



# Staff Report

City of Rolling Hills Estates

DATE: NOVEMBER 15, 2016  
TO: MAYOR & CITY COUNCIL  
FROM: DAVID WAHBA, PLANNING DIRECTOR  
SUBJECT: GENERAL PLAN UPDATE — REQUEST FOR PROPOSALS (RFP)

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## OVERVIEW

As directed by the General Plan Update subcommittee (Mayor Zuckerman and Councilwoman Schmitz), attached please find a draft “Request for Proposals (RFP) for the General Plan Update and Environmental Impact Report (EIR)”. As recommended by the subcommittee, staff would like to obtain authorization from the full Council to solicit proposals to conduct the General Plan Update, starting November 16, 2016.

## BACKGROUND & DISCUSSION

On September 13, 2016, the City Council appointed Mayor Zuckerman and Councilwoman Schmitz to serve on the City’s General Plan Update “steering” or “subcommittee”. Since that time, the subcommittee has met twice and developed the attached draft “Request for Proposals (RFP) for the General Plan Update and Environmental Impact Report (EIR).” The draft RFP also includes the City’s standard “Professional Services Agreement” that the selected consultant will be required to enter into with the City.

The subcommittee is requesting the full Council’s input on the draft RFP. Assuming there is consensus among the Council, staff will release the RFP immediately after the Council meeting on November 16, 2016. As summarized in the RPP, proposals will be accepted until close of business on Friday, January 20, 2017. In this same schedule, as outlined in the RFP, a pre-submittal meeting would be held at City Hall on December 12, 2016, and the subcommittee and staff would expect to interview the top candidates on February 7<sup>th</sup> and possibly February 8, 2017. The top candidate(s) would then be recommended for full Council review and award of contract by March 14, 2017. In the event that the Council would like to revise the attached RFP, then these dates would need to be pushed back to allow for more time. Also note that with the upcoming holidays, staff has allowed for additional time (approximately two months) in which for proposals to be submitted.

In addition to updating the mandatory General Plan Elements (Land Use, Transportation, Conservation, Open Space & Recreation, Noise and Public Safety (Hosing updated in 2014)), the subcommittee has suggested that, rather than identifying what optional Elements may be explored, that this should be part of the RFP process, whereby a perspective consultant should identify what might be most beneficial to the City based on their experience and expertise. With

that being said though, the subcommittee did discuss the possibility of exploring an Economic, Design Review, and Sustainability Element, as possible optional Elements.

Staff is also in the process of applying for a grant through SCAG (due November 18<sup>th</sup>, 2016) that may assist in updating our General Plan. If awarded, there may be an opportunity to apply up to \$200,000 towards an Economic Element, which if not considered separately as an optional Element, could also be explored in the Land Use Element. Lastly, as Council may be aware, the City of RHE, working with the cities of PVE and RPV, is applying for a SCAG grant for a Peninsula-wide traffic master plan, which could also assist us in the Transportation Element Update.

The City Council has budgeted \$300,000 for this fiscal year, with the understanding that the General Plan Update may take at least two or more years to complete, and at a total cost of around one million dollars. Council may recall that through the City's "Public Facilities Impact Fee for New Development" Program, new development projects are required to pay a General Plan Update fee of 60 cents per square foot, exempting parking garages. Staff expects to collect about \$300,000 this fiscal year and the balance (roughly another \$300,000) over the next couple of years. With the development of the Chandler and Rolling Hills Country Club project, the two mixed-use projects in the commercial district, the two assisted living projects, and the expansion to the Rolling Hills United Church project, a rough estimate of about \$600,000 (total) should be realized in the next couple of years. Depending on the cost to conduct a General Plan Update and EIR (estimated at around one million dollars), there may be a shortfall in funding; however, there may be some offsetting in grants and other types of funding mechanisms.

Staff recommends that the City Council review the attached RFP for the General Plan Update and EIR and direct staff to solicit proposals starting on November 16, 2016. Prior to selecting a consultant, the full Council will have an opportunity to review the most qualified consultant(s) and their proposed work program and costs (estimated in February or March of 2017), as will be recommended by the subcommittee and staff.

## RECOMMENDATION

Staff recommends that the City Council authorize staff to solicit bids, starting November 16, 2016 and due by January 20, 2017, for an Update to the City of Rolling Hills Estates' General Plan and associated Environmental Impact Report (EIR).

## Exhibits

Attached

1. Request for Proposals for a General Plan Update and EIR



CITY OF ROLLING HILLS ESTATES  
REQUEST FOR PROPOSALS  
NOVEMBER 16, 2016

GENERAL PLAN UPDATE AND ENVIRONMENTAL IMPACT REPORT (EIR)  
FOR THE CITY OF ROLLING HILLS ESTATES, CALIFORNIA

PROPOSALS ACCEPTED UNTIL  
1/20/17

City of Rolling Hills Estates  
4045 Palos Verdes Drive North  
Rolling Hills Estates, CA 90274

## 1. PROJECT DESCRIPTION

The City of Rolling Hills Estates is seeking a qualified consultant to prepare a comprehensive update to the City’s General Plan, excepting the Housing Element, which was recently updated and certified by the State in 2014. The balance of the General Plan was last updated and adopted by the City Council in 1992.

Along with the State mandatory Elements, the City is also seeking to adopt possibly one or more optional Elements and would like to have a qualified consultant propose which optional Element(s) may be beneficial to the City. The City envisions that the optional Elements would be prepared along with the Update of the mandatory Elements. The City is also seeking a qualified consultant to conduct an Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA) for the General Plan Update.

The City’s current General Plan and Housing Element may be obtained electronically by utilizing the following link: <http://www.ci.rolling-hills-estates.ca.us/index.aspx?page=128>

## 2. ABOUT THE CITY OF ROLLING HILLS ESTATES

The City of Rolling Hills Estates is located on the Palos Verdes Peninsula, 23 miles south of central Los Angeles. The City covers 4.18 square miles on the central and northeastern sections of the peninsula, and is generally surrounded by the cities of Lomita and Torrance, to the northeast; Palos Verdes Estates to the north; Rancho Palos Verdes, to the north, west, and south; and Rolling Hills to the south.

The City of Rolling Hills Estates incorporated in 1957 in order to preserve and protect the rural community atmosphere. The area is almost fully urbanized with lower density residential neighborhoods (typically with a density of about two single family homes per acre), and scattered concentrations of commercial and non-residential land uses. The City’s main commercial district is about 98 acres and has a mixed-use overlay zone allowing for residential units to be built at 22 units per acre. The Rolling Hills Country Club (private) is undergoing the grading and construction of a new golf course and country club facility and will soon have 114 new single family homes surrounding it, in one of the City’s most recent and largest projects ever built since the City’s incorporation in 1957. Vacant parcels are mostly steep slope areas and canyons. A network of equestrian trails, parks, and other equestrian facilities provide a major recreational resource for the City’s residents.

## 3. TIMELINE FOR RFP PROCESS

The City of Rolling Hills Estates intends to follow the following timeline in this Request for Proposals (“RFP”) process. **Bolded** dates are firm.

Distribution of RFP	November 16, 2016
Pre-Submittal Meeting	<b>December 12, 2016</b> – 9:00 a.m. to 11 a.m., Rolling Hills Estates City Hall Council Chambers

Proposal Due to City	<b>January 20, 2017</b> – 4:30 p.m. Planning Department, 4045 Palos Verdes Dr. North, Rolling Hills Estates
City Invites Top Candidates to Interview	January 30, 2017
Consultant Interviews of Top Candidates	<b>February 7 and 8, 2017</b> , Rolling Hills Estates City Hall Council Chambers
Consultant Selection/Contract Negotiation	February 2017
Council Review and Contract Award	March 14, 2017
Project Initiation	Within 2 weeks

Consultant questions may be directed to Jeannie Naughton, Senior Planner, in the Planning Department at (310) 377-1577; ext. 115 or by email [JeannieN@RollingHillsEstatesCa.gov](mailto:JeannieN@RollingHillsEstatesCa.gov). City Hall offices are also open Monday through Friday, 7:30 a.m. to 5:30 p.m., (4:30 p.m. on all Fridays) and located at 4045 Palos Verdes Drive North, Rolling Hills Estates, CA 90274.

#### 4. QUALIFICATIONS

The Consultant and specific persons who will work on this General Plan Update and EIR must demonstrate the following key qualifications:

- Knowledge and experience in managing complex General Plan projects, preparing technical baseline reports, drafting General Plans, and preparing EIRs on General Plan Updates.
- Knowledge and experience in preparing optional General Plan Elements, sustainability, climate change, city planning issues, programs and implementation.
- Experience in team building, developing and conducting public outreach and education programs, facilitating public workshops and study sessions, and problem solving involving diverse interests.
- Innovation, experience and ability to deliver the best practices, electronic tools, and other key components and objectives.
- The Consultant should have experience in complying with state or federal grant programs (the City will be applying for available grants for the General Plan Update and may need the assistance of the Consultant).
- The ability to perform on time and within budget, availability of resources to start work in March 2017, and commitment of key personnel through the end of the Project.
- Knowledge of the local area, issues and constituencies is highly desirable.

- Agreement with the terms of the professional services agreement (attached). Minor changes may be considered at the City Attorney's discretion.

## **5. PROPOSAL CONTENTS AND FORMAT**

### COPIES AND FORMAT:

- Submit three (3) complete copies, bound, 8½" by 11" pages.
- Submit one (1) electronic copy emailed or on CD or thumb drive.
- Everything project-related should be bound together. Any sample work, brochures or similar materials, should be placed in a separate appendix or bound separately.

### TITLE PAGE:

Include the name of this project (City of Rolling Hills Estates General Plan Update and EIR). Provide the name, address, telephone number, and e-mail address of the firm, for a contact person, and for individuals with authority to bind the company.

### OVERVIEW AND SUMMARY:

This section should clearly and concisely (not more than five pages) convey the approach, experience, qualifications, and other factors that make your firm or team the best qualified, such as:

- Overall approach
- Project organization
- Key qualifications
- Summary work plan, budget, and timeline
- Project references

- 6. SCOPE OF WORK:** The Proposal must address each of the points below. The Consultant may suggest alternatives, including one or more optional Elements, that the Consultant believes would be of value in providing a process and producing a Plan that reflects the needs of the City.

#### **1. Comprehensive General Plan Update:**

- The Consultant will develop a legally adequate, integrated General Plan and EIR. The Consultant is requested to provide a work plan, budget and timeline for this work.
- The Plan will be focused and organized around sustainability and a low carbon future. The City is also interested in one or more optional Elements that may be beneficial to the City's future and is requesting that the Consultant suggest which optional Elements may be of value to the City, with a detailed explanation and cost.

- The Plan must comply with State law and address recent court cases and guidelines. The updated Plan must be internally consistent, legally defensible, and easy for the public to use.
- The horizon date (planning period) for the Plan will need to be determined; however, the City would like to complete the Plan and EIR within two years.

## **2. Administration:**

The Planning Department will coordinate the project, the Consultant contract, and the EIR and any grants that may be awarded for the project. The Consultant will work closely with the City staff on a regular basis. Other City departments will be involved as needed. Timelines should take into account City staff levels, and need for consultation and product reviews, which often consume more time than anticipated.

Documents: All reports and products should be provided in MS Office formats for ease of review and input. Consultant shall provide a camera-ready copy of products, with a copy of same on a flash drive. Maps shall also be provided in GIS format.

Electronic Data: All data and documents must be PC compatible with the City's computer hardware and software (MS Office). Documents must be sized and formatted for ease in uploading to the City's website (maximum 20 MB).

Website: The City's website may serve as the General Plan website, or as a portal to another website to provide updated comprehensive information for the public. Ultimately the adopted E-Plan will need to be placed on the City's website.

GIS: The City has an in-house GIS system (contracted with Digital Map Products [Gov Clarity]) that includes land use, General Plan and zoning, Assessor's data, street, some utility data, physical data, etc. GIS data layers should be shape files compatible with the City's GIS system.

Graphics: Proposals should provide examples of representative graphics that may be used.

Maintaining the Plan: Once the Plan is adopted, the City should be able to easily update paper and electronic formats. Where known, Proposals should specify any software, tools or skills that may be advisable to maintain the Plan.

## **3. Public Process:**

The Consultant shall identify a public process including meetings, workshops and similar consultations with community groups, stakeholders, and consulting partners (General Plan Advisory Committee) [GPAC]). Proposals should provide suggestions for outreach

opportunities. Outreach concepts and techniques will be evaluated through the Consultant selection process.

The Consultant should identify techniques to ensure that the General Plan update process is constructive and the work programs stay on schedule. It is the City's desire to reach a large number of people, and all segments of the community in an inclusive way, and in an efficient manner from a financial and staffing perspective. There must be provisions for social media outreach through the City's website and on Facebook and Nextdoor. The City will provide meeting areas at City Hall. Meetings are anticipated to be in the evenings, mid-week.

Proposals should specify the roles of the City's Commissions (Planning and Park & Activities Commissions) and Committees (Environmental Advisory Committee [EAC], Traffic & Safety and Equestrian Committees).

Presentations to City Council and Planning Commission: The Consultant will make presentations to the City Council and Planning Commission throughout the project's development to ensure the Council and Commission, as well as the community, are fully apprised of the project.

Preparation of Notices and Staff Reports: The City will prepare and mail all notices for workshops and public hearings, staff reports, CEQA notices, resolutions and ordinances as required. Consultant products will generally provide much of the content for these documents.

Status Reports: The Consultant will submit monthly status reports to the Planning Director on progress and conformance with scope of work, budget and timelines.

Draft General Plan Elements: The Consultant will work with City staff and identified partners in determining the format of the Plan. The Consultant will work with City staff, partners, stakeholders, and others as determined in drafting the updated General Plan Elements. The Plan will include an update of the following state mandatory Elements: Land Use, Transportation, Housing (updated and certified in 2014; however, this Element may need some level of updating to be consistent with the other Elements), Conservation, Open Space & Recreation, Noise, and Public Safety. As stated before, the City is requesting that the Consultant suggest one or more optional Elements that would assist the City in carrying out additional goals, objectives and implementation measures that may not otherwise be addressed in the mandatory Elements. Clear concise graphics, charts, and maps are necessary to communicate the policy concepts to the community. As part of the public process, the proposal shall include a program to encourage public review of draft products.

Environmental Review: The Consultant will be responsible for the preparation and completion of all EIR components including the discussion of all issue areas, evaluation of

environmental impacts, identification of potential mitigation measures, analysis of appropriate project alternatives, statement of facts and findings, Statement of Overriding Considerations, and mitigation monitoring if required. City staff will disseminate public notices, with Consultant's preparation and assistance.

Adoption of the General Plan: The Consultant shall present the General Plan Update to the Planning Commission and other Commissions (Parks & Activities) and committees (Environmental Advisory, Traffic & Safety and Equestrian) that may be necessary to review portions of the Plan. Ultimately, the City Council will approve the General Plan Update and EIR through the public hearing process. Following the public hearings through various Commissions and committees, the consultant shall make any necessary change to the document in anticipation of presentation to the City Council. Following the adoption of the General Plan Update by the Council, the consultant shall make all necessary revisions to the General Plan to be consistent with the final adoption.

## **7. MANAGEMENT PROGRAM**

The Planning Department expects to work closely with the Consultant team and other partners. The process will need to be well managed to efficiently use limited city and other partner staff resources, while allowing close coordination. Senior personnel identified in the Proposal may not be removed from the project without prior written consent of the City. Subcontractors must also meet all requirements requested of the selected Consultant and be approved by the City. The body of the Proposal should provide a summary of the pertinent qualifications of supervisory and key technical persons. Resumes for supervisory and key technical person to be assigned to the project can be provided in an appendix. Timelines are of significant concern and are indicated below.

## **8. BUDGET PROPOSAL**

The City currently has \$300,000 budgeted for Fiscal Year 2016-17 and fully expects to continue budgeting more money for the following fiscal year(s) to complete the General Plan Update and EIR.

Proposals must provide the following:

- Work Plan, Budget and Timeline with a description of the steps to be followed in carrying out the work (tasks, subtasks) to show a clear understanding of the work, proposed approach and budget.
- A breakdown of hours by task for all personnel, billing rates, and other expenses. Accommodations, food and drink, and similar expenses that do not benefit the project are not allowable expenses; mileage is limited to the IRS limits.
- Deliverables: A description of the format, content, and level of detail that can be expected in each deliverable, and Timeline.

- Timeline: A schedule must accompany the work description illustrating the anticipated schedule of tasks and subtasks. Important milestones shall be included on the schedule.

## 9. REFERENCES

- Provide a list of jurisdictions where the Consultant has produced comparable plans or product within approximately the past five (5) years. Provide the names and telephone numbers of contacts at each City.
- Include five (5) or more references for relevant work for the firm and staff proposed for assignment, including subconsultants.
- Submittal of a Proposal constitutes agreement that the firm(s) has sufficient staff resources and capability to perform the work contained with the RFP within the specified timeframe.
- Professional Services Agreement: Submittal of a Proposal constitutes agreement to the terms of the sample agreement (attached) and to provide proof of insurance and other documents stated in the agreement applicable to each firm. In the Proposal, identify any exceptions or modifications that are requested.

## 10. QUESTIONS AND PRE-SUBMITTAL MEETING

A pre-submittal meeting is scheduled from 9:00 a.m. to 11:00 a.m. on December 12, 2016 in the City Hall Council Chambers, 4045 Palos Verdes Drive North, focused on answering questions that consultants may have. Consultants may provide questions in advance to Jeannie Naughton, Senior Planner at (310) 377-1577, ext. 115 or by email [JeannieN@RollingHillsEstatesCa.gov](mailto:JeannieN@RollingHillsEstatesCa.gov) in addition to posing questions at the meeting. Attendance is highly desirable, though not mandatory, and will not be a factor in proposal evaluation.

## 11. PROPOSAL SUBMITTAL

Three (3) complete copies of the Proposal must be received by the Planning Department, 4045 Palos Verdes Drive North, Rolling Hills Estates, CA 90274, **no later than 5:30 p.m. on Tuesday, January 17, 2017.** Note that the City is closed on Monday, January 16<sup>th</sup> in observance of Martin Luther King Jr. Day. Postmarks and late Proposals will not be accepted. All Proposals and documents submitted become the property of the City of Rolling Hills Estates.

## 12. SELECTION PROCESS

A City Council subcommittee of two council members and key City staff will review all complete Proposals received prior to the submission deadline, and interviews will be scheduled with one or more firms. Interviews are tentatively scheduled to be held on **February 7<sup>th</sup> and, if needed, February 8, 2017.** The most qualified firm will be recommended by the subcommittee to the City Council, which will award the contract.

Proposals will be evaluated based on the following criteria:

- A high level of professional competence and a proven record in the preparation of General Plans and Environmental Impact Reports, and also as applicable to the proposal of work of subconsultants. Knowledge and experience in sustainability, climate change and small city semi-rural issues, planning, programs and implementation.
- Demonstration of innovation, experience and ability to deliver the best practices, electronic tools, and other key components and objectives.
- Public participation experience and success working with the public and multiple sectors in formulating goals, policies and programs, in building relationships, and in problem solving.
- Qualifications and experience of Consultant and subconsultants personnel assigned to the project.
- Adequacy and availability of staffing and other resources, commitment to the project, and ability to meet timelines.
- Quality, completeness and understanding of the City's objectives.
- Familiarity with local planning issues.
- Review of References.
- Overall cost.

### **13. AGREEMENT FOR CONSULTANT SERVICES**

Consultants and subconsultants thereto submitting Proposals thereby agree to the following:

- Prior to awarding any work, the selected Consultant will be required to execute a professional services agreement with the City (attached). Any proposed change to the agreement shall be identified in the response to the Request for Proposals (RFP) and shall be subject to the sole approval of the City. The City requires the Consultant to obtain and maintain a policy of professional liability and other insurance as indicated in the agreement.
- The City reserves the rights to amend the RFP at any time, to determine the successful respondent(s), and to reject any or all Proposals or components thereof. Revisions to the RFP, if any, will be emailed to all Consultants to whom the original RFP was distributed and to those requesting the RFP, in addition to posting online with the notice of the RFP.
- By submitting a Proposal to the City, Consultant agrees that the City is authorized to conduct investigations into the Consultant's background including all subconsultants.

- Proposals constitute a firm offer for at minimum a ninety (90) day period.
- RFP finalists will be invited to participate in interviews with the selection committee. One or more finalists may participate in negotiations and be asked to submit other information or revisions to their proposals as may result from negotiations.
- The City expects Consultants to respond to routine questions, which do not require considerable research, on a complementary basis.
- All data, documents and other information provided to the City by the Consultant shall become property of the City.
- Expenses incurred in the preparation of submittals, presentations, travel and other incidental activities related to this RFP are solely the responsibility of the respondent, regardless of this RFP process or its outcome.
- At no time shall the Consultant assign any interest in its Proposal without the prior written consent of the City.
- The Consultant shall be an independent contractor and not an employee of the City.
- If for any reason the selected firm is not able to commence services within thirty (30) days after the award of the contract, the City reserves the right to award the contract to another qualified Consultant.
- In connection with proposals pursuant to this RFP, it is agreed that the Consultant shall comply with the nondiscrimination clause in the attached sample agreement.

Please contact Jeannie Naughton, Senior Planner, at (310) 377-1577, ext. 115 or via email [JeannieN@RollingHillsEstatesCa.gov](mailto:JeannieN@RollingHillsEstatesCa.gov) with any questions.

Sincerely,

David Wahba  
Planning Director

ATTACHED: Professional Services Agreement



***City of Rolling Hills Estates***

***PROFESSIONAL SERVICES AGREEMENT***

***With***

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**Effective Date: XX/XX/16**

## PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective as of XXXX, 20XX ("Effective Date"), and is between the City of Rolling Hills Estates, a California municipal corporation and general law city ("City") and XXXX, duly authorized to conduct business within the state of California ("Consultant").

### **Section 1. Term of Agreement.**

Subject to the provisions of Section 20 ("Termination of Agreement"), the term of this Agreement will be for a period commencing on the Effective Date and will terminate upon the completion of Consultant's services.

### **Section 2. Scope and Performance of Services.**

- 2.1** Consultant agrees to perform the services set forth in Exhibit A ("Scope of Services"), which is made a part of this Agreement.
- 2.2** Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculations, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary to perform the services required of Consultant under this Agreement.
- 2.3** Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are listed in Exhibit B ("Key Personnel & Compensation"), which is made a part of this Agreement.
- 2.4** Consultant must make every reasonable effort to maintain the stability and continuity of Consultant's key personnel and subcontractors, if any, listed in Exhibit B to perform the services required under this Agreement. Consultant must notify City and obtain City's written approval with respect of any changes in key personnel prior to the performance of any services by replacement personnel.
- 2.5** Consultant must obtain City's prior written approval before utilizing any subcontractors to perform any services under this Agreement. This written approval must include the identity of the subcontractor and the terms of compensation.
- 2.6** Consultant represents that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant will at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described in this Agreement. In meeting its obligations under this Agreement, Consultant must employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

- 2.7** City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. Acceptance of any of Consultant's work by City will not constitute a waiver of any of the provisions of this Agreement.
- 2.8** The Consultant must maintain any work site in the City in a safe condition, free of hazards to persons and property resulting from its operations.

**Section 3. Additional Services and Changes in Services.**

- 3.1** Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in the Scope of Services or otherwise required by this Agreement, unless such additional services are authorized in advance and in writing by City.
- 3.2** If Consultant believes that additional services are needed to complete the Scope of Services, Consultant will provide the City Manager with written notification describing the proposed additional services, the reasons for such services, and a detailed proposal regarding cost.
- 3.3** City may order changes to the Scope of Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing, and executed by Consultant and City. The cost or credit to City resulting from changes in the services will be determined by the written agreement between the parties.

**Section 4. Familiarity with Services and Site.**

- 4.1** By executing this Agreement, Consultant represents that Consultant:
- (a) has thoroughly investigated and considered the Scope of Services to be performed;
  - (b) has carefully considered how the services should be performed;
  - (c) understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement; and
  - (d) possesses all licenses required under local, state or federal law to perform the services contemplated by this Agreement, and will maintain all required licenses during the performance of this Agreement.
- 4.2** If services involve work upon any site, Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing its services. Should Consultant discover any latent or unknown conditions that may materially affect the performance of services, Consultant will immediately inform City of such fact and will not proceed except at Consultant's own risk until written instructions are received from City.

**Section 5. Compensation and Payment.**

- 5.1** Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in Exhibit B ("Key Personnel & Compensation"). The total compensation, including reimbursement for actual expenses, may not exceed the amount set forth in Exhibit B, unless additional compensation is approved in writing by City.
- 5.2** The use of subconsultants will not be considered a reimbursable expense, and such costs must be applied towards the approved budgeted amount.
- 5.3** Each month during the term of this Agreement, Consultant must furnish City with an original invoice for all services performed and expenses incurred during the preceding month in accordance with the fee schedule set forth in Exhibit B. The invoice must detail charges by the following categories: labor (by subcategory), reimbursable costs, subcontractor contracts and miscellaneous expenses. The invoice must list, as applicable, the hours worked and hourly rates for each personnel category, the tasks performed, the percentage of the task completed during the billing period, the cumulative percentage completed for each task, and the total cost of the services. If applicable, the invoice must also provide a budget summary including the total amounts previously invoiced and paid, the current invoice amount and the budget remaining.
- 5.4** City will review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with this Agreement. In the event that no charges or expenses are disputed, the invoice will be approved and paid. In the event any charges or expenses are disputed by City, the invoice will be returned by City to Consultant for correction and resubmission.
- 5.5** Except as to any charges for work performed or expenses incurred by Consultant that are disputed by City, City will cause Consultant to be paid within 30 days of receipt of Consultant's invoice.
- 5.6** Payment to Consultant for services performed under this Agreement may not be deemed to waive any defects in the services performed by Consultant, even if such defects were known to City at the time of payment.
- 5.7** City reserves the right to withhold future payment to Consultant if any aspect of the Consultant's work is found substantially inadequate.

**Section 6. Required Documentation Prior to Performance.**

- 6.1** Consultant may not perform any services under this Agreement until:
- (a) Consultant furnishes proof of insurance as required under Exhibit C;
  - (b) Consultant provides City with a Taxpayer Identification Number;
  - (c) Consultant obtains a City business tax certificate and license, if applicable, and provides proof of compliance; and

(d) City gives Consultant a written notice to proceed.

- 6.2** The City will have no obligation to pay for any services rendered by Consultant in advance of receiving written authorization to proceed, and Consultant acknowledges that any such services are at Consultant's own risk.

**Section 7. Time of Performance; Excusable Delays; Extensions.**

- 7.1** Consultant must adhere to all schedules and deadlines set forth in this Agreement.
- 7.2** Consultant will not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Consultant. Such causes include, but are not limited to, acts of God, acts of terrorism, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather.
- 7.3** If Consultant is delayed by any cause beyond Consultant's control, City may grant, but is not required to, a time extension for the completion of services. If delay occurs, Consultant must notify City within 48 hours, in writing, of the cause and the extent of the delay and how such delay interferes with Consultant's performance of services.

**Section 8. Cooperation by City.**

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the Scope of Services will be furnished to Consultant in every reasonable way to facilitate, without undue delay, the services to be performed under this Agreement.

**Section 9. Project Documents.**

- 9.1** All original computer programs, data, designs, drawings, files, maps, memoranda, models, notes, photographs, reports, studies, surveys and other documents (collectively, "Project Documents") prepared, developed or discovered by Consultant in the course of providing services under this Agreement will become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of Consultant. Consultant will take such steps as are necessary to perfect or protect the ownership interest of City in such Project Documents. Upon completion, expiration or termination of this Agreement or upon request by City, Consultant must turn over to City all such original Project Documents in its possession; provided, however, that Consultant may retain copies of Project Documents. City acknowledges and agrees that use of Consultant's completed work product, for purposes other than identified in this Agreement, or use of incomplete work product, is at City's own risk. If necessary, Consultant agrees to execute all appropriate documents to assign to City the copyright or intellectual property rights to the Project Documents created pursuant to this Agreement.
- 9.2** Except as necessary for the performance of services under this Agreement, no Project Documents prepared under this Agreement, will be released by Consultant to any other person or entity without City's prior written approval.

**Section 10. Confidential Information; Release of Information.**

- 10.1** All information gained or work product produced by Consultant in performance of this Agreement will be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant may not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.
- 10.2** Consultant, its officers, employees, or agents, may not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this Agreement. Response to a subpoena or court order will not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.
- 10.3** If Consultant, or any officer, employee, or agent of Consultant, provides any information or work product (including Project Documents) in violation of this Agreement, then City will have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, to the extent caused by or incurred as a result of Consultant’s conduct.
- 10.4** Consultant must promptly notify City should Consultant, its officers, employees, or agents be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the services performed under this Agreement. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.
- 10.5** All media and press releases, including graphic display information, must be approved and distributed solely by City, unless otherwise agreed to in writing by City. All media interviews regarding the performance of services under this Agreement are prohibited unless expressly authorized by City.

**Section 11. Consultant’s Books and Records.**

- 11.1** Consultant must maintain all documents and records demonstrating or relating to Consultant’s performance of services under this Agreement, including ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City under this Agreement. All financial documents or records must be maintained in accordance with generally accepted accounting principles and all other documents must be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant under this Agreement. All such documents or records must be maintained for at least three years following the final payment under this Agreement.

- 11.2** Any and all records or documents required to be maintained by this section must be made available for inspection, audit and copying, at any time during regular business hours, upon written request by City or its designated representative. Copies of such documents or records must be provided directly to City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records must be made available at Consultant's address indicated for receipt of notices in this Agreement.
- 11.3** Where City has reason to believe that any of the documents or records required to be maintained by this section may be lost or discarded due to dissolution or termination of Consultant's business, City may, by written request, require that custody of such documents or records be given to a person or entity mutually agreed upon and that such documents and records thereafter be maintained by such person or entity at Consultant's expense. Access to such documents and records must be granted to City, as well as to its successors-in-interest and authorized representatives.

**Section 12. Status of Consultant.**

- 12.1** Consultant is and will at all times remain a wholly independent contractor and not an officer or employee of City. Consultant has no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.
- 12.2** The personnel performing the services under this Agreement on behalf of Consultant will at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, will have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as provided in this Agreement. Consultant agrees that it will not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, or employees of City.
- 12.3** Neither Consultant, nor any of Consultant's officers, employees or agents, will obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim to any such rights or benefits.

**Section 13. Compliance with Applicable Laws.**

- 13.1 In General.** Consultant must use the standard of care in its profession to keep itself informed of and comply with all federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement that apply to the services performed by Consultant.
- 13.2 Professional Licenses and Approvals.** Consultant agrees that it will, at its sole cost and expense, obtain and maintain in effect at all times during the term of this Agreement any licenses, permits, insurance and approvals that are legally required for Consultant to practice its profession.

**13.3 Employment Laws.** Consultant agrees to comply with all applicable federal and state employment laws including those that relate to minimum hours and wages, occupational health and safety, and workers compensation insurance. Consultant further represents that it is an equal opportunity employer and in performing services under this Agreement agrees to comply with all applicable federal and state laws governing equal opportunity employment, and further agrees that it will not discriminate in the employment of persons to perform services under this Agreement on the basis of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any such person, except as may be permitted by California Government Code section 12940.

**Section 14. Unauthorized Aliens.**

Consultant agrees to comply with all of the applicable provisions of the Federal Immigration and Nationality Act (8 U.S.C. § 1101 *et seq.*), as it may be amended, and further agrees not to employ unauthorized aliens as defined under the Act. Should Consultant employ any unauthorized aliens for the performance of any work or services covered by this Agreement, and should any liability or sanctions be imposed against City for the use of unauthorized aliens, Consultant agrees to reimburse City for the amount of all such liabilities or sanctions imposed, together with any and all related costs, including attorneys' fees, incurred by City.

**Section 15. Conflicts of Interest.**

**15.1** Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City or that would in any way hinder Consultant's performance of services under this Agreement. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 and following) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 *et seq.*), and California Government Code section 1090.

**15.2** Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm will make, participate in the making, or in any way attempt to use the position of Consultant to influence any decision of the City in which Consultant knows or has reason to know that Consultant, or any officer, principal or employee of Consultant has any of the financial interests listed in Government Code section 87103.

**15.3** If Consultant discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant must promptly disclose the relationship to City and take such action as City may direct to remedy the conflict.

**15.4** City understands and acknowledges that Consultant is, as of the Effective Date, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant represents that, except as otherwise disclosed to City, it is unaware of any stated position of City relative to these projects. Any future position of City on these projects will not be considered a conflict of interest for purposes of this section.

**Section 16. Indemnification.**

- 16.1** The parties agree that City should, to the fullest extent permitted by law, be defended, indemnified, and held harmless from all Services Claims and Operations Claims (defined below) related to the performance by Consultant of this Agreement. Accordingly, the provisions of this section are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to defend, indemnify, and hold harmless City as set forth in this section.
- 16.2** For the purposes of this section, "City" includes City's officers, officials, employees, agents and volunteers, and "Consultant" includes Consultant's officers, officials, employees, agents and subcontractors and any other persons for whom Consultant is legally responsible.
- 16.3** With respect to the performance of professional services under this Agreement where the law establishes a professional standard of care for such services, Consultant agrees to indemnify, and hold harmless City from and against all liabilities, damages, losses, and costs, including but not limited to reimbursement of reasonable attorney's fees and all other costs of defense, to the extent caused by the negligence, recklessness, or willful misconduct of Consultant (collectively, "Services Claims").
- 16.4** With respect to the acts and operations of Consultant under this Agreement other than the performance of professional services, Consultant agrees to defend, indemnify, and hold harmless City from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees and all other costs of defense, to the extent caused, in whole or in part, by the negligence, recklessness, or willful misconduct of Consultant, and excepting only those claims, damages, liabilities, losses, and costs caused by City's negligence or willful misconduct (collectively, "Operations Claims").
- 16.5** Consultant must notify City within five days of receipt of notice of any Operations Claims or Services Claims made or legal action initiated that arises out of or pertains to Consultant's performance of services under this Agreement.
- 16.6** Consultant's duty to defend Operations Claims is a separate and distinct obligation from Consultant's duty to indemnify City for any Services Claims. Consultant is obligated to defend City in all legal, equitable, administrative, or special proceedings, with counsel approved by City, immediately upon tender to Consultant of an Operations Claim in any form or at any stage of an action or proceeding, whether or not liability is established..
- 16.7** Consultant agrees that settlement of any Operations or Services Claim against City requires the consent of City. City agrees that its consent will not be unreasonably withheld provided that Consultant is financially able (based on demonstrated assets including insurance) to fulfill its obligation to indemnify City for the costs of any such settlement as required under this Agreement.
- 16.8** The insurance required to be maintained by Consultant under this Agreement is intended to ensure Consultant's obligations under this section, but the limits of such insurance do not limit the liability of Consultant.

**16.9** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required, Consultant will be fully responsible for all obligations under this section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights under this Agreement.

**16.10** The provisions of this section will survive the expiration or earlier termination of this Agreement in accordance with the applicable provisions of Exhibit C ("Insurance").

**Section 17. Insurance.**

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance coverages listed in Exhibit C ("Insurance"), which is made a part of this Agreement. All insurance policies are subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager or City Attorney.

**Section 18. Assignment.**

The expertise and experience of Consultant are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant may not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of City, which may be withheld in the City's sole discretion. Any attempted assignment will be null and void, and will constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement.

**Section 19. Default; Limitations on Liability.**

**19.1** In the event that Consultant is in default under the terms of this Agreement, City will have no obligation or duty to continue compensating Consultant for any services performed after City provides written notice to Consultant of such default.

**19.2** Consultant agrees that no City official, officer, employee or agent will be personally liable to Consultant in the event of any default or breach of City, or for any amount which may become due to Consultant, or for any obligations directly or indirectly incurred under this Agreement.

**19.3** City's liability under this Agreement is limited to payment of Consultant in accordance with the terms of this Agreement and excludes any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.



- 21.2 Any party may change its notice information by giving notice to the other party in compliance with this section.

**Section 22. General Provisions.**

- 22.1 **Authority to Execute; Counterparts.** Each party represents and warrants that all necessary action has been taken by such party to authorize the undersigned to execute this Agreement and to bind it to the performance of its obligations hereunder. This Agreement may be executed in several counterparts, each of which will constitute one and the same instrument and will become binding upon the parties when at least one copy has been signed by both parties.
- 22.2 **Entire Agreement.** This Agreement, including the attached Exhibits A through C, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed in this Agreement and supersedes all other agreements or understandings, whether oral or written, between Consultant and City prior to the execution of this Agreement.
- 22.3 **Binding Effect.** This Agreement is binding upon the heirs, executors, administrators, successors and assigns of the parties.
- 22.4 **Modification of Agreement.** No amendment to or modification of this Agreement will be valid unless made in writing and approved by Consultant and by the City Council or City Manager, as applicable. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver will be void.
- 22.5 **Facsimile Signatures.** Amendments to this Agreement will be considered executed when the signature page of a party is delivered by electronic transmission. Such electronic signatures will have the same effect as an original signature.
- 22.6 **Waiver.** Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement will not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement will not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any services by Consultant will not constitute a waiver of any of the provisions of this Agreement.
- 22.7 **Interpretation.** This Agreement will be interpreted, construed and governed according to the laws of the State of California. Each party has had the opportunity to review this Agreement with legal counsel. The Agreement will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either party.
- 22.8 **Severability.** If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will not be affected and the Agreement will be read and construed without the invalid, void or unenforceable provision.
- 22.9 **Venue.** In the event of litigation between the parties, venue in will be exclusively in a state court in the County of Los Angeles.

[Signatures on the following page.]

**THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF** the parties hereby execute this Agreement as follows:

**CITY OF ROLLING HILLS ESTATES**

\_\_\_\_\_  
Steven Zuckerman, Mayor

**ATTEST:**

\_\_\_\_\_  
Hope Nolan, Deputy City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Donald M. Davis, City Attorney

**CONSULTANT:**

\_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**SCOPE OF SERVICES**

**Consultant's Proposal to Prepare General Plan Update and Environmental Impact Report (EIR ),  
dated XXXX, 20XX (Attached)**

A

**EXHIBIT B**

**KEY PERSONNEL & COMPENSATION  
(Attached)**

**EXHIBIT C**

**INSURANCE**

- A. **General Requirements.** Before commencing the performance of services under this Agreement, and at all other times this Agreement is effective, Consultant must procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

<u>Type of Insurance</u>	<u>Limits (combined single)</u>
Commercial General Liability:	\$1,000,000
Business Automobile Liability	\$1,000,000
Professional Liability	\$1,000,000
Workers Compensation	Statutory Requirement.

- B. **Commercial General Liability Insurance.** Commercial general liability insurance must have coverage at least as broad as Insurance Services Office (ISO) CGL Form No. CG 00 01. The amount of insurance set forth above must be a combined single limit per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability for the policy coverage. The insurance must be on an “occurrence” not a “claims made” basis.
- C. **Business Automobile Insurance.** Automobile insurance must have coverage at least as broad as ISO Business Auto Coverage Form CA 00 01, covering bodily injury and property damage, including coverage for any owned, hired, non-owned or rented vehicles. If Consultant or Consultant’s employees will use personal autos in connection with the provision of services under this Agreement, Consultant will provide evidence of personal auto liability coverage for each such person.
- D. **Professional Liability (Errors & Omissions) Insurance.** This coverage must be on a “claims made” basis, including coverage for contractual liability. The Professional Liability Insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of Consultant’s services. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Consultant must purchase extended period coverage for a minimum of three years after completion of services.
- E. **Workers Compensation.** Consultant must have a State of California approved policy form providing the statutory benefits required by law with employer’s liability limits of no less than \$1,000,000 per accident for all covered losses, or Consultant must provide evidence of an approved self-insurance program. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for worker’s compensation or to undertake self-insurance in accordance with the Labor Code. Consultant certifies that it will comply with such provisions before commencing performance of services under this Agreement and thereafter maintain such coverage as required by the Labor Code.

- F. **Additional Insureds.** Each Commercial General Liability Insurance policy and Business Auto Insurance policy must provide that the City, its officials, officers, employees, agents and volunteers are “additional insureds” under the terms of the policy, and must provide that an act or omission of one the insureds will not reduce or avoid coverage to the other insureds.
- G. **Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions applicable to the insurance policies required under this Agreement must be declared to and approved by City. In no event may any required insurance policy have a deductible, self-insured retention or other similar policy provision in excess of \$50,000 without prior written approval by City in its sole discretion. At the option of City, either the insurer will reduce or eliminate such deductibles or self-insured retentions with respect to the City’s additional insureds or Consultant will procure a bond guaranteeing payment of any losses, damages, expenses, costs or settlements up to the amount of such deductibles or self-insured retentions.
- H. **Primary Insurance.** Each of the commercial general liability and business auto insurance policies maintained by Consultant under this Agreement must state that such insurance will be deemed “primary” so that any insurance that may be carried by City will be deemed excess to that of Consultant. This endorsement must be reflected on ISO Form No. CG 20 01 04 13, or current equivalent form acceptable to City.
- I. **Certificates of Insurance and Endorsements; Notice of Termination or Changes to Policies.** Prior to commencing any services under this Agreement, Consultant must file with the City certificates of insurance and endorsements evidencing the existence of all insurance required by this Agreement, along with such other evidence of insurance or copies of policies as may reasonably be required by City. These certificates of insurance and endorsements must be in a form approved by the City Attorney. Consultant must maintain current certificates and endorsements on file with City during the term of this Agreement reflecting the existence of all required insurance. Each of the certificates must expressly provide that no termination or cancellation of the required coverage will be effective except upon 30 days’ prior written notice to City. The delivery to City of any certificates of insurance or endorsements that do not comply with the requirements of this Agreement will not waive the City’s right to require compliance. In the event that Consultant’s policies are materially changed, Consultant must provide the City with at least 30 days’ prior written notice of the applicable changes.
- J. **Insurance Rating.** All insurance required to be maintained by Consultant under this Agreement must be issued by companies licensed by or admitted to conduct insurance business in the State of California by the California Department of Insurance and must have a rating of A or better and Class VII or better by the latest edition of A.M. Best’s Key Rating Guide.
- K. **Aggregate Limits.** The aggregate limits for each insurance policy required under this Agreement must apply separately and solely to the services performed under this Agreement. If the required policies do not have an endorsement providing that the aggregate limit applies separately to the services being performed, or if defense costs are included in the aggregate limit, then the required aggregate limits must be increased to an amount satisfactory to City.
- L. **Excess or Umbrella Liability Insurance (Over Primary).** If an excess or umbrella liability policy is used to meet limit requirements, the insurance must provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an excess or umbrella liability policy must include a “drop-down provision” providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage must be provided on a “pay-on-behalf” basis, with defense costs payable in addition to policy limits. There may be no cross-liability exclusion precluding coverage for claims

or suits by one insured against another. Coverage must be applicable to City for injury to employees of Consultant, its subcontractors or others performing work to satisfy Consultant's obligations under this Agreement. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review, but in no event may be less than \$4,000,000 per occurrence and aggregate.

- M. **Waiver of Subrogation Rights.** Consultant and each insurer providing any insurance required by this Agreement must waive all rights of subrogation against City, its officials, officers, employees, agents and volunteers, and each insurer must issue a certificate to the City evidencing this waiver of subrogation rights.
- N. **Subcontractor Insurance.** Should the Consultant subcontract out any of the work or services required under this Agreement, it must include all subcontractors as insured's under its policies or maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Exhibit C. If this option is exercised, both City and Consultant must be named as additional insured under the subcontractor's general liability policy. All coverages for subcontractors will be subject to all the requirements of this Exhibit C. The City reserves the right to perform an insurance audit during the term of this Agreement to verify compliance with requirements.
- O. **Failure to Maintain Required Insurance.** If Consultant, for any reason, fails to obtain and maintain the insurance required by this Agreement, City may obtain such coverage at Consultant's expense and deduct the cost of such insurance from payments due to Consultant under this Agreement or may terminate the Agreement.
- P. **Effect of Coverage.** The existence of the required insurance coverage under this Agreement will not be deemed to satisfy or limit Consultant's indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Any insurance proceeds available to City in excess of the limits and coverage required by this Agreement, and which is applicable to a given loss, must be made available to City to compensate it for such losses.
- Q. **Higher Limits of Insurance.** If Consultant maintains higher limits of insurance than the required amounts shown in Section A above, then such amounts will be the minimum required under this Agreement.
- R. **Evaluation and Revision of Coverage.** City retains the right to modify, delete, alter or change the insurance requirements set forth in this Exhibit C upon not less than 90 days prior written notice. If any such change results in a substantial additional cost to Consultant, the City and Consultant may renegotiate Consultant's compensation under this Agreement.

## TABLE OF CONTENTS

	<u>Page No.</u>
<b>Section 1. Term of Agreement.....</b>	<b>1</b>
<b>Section 2. Scope and Performance of Services.....</b>	<b>1</b>
<b>Section 3. Additional Services and Changes in Services.....</b>	<b>2</b>
<b>Section 4. Familiarity with Services and Site.....</b>	<b>2</b>
<b>Section 5. Compensation and Payment.....</b>	<b>3</b>
<b>Section 6. Required Documentation Prior to Performance.....</b>	<b>3</b>
<b>Section 7. Time of Performance; Excusable Delays; Extensions.....</b>	<b>4</b>
<b>Section 8. Cooperation by City.....</b>	<b>4</b>
<b>Section 9. Project Documents.....</b>	<b>4</b>
<b>Section 10. Confidential Information; Release of Information.....</b>	<b>5</b>
<b>Section 11. Consultant’s Books and Records.....</b>	<b>5</b>
<b>Section 12. Status of Consultant.....</b>	<b>6</b>
<b>Section 13. Compliance with Applicable Laws.....</b>	<b>6</b>
<b>Section 14. Unauthorized Aliens.....</b>	<b>7</b>
<b>Section 15. Conflicts of Interest.....</b>	<b>7</b>
<b>Section 16. Indemnification.....</b>	<b>8</b>
<b>Section 17. Insurance.....</b>	<b>9</b>
<b>Section 18. Assignment.....</b>	<b>9</b>
<b>Section 19. Default; Limitations on Liability.....</b>	<b>9</b>
<b>Section 20. Termination of Agreement.....</b>	<b>10</b>
<b>Section 21. Notices.....</b>	<b>10</b>
<b>Section 22. General Provisions.....</b>	<b>11</b>
<b>EXHIBIT A – SCOPE OF SERVICES.....</b>	<b>A-1</b>
<b>EXHIBIT B – KEY PERSONNEL &amp; COMPENSATION.....</b>	<b>B-1</b>
<b>EXHIBIT C – INSURANCE.....</b>	<b>C-1</b>