE

CONSULTANT

Andrew Murray, City Manager

[NAME, TITLE]

Consultant's City of Pinole Business
License #: _____

Attest:

Heather Bell, City Clerk

Approved as to Form:

Eric S. Casher, City Attorney

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION SCHEDULE AND HOURLY FEES

EXHIBIT C
CITY-FURNISHED FACILITIES

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