



CITY OF SOUTH SAN FRANCISCO

REQUEST FOR PROPOSALS/QUALIFICATIONS

Municipal Engineering Services for Fiscal Years 2019-2020 And 2020-2021

1. INTRODUCTION

The City of South San Francisco's Engineering Division is requesting proposals from qualified firms for the purpose of selecting multiple consultants to provide administrative services, plan review services, inspection services, and other needed professional services for an anticipated term of two years. *A term extension may be executed pending a review of performance for a maximum of two additional years in one year intervals.*

All proposals for plan review and inspection services shall be submitted to the Engineering Division no later than **2:00 P.M. on Monday, January 13, 2020**. No interviews are expected.

2. BACKGROUND

About South San Francisco

The City of South San Francisco is located in northern San Mateo County. The City is bordered by the cities of Daly City and Pacifica to the west; the San Francisco Bay to the east; the city of San Bruno to the south; and the cities of Daly City and Colma to the north. South San Francisco is strategically located within the corridors of two major highways (Interstate 280 and Highway 101) approximately 10 miles south of San Francisco. The City is conveniently located within a 10 minute drive of San Francisco International Airport. South San Francisco is approximately 9 square miles in size and has a very diverse population estimated to be approximately 67,700 residents based on 2010-2018 Census Bureau data.

South San Francisco has benefited from the substantial growth of the region in the last twenty years, including significant expansion of biotechnical firms in the area east of Highway 101, the construction of a BART Station at the northern end of the city, and a BART station just outside the southern city limit in the City of San Bruno. The biotech industry and housing industry has grown considerably, and, as a result, construction is a sizable amount of the Engineering Division's workload.

City's Objectives

The City is seeking to contract with dependable firms that can conduct external plan reviews; provide inspection services; and provide other administrative and professional services as needed by the Engineering Division. The City aims to provide timely, efficient, and professional service responsive to the needs of the development sector.



3. SCOPE OF WORK

The Engineering Division is seeking qualified firms with experience in commercial and residential plan review and inspection as they relate to the City's right-of-way and City maintained infrastructure. Plan reviews often require quick turnaround to meet the needs of the developers and contractors. Inspection demand may also be high and require short notice and night or weekend hours. Other administrative and professional services needed may include permit technician, in-house plan reviewer, and project management as need.

Task 1 – Private Development Reviews

- Perform complete plan review and draft conditions of approval for planning projects and entitlements including tentative maps, easements, dedications, mitigation measures for City traffic and utility infrastructure, parking standards, turning radii, grading, site development, and accessibility.
- Perform complete plan reviews for building permits and encroachment permits for conformance to conditions of approval, City Municipal Code, and City Engineering Standards. This includes but is not limited to: easements, traffic and parking, utilities, grading, hardscape, stormwater pollution prevention, best management practices, haul routes, site development, and accessibility.
- Provide plan check comments on private development submittals, studies, and proposed improvements.
- Provide conditions and/or comments on SSF's online permitting system (CRW/TRAKiT).
- Attend Technical Advisory Group, Planning Commission or City Council meetings as needed.

Task 2 – Public Works Inspections

- Perform daily field inspections on short notice including nights and weekends. This includes inspection of the following, but not limited to: sidewalk removal and replacement, sewer lateral rehabilitation or installation, temporary power poles, temporary traffic controls, haul routes, utility trenches (storm, sewer, fiber, and conduits), utility testing, erosion and dust protection, and ADA accessible ramps. Grading and on-site inspections are not performed nor expected.
- Attend pre-construction meetings with permittees to confirm scope, constructability, and coordination with other projects.
- Report and Log inspections on SSF's online permitting system (CRW/TRAKiT).



Task 3 – Administrative Services

- Provide, on an as needed basis, in-house staff augmentation to provide administrative duties. This includes permit technician, in-house plan checker, administrative assistant, and other Engineering Division personnel knowledgeable in the operation of a municipal government, land development engineering, and the Subdivision Map Act.
- Daily project management; cost management; coordination with contractor, developer and other regulatory agencies.
- Provide policy administration of the Dig Once Policy and the Open Trench Notification Policy in accordance with SSF Muni Code 13.40.

4. PROPOSAL FORMAT

Proposals are required in two formats: three (3) printed copies and one (1) electronic copy (via email, cd, or USB).

Consultants wishing to be considered for the Municipal Engineering Services shall submit, at a minimum, the following in order:

A. Introductory Cover Letter.

Please provide a brief summary as to why your firm is best qualified for this service. Letter must be signed by representative of the firm with authorization to bind the firm by contract.

Understanding of the City's Goals and unique nature of the services required. Please describe your understanding of the City goals, business processes and culture?

B. Brief History of Firm

Provide a brief history of your firm including numbers of years in business, professional experience and services expertise. Please state the name of the firm, address of the office submitting the proposal, telephone and fax numbers, date firm established, type of firm (individual, corporation, etc.), and types of business conducted.

C. Project Team / Staffing

Provide an organizational chart describing how the team is organized. Please identify the key personnel you would assign to the City's Program and/or Project(s) including their roles. Provide experience and qualifications of each member including resumes. For any subconsultants, please provide a description of the services and expertise the firm(s) will provide.



D. Familiarity with City of South San Francisco

Describe your familiarity with the City and neighboring areas. How close are your offices to the City of South San Francisco?

E. Relevant Experience and References

Relevant experience of both the consulting firm and the personnel assigned to provide municipal engineering services including both program management and land development engineering services for the multiple types of projects similar to those for the City of South San Francisco. Provide a minimum of (3) municipal engineering services in the last three years, with client contact names and phone numbers.

F. Specific Management Approach and Methodologies.

A description of your methodology techniques and procedures that will be followed to track projects and project costs, including meeting very aggressive schedules.

G. Scope of work and Fee Schedule.

Provide proposed turnaround times for regular plan reviews with inclusive fees based on the RFP/RFQ. Provide Hourly Rates for each category of personnel and any fee for related support costs (mileage, blueprint, reproduction, etc.). Include all classifications of staff that could be provided to the City.

H. Acknowledgement of Standard Consulting Services Agreement.

Attached is a copy of the City's Standard Consulting Services Agreement that will be utilized for the Project. Proposals shall acknowledge the firm has reviewed the agreement.

I. Duration of Proposal:

Proposals shall remain effective for a minimum of ninety (90) days beyond the submittal date.

5. DUE DATE/TIME & POINT OF CONTACT

Proposals will be received by the City's Public Works Department, Engineering Division, until **2:00 P.M. on Monday, January 13, 2020**. Proposals received after that time will not be considered. Submit RFP/RFQ packet to:

**Jason Hallare, P.E., Senior Engineer
City of South San Francisco – Engineering Division
315 Maple Avenue, South San Francisco, CA 94080**

For questions regarding this RFP/RFQ, please contact Jason Hallare at (650)-829-6667 or by email at Jason.Hallare@ssf.net. If deemed necessary, the City will provide copies of questions and answers to all prospective proposers.



6. EVALUATION PROCESS

Evaluation Criteria

An evaluation committee comprised of City staff will review and evaluate technical qualifications and proposals against the following criteria:

1. **Organization**: Are the qualifications of the consultant's personnel suitable for the execution of programs; and, does the consultant's organizational structure show sufficient depth for its present workload?
2. **Staff**: Do assigned personnel have requisite education, experience, and professional qualifications to perform the Tasks outlined in the Scope of Work?
3. **Services Offered**: Does the consultant offer the breadth and quality of services required for the Tasks outlined in the Scope of Work? Does the consultant propose schedules that will uphold a high standard for review turnaround times?
4. **Familiarity with Locality**: Does the consultant have familiarity with the City and the area required to successfully execute the programs? How close are the consultant's permanent offices to the area? (Preference is to local or near-local consultants).
5. **Experience**: Has the consultant demonstrated the ability to successfully provide services for projects of a similar complexity and nature as described herein?
6. **Costs**: Are the consultant's fee's competitive?

Procedures

At completion of the review process, consultants will be ranked, and the most highly qualified ones will be placed on a short list for further evaluation. No one factor will be determinative in ranking the consultants. Consultants' fee schedules will be only one factor in determining the selection, and as such, the contract might not be awarded to the lowest responsible consultants.

Once a final selection is made, staff may elect to refine the scope of services and the fees with the selected consultants.

The City Council will award the contract to the best qualified consultants at a not to exceed cost mutually agreed upon by the City and Consultants, and a formal contract will be entered into by the Consultants and the City.



7. GENERAL

Term

The period of service required will be two (2) years from the date of award. The period of services can be amended for time extensions in one year intervals for a maximum of two additional years, if the City deems necessary.

Standard Consulting Services Agreement

Attached is the City's Standard Consulting Services Agreement for review. Consultants interested in responding to this RFP/RFQ should be prepared to enter into the agreement under the standard terms and should be able to provide the required insurance. Once the consultant has been selected, a failure to have read the conditions, instructions, and specifications herein shall not be cause to alter the contract or for Consultant to requested additional compensation.

Non-Discrimination Requirement

By submitting a proposal, the Consultant represents that it and its subsidiaries do not and will not discriminate against any employee or applicant for employment on the basis of race, religion, sex, color, national origin, sexual orientation, ancestry, marital status, physical condition, pregnancy or pregnancy-related conditions, political affiliations or opinion, age, or medical condition.

Conditions of Proposal Acceptance

This RFP/RFQ does not commit the City to award a contract, to pay any costs incurred in the preparation of a proposal for this RFP/RFQ, or to procure or contract for any services. The City reserves the right to: waive any minor irregularities or informalities contained within an RFP/RFQ, and/or reject any or all proposals received as a result of this request, and negotiate with any qualified consultant, or to cancel the RFP/RFQ in part or whole.

The City of South San Francisco reserves the right to reject any and all proposals and to reissue its request for proposals. The City reserves the right to cancel the project at any point and pay the consultant only for costs incurred to that point and for work completed which is usable by the City as determined by the City.

All proposals and material submitted will become the property of the City of South San Francisco and will not be deemed confidential or proprietary. The City of South San Francisco reserves the right to award in whole or in part, by item or group of items, by section or geographic area, when such action serves the best interests of the City.

The City and Consultants may agree to add additional areas to the contract by mutual agreement at a later date. The City may elect to stop work at any time in the contract and will pay for work completed to that point on a time and material basis.



**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SOUTH SAN FRANCISCO AND
NAME OF CONSULTANTS**

THIS AGREEMENT for consulting services is made by and between the City of South San Francisco ("City") and [REDACTED] ("Consultant") (together sometimes referred to as the "Parties") as of [REDACTED] (the "Effective Date").

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**, attached hereto and incorporated herein, 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 [REDACTED], the date of completion specified in **Exhibit A**, and Consultant shall complete the work described in **Exhibit A** prior to 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 substantial, first-class 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 Sections 1.1 and 1.2 above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed [REDACTED], notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as **Exhibit A**, or Consultant's compensation schedule attached as **Exhibit B**, 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

2.3 Final Payment. City shall pay the last ten percent (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 compensation schedule attached hereto and incorporated herein as Exhibit B.

2.6 Reimbursable Expenses. The following constitute reimbursable expenses authorized by this Agreement [REDACTED]. Reimbursable expenses shall not exceed \$ [REDACTED]. Expenses not listed above are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under Section 2 of this Agreement that shall not be exceeded.

2.7 Payment of Taxes, Tax Withholding. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. To be exempt from tax withholding, Consultant must provide City with a valid California Franchise Tax Board form 590 ("Form 590"), as may be amended and such Form 590 shall be attached hereto and incorporated herein as Exhibit [REDACTED]. Unless Consultant provides City with a valid Form 590 or other valid, written evidence of an exemption or waiver from withholding, City may withhold California taxes from payments to Consultant as required by law. Consultant shall obtain, and maintain on file for three (3) years after the termination of this Agreement, Form 590s (or other written evidence of exemptions or waivers) from all subcontractors. Consultant accepts sole responsibility for withholding taxes from any non-California resident subcontractor and shall submit written documentation of compliance with Consultant's withholding duty to City upon request. .

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.

2.10 Prevailing Wage. Where applicable, the wages to be paid for a day's work to all classes of laborers, workmen, or mechanics on the work contemplated by this Agreement, shall be not less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where the work hereby contemplates to be performed as determined by the Director of Industrial Relations pursuant to the Director's authority under Labor Code Section 1770, et seq. Each laborer, worker or mechanic employed by Consultant or by any subcontractor shall receive the wages herein provided for. The Consultant shall pay two hundred dollars (\$200), or whatever amount may be set by Labor Code Section 1775, as may be amended, per day penalty for each worker paid less than prevailing rate of per diem wages. The difference between the prevailing rate of per diem wages and the wage paid to each worker shall be paid by the Consultant to each worker.

An error on the part of an awarding body does not relieve the Consultant from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Sections 1770 1775. The City will not recognize any claim for additional compensation because of the payment by the Consultant for any wage rate in excess of prevailing wage rate set forth. The possibility of wage increases is one of the elements to be considered by the Consultant.

a. **Posting of Schedule of Prevailing Wage Rates and Deductions.** If the schedule of prevailing wage rates is not attached hereto pursuant to Labor Code Section 1773.2, the Consultant shall post at appropriate conspicuous points at the site of the project a schedule showing all determined prevailing wage rates for the various classes of laborers and mechanics to be engaged in work on the project under this contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

b. **Payroll Records.** Each Consultant and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Consultant in connection with the public work. Such records shall be certified and submitted weekly as required by Labor Code Section 1776."

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 this section, and only under the terms and conditions set forth herein.

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.

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 Certificates of Insurance, attached hereto and incorporated herein as **Exhibit C**, indicating that Consultant has obtained or currently maintains 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).

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) 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 Contract Administrator (as defined in Section 10.9). 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 there from, and damage to property resulting from

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. Further, if the Consultant's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

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 Wasting Policy. No insurance policy required by Section 4 shall include a "wasting" policy limit.

4.4.8 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:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

- b. 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
- c. Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. To the fullest extent permitted by law, Consultant shall indemnify, defend with counsel selected by 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 gross 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

Section 8. TERMINATION AND MODIFICATION.

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

Consultant may cancel this Agreement for cause upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the date of notice of termination; City, however, may condition payment of such compensation upon Consultant delivering to City all materials described in Section 9.1.

- 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 require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants 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 Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

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

- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not assign or 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 Contract Administrator.

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

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

the exclusive property of the City. At such time as the City selects a bid, all proposals received become a matter of public record, and shall be regarded as public records, with the exception of those elements in each proposal that are defined by Consultant and plainly marked as "Confidential," "Business Secret" or "Trade Secret."

The City shall not be liable or in any way responsible for the disclosure of any such proposal or portions thereof, if Consultant has not plainly marked it as a "Trade Secret" or "Business Secret," or if disclosure is required under the Public Records Act.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a prospective bidder submits is a trade secret. If a request is made for information marked "Trade Secret" or "Business Secret," and the requester takes legal action seeking release of the materials it believes does not constitute trade secret information, by submitting a proposal, Consultant agrees to indemnify, defend and hold harmless the City, its agents and employees, from any judgment, fines, penalties, and award of attorneys fees awarded against the City in favor of the party requesting the information, and any and all costs connected with that defense. This obligation to indemnify survives the City's award of the contract. Consultant agrees that this indemnification survives as long as the trade secret information is in the City's possession, which includes a minimum retention period for such documents.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including arbitration or 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 San Mateo 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 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 (12) 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.

- 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 [REDACTED] ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** All notices and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given (i) when received if personally delivered; (ii) when received if transmitted by telecopy, if received during normal business hours on a business day (or if not, the next business day after delivery) provided that such facsimile is legible and that at the time such facsimile is sent the sending Party receives written confirmation of receipt; (iii) if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and (iv) upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to the respective Parties as follows: Consultant [REDACTED]



City:
City Clerk
City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080

10.11 Professional Seal. Where applicable in the determination of the contract administrator, 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. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



10.12 Integration. This Agreement, including all Exhibits attached hereto, and incorporated herein, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral pertaining to the matters herein.

10.13 Counterparts. This Agreement may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one Agreement, which shall be binding upon and effective as to all Parties..

10.14 Construction. The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Agreement. The parties have had an equal opportunity to participate in the drafting of this Agreement; therefore any construction as against the drafting party shall not apply to this Agreement.

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

CITY OF SOUTH SAN FRANCISCO

Consultants

City Manager

NAME:

TITLE:

Attest:

City Clerk

Approved as to Form:

City Attorney

2729962.1

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION SCHEDULE

EXHIBIT C

INSURANCE CERTIFICATES

[OPTIONAL] EXHIBIT D

FORM 590