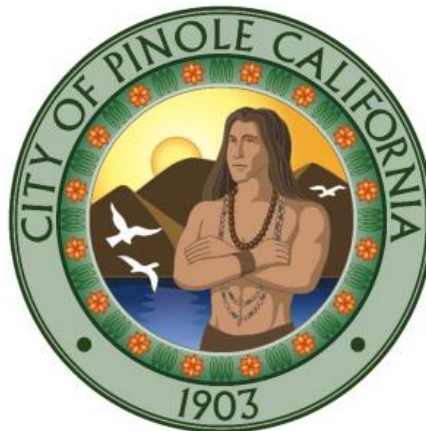


CITY OF PINOLE

REQUEST FOR PROPOSALS

COST ALLOCATION PLAN AND

COMPREHENSIVE USER FEE STUDY



Proposal Submission Deadline:
November 18, 2021 at 3:00 PM (Pacific Time)

Issued By:
Markisha Guillory
Finance Director
2131 Pear Street
Pinole, CA 94564
(510) 724-9823
mguillory@ci.pinoles.ca.us

I. Introduction

The City of Pinole is a diverse community of approximately 19,400 residents located on the east side of the San Francisco Bay in West Contra Costa County. Pinole is approximately 30 miles northeast of San Francisco and 20 miles north of Oakland along highway I-80. Pinole has a lovely natural setting and is noted for its architectural heritage.

Pinole is a full-service city, with a total budget of \$46.4 million, that provides public safety (police and fire), public works, community services (including recreation programs and Pinole community television), community development, and general administration services.

In February 2020, the City Council adopted the [City of Pinole Strategic Plan 2020 – 2025](#), which identified four main goals and 22 individual strategies for the City to complete. Under the Strategic Goal 2 – Financially Stable Pinole, one of the strategies is to “conduct a comprehensive fee study to ensure cost recovery of current and potential service fees.”

The current [Master Fee Schedule](#) includes user fees for the following departmental services: code enforcement; development; engineering; fire; planning; police; recreation; wastewater/sewer; and general administration. The City’s user fee structure is guided by its [Revenue Policy – User Fee and Charges](#) (page 5).

The City of Pinole is issuing this request for proposals (RFPs) to solicit proposals from qualified firms to prepare a cost allocation plan and conduct a comprehensive user fee study.

II. Purpose & Scope of Work

1. Cost Allocation Plan

The purpose of the cost allocation plan is to establish and maintain a well-documented and defensible plan that can be used to recover indirect costs. Additionally, the plan will be used to ensure that the City has a basis for applying comprehensive overhead rates and is accurately accounting for the true cost of providing various services. The results from the full cost allocation plan shall be used to develop the comprehensive user fee study.

The firm selected will prepare the City’s cost allocation plan (full cost and an OMB 2 CFR Part 225 allocation plan), which may include the following elements. The project tasks are not necessarily limited to the items listed below. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant’s proposal.

- Work with City staff to refine the project scope, schedule, and objectives of the City’s cost allocation plan to ensure that the plan is accurate and appropriate to meet the City’s needs.
- Meet with City staff and conduct interviews as needed to gain an understanding of the City’s processes and operations. This includes identifying services that overlap different departments so that costs are allocated to and tracked to the appropriate department.
- Identify each City service included in the plan and document the allocation basis for calculating the cost of providing the service.
- Work with the Finance department in developing service provisions, cost categories, and allocation criteria for current and future activities and programs.

- Develop a cost allocation plan model using budget and/or actual data for calculating the full costs of providing each City service. The requirements of the model should allow for:
 - Additions, revisions, or removal of direct and indirect overhead costs so that the full cost allocation plan can be easily adapted to changing conditions.
 - The ability of the City to continuously update the model and cost allocation plan from year to year to accommodate organizational changes.
 - The ability to perform ad hoc analysis for future service additions and/or expansion.
- Report on other matters that come to the consultant's attention during the course of the study that in their professional opinion the City should consider.
- Present the plan to City management and make adjustments as necessary.
- Deliver an Excel-based model for adjusting to meet the City's current and future needs and provide the City with an electronic copy of the final cost allocation plan, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate organizational changes.
- Prepare a hard copy report and provide three bound copies, one unbound copy, and a single Excel and PDF file of the final cost allocation plan.
- Consult with City staff should the need arise to defend the cost allocation plan as a result of audits or other challenges.

2. Comprehensive User Fee Study

The purpose is to conduct a comprehensive citywide review and evaluation of user fees and charges resulting in recommended cost-based user fees. This will include a thorough analysis of existing fees, development of fee models, and recommendations, including potentially identifying and recommending new fees.

The firm selected will conduct a comprehensive user fee study that will be used as the basis for updating the Master Fee Schedule. The study may include the following elements. The project tasks are not necessarily limited to the items listed below. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

- Work with City staff to refine the project scope, schedule, and objectives of the comprehensive user fee study to ensure that the study is accurate and appropriate to meet the City's needs.
- Meet with City staff and conduct interviews as needed to gain understanding of the City's processes and operations. Conduct a comprehensive review of the City's existing fees, rates, and charges.
- Identify the total cost of providing each City service in a manner that is consistent with all applicable laws, statutes, rules, and regulations governing the collection of fees, rates, and charges by public entities including, but not limited to, Proposition 26 and Proposition 218.
- Compare service costs with existing recovery levels. This should include any service areas where the City is currently charging for services, as well as areas where perhaps the City should charge, in light of the City's practices, or the practices of similar or neighboring cities.
- Recommend potential new fees and charges for services that the City currently provides but does not have any fees and/or charges established. Recommendations should be based on practices by surrounding cities that may charge for similar services, industry best practices, or the consultant's professional opinion.
- Recommend appropriate fees and charges based on the firm's analysis together with the appropriate subsidy percentage for those fees where full cost recovery may be unrealistic.

- Prepare a report that identifies each fee service, its full cost, recommended and current cost recovery levels. The report should also identify the direct cost, the indirect cost, and the overhead cost for each service.
- Prepare a report that identifies the present fees, recommended fees, percentage change, cost recovery percentage, revenue impact and fee comparison with cities similar to and in close proximity to Pinole.
- Report on other matters that come to the consultant's attention during the course of the study that in their professional opinion the City should consider.
- Develop a user fee model using budget and/or actual data for calculating the full costs of providing each City service. The requirements of the model should allow for:
 - Additions, revisions, or removal of direct and indirect overhead costs so that the model can be easily adapted to changing conditions.
 - The application of an annual inflator, such as the Consumer Price Index.
- Present the study to City management and make necessary adjustments as necessary.
- Prepare and deliver presentations to the City Council to facilitate its understanding of the study and the implications to the City.
- Provide the City with an electronic copy of the final comprehensive review, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate organizational changes.
- Consult with City staff should the need arise to defend the user fee study as a result of a legal or other challenge.

III. Submittal Requirements

Proposals must meet the following requirements in order to be considered responsive to this RFP.

Proposals shall include the following sections and information, in the sequence listed.

A. Cover Letter

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

B. Qualifications

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

C. Key Personnel

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

D. Scope of Work

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

E. Fee Proposal

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

F. References

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

G. Conflicts and Terminations

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

H. Standard Agreement

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

Firms shall submit their proposal as an attachment to an email with the subject line "Cost Allocation Plan and Comprehensive User Fee Study Proposal" sent to mguillory@ci.pinole.ca.us no later than November 18, 2021 at 3:00 PM

IV. Proposal Evaluation and Consultant Selection

The City will evaluate firms on the basis of the proposal (qualifications, key personnel, scope, and fee) and reference checks. Upon the City's review of proposals, the City may invite firms for interviews.

V. Miscellaneous Provisions

Tentative Project Schedule

Request for Proposals Issued	October 21, 2021
Proposals Due	November 18, 2021 (3:00 PM)

Evaluation and Selection Completed	November 2021
Contract Executed and Project Begins	December 2021

The City reserves the right to accept or reject any or all proposals or to waive any defects or irregularities in the proposals or selection process. No representation is made hereby that any contract will be awarded pursuant to this RFP. Receipt of a proposal by the City does not constitute a contract with the City. All costs incurred in the preparation of the proposal and subsequent material will be borne by the proposer. All quotes, inquiries, responses correspondence, proposals, reports, charts, displays, schedules, exhibits, and other documentation or other information submitted to the City in response to this RFP will become the property of the City and a matter of public record. The City retains the right to abandon the proposal process at any time prior to the actual execution of a contract with no financial or other responsibility in the event of such abandonment. The City reserves the right to negotiate all final terms and conditions of any agreement entered into. The City further reserves the right to make such investigation as it deems necessary to determine the ability of proposers to furnish the required services, and proposers shall furnish all such information for this purpose as the City may request. The firm awarded the contract will be required to have a City of Pinole business license.

Please submit any questions regarding this RFP to Markisha Guillory at mguillory@ci.pinole.ca.us.

VI. Attachments

Attachment A – City of Pinole Standard Consulting Services Agreement

**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, and the applicable sections of Exhibit D.

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 work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

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. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

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

4.2.1 **General requirements.** 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 ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

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 (ed. 11/88) or GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1. 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 insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

- b. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

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) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

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 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- 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 years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- 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 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.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete certified copies of all policies, including complete certified copies of all endorsements. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

4.4.3 **Notice of reduction in or cancellation of coverage.** A certified endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. In the event that any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than ten (10) working days after Consultant is notified of the change in coverage.

4.4.4 **Additional insured; primary insurance.** A certified endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) shall be attached to all policies stating that the City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

A certified endorsement shall be attached to all policies stating that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

4.4.5 **Deductibles and self-insured retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

4.4.6 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.7 **Variation.** The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

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 exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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 including but not limited to the California Labor Code and the prevailing wage requirements set forth in Exhibit D.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing,

Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

- 7.5 **Pinole Business License.** Consultant shall obtain a City of Pinole business license according to the terms of Title 5 of the City of Pinole Municipal Code and deliver to City proof of such business license prior to beginning work under this Agreement. Work under this Agreement cannot begin until the City receives proof that Consultant has obtained a City of Pinole business license.
- 7.6 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

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

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may cancel this Agreement upon thirty (30) calendar days and without cause upon written notification to Consultant pursuant to this section and the applicable sections of Exhibit D.

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 **Consultant's Identity and Personnel.** The person identified on page one as the CONSULTANT's Key Personnel will be the key person for the performance of services

under this AGREEMENT. CONSULTANT's additional key personnel who will work on the PROJECT are identified in Exhibit B. Any addition or deletion of a firm (whether working as a joint venture partner or subconsultant), or any change in key personnel may be made only upon prior written approval by CITY. CONSULTANT shall notify CITY of any proposed change of ownership or fundamental structure in CONSULTANT's firm. Within thirty (30) calendar days of such notice, CITY shall notify CONSULTANT whether CITY will approve such changed firm or personnel to continue providing services under this AGREEMENT or whether CITY will terminate this AGREEMENT. Nothing in this provision shall be construed to limit CITY's right to terminate this AGREEMENT for cause or without cause as set forth in Article I, Section C of this AGREEMENT. Subcontracts between the CONSULTANT and any subconsultants will be subject to review and approval of CITY's representative.

If CONSULTANT reassigns or reduces the commitment of any such key personnel, CONSULTANT shall provide a suitable replacement, subject to the approval of CITY, and CONSULTANT shall provide a reasonable number of unbilled hours of work for such replacement personnel to the extent required to bring the personnel up to speed.

- 8.4 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties and consistent with the requirements set forth in Exhibit D.
- 8.5 **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. See the applicable sections of Exhibit D for additional requirements.
- 8.6 **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.
- 8.7 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.7.1 Immediately terminate the Agreement;
- 8.7.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

- 8.7.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
- 8.7.4 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 and pursuant to the applicable sections of Exhibit D.
- 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 consistent with the applicable sections of Exhibit D.
- 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 pursuant to the applicable sections of Exhibit D. 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) and the requirements set forth in Exhibit D. 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 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:

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.

EXHIBIT D

ADDITIONAL CONTRACT REQUIREMENTS