

City of Piedmont
COUNCIL AGENDA REPORT

DATE: March 1, 2021

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Consideration of the Issuance of a Request for Proposals for a Housing Element Update, a Safety Element Update, Other Related General Plan Amendments, Related Regulatory Modifications as Required by State law, in a Manner Consistent with the Regional Housing Needs Allocation 6 (RHNA 6) Planning Period (2023-2031)

RECOMMENDATION

Authorize staff to issue a Request for Proposals (RFP) for a Housing Element Update, a Safety Element Update, Other Related General Plan Amendments, Related Regulatory Modifications as Required by State law, in a Manner Consistent with the Regional Housing Needs Allocation 6 (RHNA 6) Planning Period (2023-2031).

EXECUTIVE SUMMARY

The scope of work necessary to update the General Plan Housing Element in accordance with the RHNA 6 and make other General Plan amendments and regulatory modifications will be much greater than the work necessary to make previous updates to Piedmont's Housing Element. Barry Miller, FAICP, who prepared 3rd, 4th, and 5th cycle Piedmont Housing Elements, has advised City staff that he will not be bidding on the City's 6th Cycle Element as a prime contractor, given the likely significant increase in the City's RHNA numbers and need for a multi-disciplinary team to complete the work. Accordingly, Staff recommends the issuance of the attached RFP to procure consulting services at a fair market value that achieve State certification of the Housing Element.

BACKGROUND

Housing Policy Development Projects Currently Underway

Under the scope of the California SB2 grant program, the City has engaged the services of Lisa Wise Consulting (LWC) to complete several housing policy related projects. LWC is tasked with identifying potential sources of funding (such as Alameda County Measure A1 funds) to support local incentives for the construction of income-restricted ADUs. LWC is also tasked with developing ADU and Junior ADU prototypes, drafting objective design standards that would comply with ministerial review requirements under laws such as SB 35, and beginning the discussion with the Piedmont community about strategies to affirmatively further fair housing. Furthermore, LWC is tasked with initiating a discussion about suitable sites for mixed-use and

multi-family development through community surveys and meetings, and providing analysis and summary of the results. Finally, LWC is tasked to prepare two development economic feasibility studies for two sites in Piedmont. The studies are intended to help the community understand the minimum height, density, and other standards that make a development economically feasible in Piedmont based on the high land cost and the cost of construction. The completion due date for the projects is January 15, 2022.

The City has also engaged the professional services of Plan to Place for the development of public engagement products and branding for the Piedmont Housing Element update. The effort is intended to enhance the services provided by Lisa Wise Consulting and as a lead toward the launch of the Housing Element update and the public engagement necessary for the update. The goals are: to inform the public about the update, receive feedback on key topics, and provide multiple opportunities for residents and stakeholders to engage through communication tools that are most convenient to them. Plan to Place's deliverables include a community engagement plan, project messaging, outreach materials, and a project specific website (to be launched in early March), all of which fall under the branding, "Piedmont is Home."

DISCUSSION

Housing Element Update for the 6th Cycle 2023-2031

Piedmont expects a RHNA 6 of approximately 587 housing units, compared to 60 units in RHNA 5, representing a 979 percent increase from the last planning cycle. The expected allocation includes:

- 163 very low income units
- 94 low income units
- 92 moderate income units
- 238 above moderate income units
- 587 units

To ensure adequate inventory of adequate sites, City staff anticipates the element update will necessitate modifications to the uses and regulations for each of the City's five zones.

The 3rd, 4th, and 5th cycle Piedmont Housing Elements were prepared by Barry Miller, FAICP, a contractor who has provided certain long-range planning services to the City since 1991. Mr. Miller has advised the City that he does not have the capacity to be the prime contractor on the City's 6th Cycle Element, given the significant increase in the RHNA and need for a multi-disciplinary team to complete the work.

While a number of important housing issues will need to be considered and addressed through the update process, the most significant work effort is expected to be meeting Piedmont's RHNA numbers in the site inventory. To achieve that, the City expects the need to consider several approaches, including: amending the site development standards and densities for key housing opportunity sites and for one or more zones, implementing AB 1851 (a bill that allows the conversion of parking areas for religious institutions to housing development), and streamlining review of proposals for the construction and development of affordable housing projects.

The services and scope of work requested in the RFP include the following tasks:

- a) Project Management and Coordination Scheme;
- b) Community Outreach and Engagement, including a minimum of ten public meetings, with parallel task and budget for an additional five to ten public meetings to accommodate the significant interest the project is expected to generate. “Public meetings” can include surveys, workshops and other alternative engagement endeavors;
- c) Assessment of Housing and Special Housing Needs;
- d) Identification of Potential and Actual Governmental and Nongovernmental Housing Constraints;
- e) Review of the Current Housing Element;
- f) The Preparation of an Inventory of Candidate Sites to Meet RHNA Requirements;
- g) Preparation of the Sites Inventory section of the Housing Element;
- h) Draft Goals, Policies, Programs and Quantified Objectives to address Housing Needs;
- i) Draft General Plan Amendments (e.g., Environmental Hazards Element, Land Use Element and Transportation Element), City Code Amendments, and other amendments to Adopted Plans and Regulations for consistency with the 2023-2031 Housing Element;
- j) Preparation of Draft Housing Elements, including an Assessment of Fair Housing, for review by staff, the Housing Advisory Committee, the Planning Commission and the City Council;
- k) Preparation of Draft Housing Element for submission to the California Department of Housing and Community Development (HCD); and
- l) Upon Successful Completion of HCD Review, Produce a Final Draft Housing Element for Adoption and Certification by January 2023.

Project Timeline

May 2021_____The RFP contract execution and kick-off meeting
 Summer 2021_____Due date for any RHNA Appeals
 Winter 2021_____Final RHNA Allocation
 Spring/Summer 2022_Public Draft Housing Element distributed
 Summer 2022_____Review of Draft Housing Element by Planning Commission and City Council
 Summer 2022_____Draft Housing Element submitted to California Department of Housing and Community Development (HCD) for review/approval
 Fall/Winter 2022____City Council Revises or adopts (or adopts without changes) the Housing Element
 January 2023_____Submission of Adopted Housing Element is due to HCD

RFP TIMELINE

The timeline for the RFP, while aggressive, is reasonable. It would begin with the issuance of the RFP on March 3rd, proposals due on April 5th, and probable Council consideration of the contract on May 3rd.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION FOR HOUSING ELEMENT UPDATE

The scope of services sought in the RFP does not include the preparation of documents for California Environmental Quality Act (CEQA) review and submittal. Depending on the results of Task 6, Housing Program Options, and Task 7, Sites Inventory/RHNA the scope and cost of the necessary environmental review could vary greatly, from a Mitigated Negative Declaration (estimated cost of \$75,000) to a full Environmental Impact Report (estimated cost of \$165,000). Removing this task from the other housing element update services will provide more certainty to the proposers in the scope of work required and enable them to better estimate costs and services. The goal is to make the project more attractive to consultants and thereby elicit more proposals. Under this scenario, the City will separately procure consulting services for environmental review in compliance with the California Environmental Quality Act once sites inventory has been completed

FINANCE

Under the RFP, the Consultant will be selected based on demonstrated competence and professional qualifications, and negotiations regarding the amount of the contract will commence after identifying the most qualified consultant. Although the RFP does not set a price, it should be noted that other California cities have paid upwards of \$500,000.00 for similar services. Current efforts to mitigate costs include: 1) the environmental review separated out from the scope of work, 2) some preliminary and related housing policy work being accomplished by Lisa Wise Consulting, and 3) initial design of branding and public engagement is currently being accomplished by Plan to Place.

Payments to cover the expenses incurred by the housing element update and the preliminary housing policy development currently underway will come from the City's General Fund and budgeted in Fiscal Years 2020/2021 (\$205,000), 2021/2022 and 2022/2023. The demand on General Fund monies will be partially offset by grants. The City has been awarded \$160,000 from the SB2 Planning Grant Program and \$65,000 from the Local Early Action Planning grant program, both of which must be used toward the development of policies that accelerate housing production. City staff is also seeking an award of \$20,000 from a noncompetitive Regional Early Action Planning grant program, and an award of up to \$100,000 from a competitive Regional Early Action Planning grant program to offset these costs. And finally, on July 1, 2019 the City instituted a General Plan Maintenance fee that is \$0.007 x the construction cost valuation on building permits. It is generating approximately \$200,000 in revenue that must be spent on updates and amendments to the General Plan and other auxiliary documents (e.g., Climate Action Plan, Zoning Ordinance, and Hazard Mitigation Plan).

CONCLUSION

The work necessary to research and draft a housing element update for Piedmont's General Plan so that it is consistent with the 6th RHNA of 587 housing units will be much greater than the work it took to complete prior housing element updates, which planned for 60 or fewer housing units and cost roughly \$30,000. Because the scope and cost of this update will be significant, staff

recommends the issuance of the attached request for proposals so that the City Council and the public will have confidence that the City is receiving fair market value for the services provided.

The attached Request for Proposals was reviewed by the City Attorney.

By: Kevin Jackson, Director of Planning & Building

ATTACHMENT

- A. Request for Proposals for a Housing Element Update, a Safety Element Update, Other Related General Plan Amendments, Related Regulatory Modifications as Required by State law, in a Manner Consistent with the Regional Housing Needs Allocation 6 (RHNA 6) Planning Period (2023-2031)



CITY OF PIEDMONT CALIFORNIA

REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES to UPDATE THE PIEDMONT HOUSING ELEMENT for the 6TH CYCLE / 2023-2031

DATE ISSUED: Wednesday March 3, 2021
DATE DUE: Monday, April 5, 2021, at 4 p.m.

CONTACT: Kevin Jackson, Planning & Building Director
PiedmontHousingRFP@piedmont.ca.gov
(510) 420-3039

PROPOSALS: Please see Section VI for the proposal submission and format requirements. Please define the proposed work and the completion schedule respective to your proposal. Proposals can be submitted to:

Kevin Jackson, AICP
Director of Planning & Building
City of Piedmont
120 Vista Avenue, Piedmont, CA 94611
PiedmontHousingRFP@piedmont.ca.gov / (510) 420-3039

I. INTRODUCTION

Located in Alameda County, approximately 10 miles east of San Francisco, Piedmont is completely encircled by the City of Oakland and has no opportunities for annexation. Since incorporation in 1907, Piedmont's "landlocked" setting has influenced its development patterns and significantly affects its potential for new housing and employment today. The City encompasses 1.7 square miles—virtually all of it developed with mostly single-family residential homes. Piedmont is regarded within the region as a desirable residential community and is currently comprised primarily of architecturally-designed well-maintained single-family detached residences sited along tree-lined streets. The City's proximity to employment centers, coupled with its excellent schools, low crime rate, historic architecture, and beautiful parks contribute to this image. More than 90 percent of the land is developed with housing and 9 percent consists of schools, parks, and churches. Piedmont has less than 4 acres of commercial land. The largest employers are the Piedmont Unified School District and the City of Piedmont municipal organization. The City has no industrial land and no Planned Unit Development zones.

The trends in Piedmont's housing market reflect the fact that the City has been "built out" for over 50 years. Real estate transactions primarily consist of the sale of high-end single-family homes, built before 1960. Since 1980, the construction of single-family dwellings has averaged just one to two units a year. Since the 1990s, the City has found that the most effective housing program is to actively encourage the production of accessory dwelling units (ADUs). For the past six years, permits issued for ADUs have averaged 8, annually. For the past three decades, the City has had a highly effective design review and planning program to guide remodels and new construction. This program has enabled the City to retain the scale of its neighborhoods and preserve many of its smaller homes. Piedmont currently has a very small supply of rental housing, consisting of approximately 50 conventional apartments, and approximately 300 accessory dwelling units.

At the present time, there are fewer than 60 vacant lots in the city. These lots are scattered throughout Piedmont and comprise a combined total of approximately 12 acres of land. The number of undeveloped lots that are actually buildable is much smaller since many of Piedmont's vacant lots are constrained by steep slopes or inadequate street frontage, and many are owned by adjacent property owners and are in use as yards or gardens. Piedmont has almost no land with the size and availability for conventional redevelopment, nor does it have public land that is readily available for future housing. The City's commercial acreage supports about two dozen active businesses and ancillary storage uses.

In 2013, the City modified its commercial zoning district (Zone D) along Grand Avenue and at the intersection of Highland and Vista Avenues to include mixed-use multi-family development. In 2017, the City updated the development standards for Zone D to better accommodate mixed-use multi-family development. Zone C, multi-family zoning district, consists of a cluster of parcels near the intersection of Oakland and Linda Avenues and a few lots amongst those in the Zone A district.

II. GENERAL INFORMATION

The City of Piedmont is seeking proposals from qualified consultants or consultant teams to complete a housing element update, a safety element update, other related General Plan amendments, related regulatory modifications as required by State law, in a manner consistent with the Regional Housing Needs Allocation 6 (RHNA 6) planning period (2023-2031).

For context, Piedmont expects a RHNA of approximately 587 housing units, compared to 60 units in RHNA 5, representing a 979 percent increase from the last planning cycle. The expected allocation includes:

- 163 very low income units
- 94 low income units
- 92 moderate income units
- 238 above moderate income units
- 587 units

To ensure adequate inventory of adequate sites, we anticipate the element update will necessitate modifications to the uses and regulations for each of the five zones. Respondents should be aware that Section 9.02 of the Charter of the City of Piedmont provides that certain changes to the City's zoning require voter approval. Section 9.02 states "The Council may classify and reclassify the zones established, but no existing zones shall be reduced or enlarged with respect to size or area, and no zones shall be reclassified without submitting the question to a vote at a general or special election. No zone shall be reduced or enlarged and no zones reclassified unless a majority of the voters voting upon the same shall vote in favor thereof..."

The 3rd, 4th, and 5th cycle Piedmont Housing Elements were prepared by Barry Miller, FAICP, a contractor who has provided certain long-range planning services to the City since 1991. Mr. Miller has advised the City that he will not be bidding on the City's 6th Cycle Element as a prime contractor, given the significant increase in the RHNA and need for a multi-disciplinary team to complete the work. The current (5th cycle) housing element is available at the web address listed in the footnote below.¹ Annual Progress Reports have been completed and submitted to the State for the years 2014-2019. The Piedmont City Council approved a comprehensive update to the Zoning Ordinance (City Code Chapter 17) in 2017. The Accessory Dwelling Unit (ADU) Ordinance was updated in 2020 to comply with State legislation.

Under the scope of the California SB2 grant program, the City has engaged the services of Lisa Wise Consulting (LWC) to complete several housing policy related projects. LWC is tasked with identifying potential sources of funding (such as Alameda County Measure A1 funds) to support local incentives for the construction of income-restricted ADUs. LWC is also tasked with developing ADU and Junior ADU prototypes, drafting objective design standards meeting SB 35 requirements, and beginning the discussion with the Piedmont

¹http://piedmont.hosted.civiclive.com/UserFiles/Servers/Server_13659739/File/Government/Projects/General%20Plan%20and%20Housing%20Element/housing_element.pdf

Community about strategies to affirmatively further fair housing. Furthermore, LWC is tasked with initiating a discussion about suitable sites for mixed-use and multi-family development through community surveys and meetings, and providing analysis and summary of the results. Finally, LWC is tasked to prepare two development “pro forma” economic development studies for two sites in Piedmont. The “pro formas” are intended to help the community understand the minimum height, density, and other standards that make a development economically feasible in Piedmont based on the high land cost and the cost of construction. The completion due date for the projects is January 15, 2022.

While a number of important housing issues will need to be considered and addressed through the update process, the most significant work effort is expected to be meeting Piedmont’s RHNA numbers in the site inventory. To achieve that, the City expects the need to consider several approaches, including: amending the site development standards and densities for key housing opportunity sites for one or more zones, implementing AB 1851, and streamlining review of proposals for the construction and development of affordable housing projects.

The City has also engaged the professional services of Plan to Place for the development of public engagement products and branding. The effort is intended to enhance the services provided by Lisa Wise Consulting and as a lead toward the launch of the Housing Element update and the public engagement necessary for the update. The goals are: to inform the public about the update, receive feedback on key topics, and provide multiple opportunities for residents and stakeholders to engage through communication tools that are most convenient to them. Plan to Place’s deliverables include a community engagement plan, project messaging, outreach materials, and a project specific website (expected launch in March 2021), all of which fall under the branding, “Piedmont is Home.”

The Piedmont City Council has established a Housing Advisory Committee (HAC), a temporary advisory body to the City Council that is expected to have its first meeting in April 2021. The City Council is expected to make appointments to the HAC in March 2021. Its membership will consist of five or seven members total, including one member of the Planning Commission and the remaining members being residents at large. The HAC shall meet on an as-needed basis and its term will extend to the receipt of a Draft Housing Element Update document by the City Council. The efforts of the HAC shall be focused on assisting staff and City consultants with the development of the SB 2 Housing Programs project and the housing element update, specifically in reviewing and providing feedback on the following materials: community needs assessment; draft recommendations; opportunities for public participation and input regarding the draft recommendations; public review drafts of the SB 2 housing programs and housing element update documents; and opportunities for public participation and input regarding the public review drafts of the SB 2 Housing Programs and Housing Element Update documents.

The Piedmont Planning Commission will retain its role in the review of the housing element update and other General Plan amendments as required by State law. The HAC will complement the Planning Commission’s role.

III. QUALIFICATIONS

Demonstrated experience updating Housing Elements and making General Plan amendments. The proposal should include enough information for judging the quality and competence of the personnel dedicated to preparation of the Housing Element update. This section of the proposal should clearly identify the day-to-day project manager for the project, as well as the key personnel who will perform the actual research and writing. Similar information is also required for all subconsultants for the project.

Demonstrated professional experience and knowledge of the general principles and background law applicable to Housing Element updates, as well as a familiarity with specific regional requirements that would help the selected Consultant be successful. Including examples of your work and including former clients will be helpful in determining expertise.

Ability to make project presentations, provide public engagement activities, and work with diverse groups of people representing varied points of view.

IV. SCOPE OF SERVICES

The City of Piedmont is seeking professional consulting services to update the City's housing element and safety element (currently titled Environmental Hazards Element); and make other related General Plan amendments, such as any necessary amendments to the conservation element (currently titled Natural Resources and Sustainability Element) for conformance with Government Code section 65302(d)(3), and regulatory modifications as required by State law, ensuring certification of the final housing element by HCD by January 2023.

CEQA: Please note that scope of services DOES NOT INCLUDE the preparation of documents for California Environmental Quality Act (CEQA) review and submittal. The preparation of an Initial Study, Mitigated Negative Declaration or Environmental Impact Report and CEQA Determination, will be undertaken separately from the services listed below once Task 6, Housing Program Options, and Task 7, Sites Inventory/RHNA have been completed. The City will separately procure consulting services for environmental review in compliance with the California Environmental Quality Act.

Proposals must address the following tasks, providing a description and timeline of how they would be accomplished. Additional or optional tasks may be included and creative approaches are welcome. The final scope of work will be subject to refinement and mutual agreement following the project's launch and further discussion.

1. Project Management and Coordination

This task covers communication and coordination between the consultant and City staff, including meetings, phone conferences, email exchanges, and other communications to ensure timely delivery and adoption of the City's updated housing element. The proposal should identify the number of meetings anticipated and

expectations for City staff. Strategies or practices to ensure clear and timely communication and effective project coordination should be described. Strategies for ensuring coordination with HCD over the course of the project should also be addressed, as needed.

2. Community Outreach and Engagement

Consistent with the branded outreach and engagement product provided by Plan to Place, the consultant will either: 1) partner with Plan to Place to provide an appropriate community engagement program; or 2) propose an appropriate community engagement program that uses and continues the deliverables provided by Plan to Place to effectively reach, educate and engage the community throughout the project. This should include strategies to ensure broad inclusion, particularly of hard to reach groups and special needs populations, with special attention given to communicating information so it is accessible and easy to understand. Outreach has been initiated and is expected continue throughout for feedback on important topics such as draft ideas, site options, the draft housing element, and draft General Plan and zoning amendments. The engagement program should be tailored to assume that much of the engagement in 2021 will be virtual due to COVID-19. The consulting team should lead the engagement as well as provide a summary of the work.

Public engagement should include a minimum of 10 public meetings (6 of the Housing Advisory Committee, 2 of the Planning Commission, and 2 of the City Council). However, due to the significant amount of public interest that the RHNA process and this project is expected to generate, in addition to the minimum community outreach required by Housing Element Law, the consultant should establish a parallel task with a budget of up to 5 to 10 more public or community engagement meetings that have not yet been identified. Such meetings may include surveys, workshops and other alternative engagement endeavors.

3. Housing and Special Housing Needs

ABAG's Regional Housing Technical Assistance Program will provide jurisdictional-specific tables, charts and a text summary for all required data, including population, demographic, housing, market conditions and regional comparisons. ABAG/REAP funded County Collaboratives will also provide county-level narratives, which expand on key themes. In some cases, these may capture all the information needed. In other cases, jurisdictions may want to tailor for their specific circumstances. Because these documents are not completed yet, respondents should hold some hours to tailor the work as needed. For more information about ABAG's assistance, review this slide deck and webinar recording:

- https://abag.ca.gov/sites/default/files/planning_innovations_regional_data_tools_10.29.2020_final_cl.pdf
- <https://www.youtube.com/watch?v=6cS2ZIGTE4g&feature=youtu.be>

4. Housing Constraints

Identify potential and actual governmental and nongovernmental constraints for the preservation, protection or production of housing across income levels within the city.

ABAG's Regional Housing Technical Assistance Program is expected to provide all cross-jurisdictional comparisons necessary for this task (e.g., comparison of fees and processing time). It will also provide write ups of typical countywide non-governmental constraints, including community opposition to housing, cost of construction, limited availability of land, and other topics.

5. Current Housing Element Review

Review the current Housing Element and identify Piedmont success in accomplishing and implementing the identified goals, policies and programs. Provide explanations and updates where goals, policies or programs are in progress, have been abandoned or have not proven effective. Review the inventory of sites remaining from the last Piedmont Housing Element, and their suitability or limitation for use as housing opportunity sites in the new Housing Element, in light of new State requirements for recycled sites.

6. Housing Program Options

Prepare an inventory of candidate sites to meet RHNA requirements. This includes identifying safe assumptions, evaluating sites and analyzing potential policy strategies to increase site capacity, demonstrating development viability (per State law). Outline potential housing densities/housing types achievable at these sites, provide schematic visualization where currently-allowed densities and heights are proposed to be increased, and indicate how the sum of development from the sites, together with ADUs, will help achieve RHNA needs. We anticipate that this will be the most significant area of work for the update process, and will need to start early in order to ensure adequate time for consideration of potential areas for rezoning or other changes to development standards needed to achieve RHNA. Discussion and review of these is expected to involve significant amount of community outreach.

7. Sites Inventory, Regional Housing Needs Assessment

Based on community input and staff direction on a preferred development program option, prepare the sites inventory section of the Housing Element, demonstrating how Piedmont will satisfy its RHNA in each income category, and inputting the information into HCD's electronic form for submittal with the updated element, potentially using the mapping tool being developed by ABAG. If applicable, the consultant will assist City staff through the RHNA appeal process.

8. Goals, Policies, Programs and Quantified Objectives

Identify goals, policies, programs and quantified objectives to include in the Housing Element to ensure compliance with State law and effective response to the housing needs, constraints and key priorities identified through the updated process. This task includes ensuring responsiveness to priorities articulated through the community engagement process as well as ensuring internal consistency with other elements of the General Plan. This task will include identification of other General Plan policy updates or revisions needed to ensure consistency.

9. General Plan Amendments

Update the City's General Plan Natural Resources and Sustainability (Conservation) Element as needed in conformance with Government Code section 65302(d)(3), and the Environmental Hazards (Safety) Element as required and consistent with updated information available from the City's Local Hazard Mitigation Plan adopted in 2019 and identify section of the General Plan (all elements), zoning code, and other adopted plans/regulations identified by staff that may need to be amended to be in compliance with State law, including all tables, maps, etc., consistent with the 2023-2031 Housing Element. As noted in Section II General Information, the Piedmont City Charter limits changes to the zoning map and zoning classification without approval by the voters.

10. Draft Housing Element and Public Meetings

Prepare and submit an administrative draft Housing Element for City staff review. Staff will provide a comprehensive set of desired changes. Once edits are complete, prepare a draft Housing Element that is made available to the public and presented to the Housing Advisory Committee at public hearings. Comments from the Housing Advisory Committee will be incorporated into a draft made available to the public and presented to the Planning Commission at public hearings. Comments from the Planning Commission will be incorporated into a draft made available to the public and presented to the City Council at public hearings. Based on Committee, Commission and Council input, prepare a HCD review draft and submit to HCD for the mandatory review.

- Administrative draft and draft housing element (Microsoft Word)
- PowerPoint slide show presentation
- Ten (10) public meetings

11. Final Draft Meetings, Final Adoption and Certification

The consultant will work closely with HCD and City staff to respond to any comments and produce a final draft housing element for adoption. Present to the Planning Commission and City Council at public meetings. Prepare the final Housing Element, including any changes from the public hearings, and submit to HCD for final certification as well as East Bay Municipal Utility District and the California Office of Planning and Research.

- Draft final and final housing element (Microsoft Word and PDF)
- PowerPoint slide show presentation
- Six (6) public meetings

12. Affirmatively Furthering Fair Housing and the Housing Element

Starting in January 2021, California law requires that Housing Elements include an Assessment of Fair Housing (AFH). This applies to all jurisdictions. Housing Elements must factor the AFH into the housing sites inventory and include goals, policies and/or programs to combat discrimination, overcome patterns of segregation and foster inclusive communities.

13. Deliverables

A. Administrative Draft #1: Prepare and submit one (1) hard copy, one (1) electronic copy in Microsoft Word, and one (1) complete PDF copy of the Administrative

- Draft Housing Element and list of necessary additional General Plan amendments and other regulatory amendments (if applicable) for City staff to review and comment upon in accordance with the project's schedule. Design of the draft (text, font, graphics, tables, figures, and picture placement) to match the General Plan document format and quality;
- B. Administrative Draft #2: Revise the Administrative Draft Housing Element #1 and identified General Plan amendments and other regulatory amendment to incorporate staff's comments and submit one (1) hard copy, one (1) electronic copy in Microsoft Word, and one (1) PDF copy of the Draft Housing Element and proposed General Plan amendments and other regulatory amendments to the City for staff review and comment;
 - C. Public Review Draft Housing Element #1: Revise Administrative Draft Housing Element #2 and identified General Plan amendments and other regulatory amendments to incorporate staff's comments and submit one (1) hard copy, one (1) electronic copy in Microsoft Word, and one (1) PDF copy of the Draft Housing Element and proposed General Plan amendments and other regulatory amendments to the City for distribution to the Housing Advisory Committee, and the general public for review and comment;
 - D. Public Review Draft Housing Element #2: Revise Public Review Draft Housing Element #1 and identified General Plan amendments and other regulatory amendments to incorporate comments of the Housing Advisory Committee and submit one (1) hard copy, one (1) electronic copy in Microsoft Word, and one (1) PDF copy of the Draft Housing Element and proposed General Plan amendments and other regulatory amendments to the City for distribution to the Planning Commission, and the general public for review and comment;
 - E. Public Review Draft Housing Element #3: Revise Public Review Draft Housing Element #2 and identified General Plan amendments and other regulatory amendments to incorporate comments of the Planning Commission and submit one (1) hard copy, one (1) electronic copy in Microsoft Word, and one (1) PDF copy of the Draft Housing Element and proposed General Plan amendments and other regulatory amendments to the City for distribution to the City Council, and the general public for review and comment;
 - F. Final Public Review Draft Housing Element: Revise Public Review Draft Housing Element #3 and identified General Plan amendments and other regulatory amendments to incorporate comments of the City Council and submit one (1) hard copy, one (1) electronic copy in Microsoft Word, and one (1) PDF copy of the Draft Housing Element and proposed General Plan amendments and other regulatory amendments to the City for distribution to HCD and the general public for review and comment;
 - G. Submit public engagement strategy memo to City staff for review within sixty (60) days of contract engagement;
 - H. Prepare addendum and revisions to draft documents both in response to City input and comments from HCD, including tracking of said revisions;
 - I. Prepare Final Draft Updated Housing Element in response to comments from HCD, responsible agencies, City staff, the Housing Advisory Committee, the Planning Commission, the City Council, and the public. Upon determination of compliance

by HCD of the Final Draft Housing Element and Draft General Plan amendment and other regulatory amendments, the consultant will submit ten (10) bound copies, one (1) electronic copy in Microsoft Word format, and one (1) PDF of the Final Draft Housing Element (2023-2031) for distribution to the Planning Commission and the City Council for final adoption at corresponding public hearings;

- J. Amend the Environmental Hazards (Safety) Element of the City's General Plan to be consistent with SB 379, and amend the Natural Resources and Sustainability (Conservation) Element of the City's General Plan as needed to comply with Government Codes section 65302(d)(3);
- K. Attend, present and participate in a minimum of ten (10) public meetings which may include Housing Advisory Committee, Planning Commission meetings, City Council meetings, workshops, study session meetings and any additional community engagement meetings as required by the City (see tasks 2, 9 and 10);
- L. Prepare public meeting presentation materials, memos, letters, resolutions, findings of fact, and other documents as required by the City;
- M. Provide regular email progress reports to the project manager;
- N. Assist in the preparation of staff reports and exhibits for Housing Advisory Committee, Planning Commission and City Council;
- O. Provide and maintain an internet-based folder (or other agreed-to platform) for all project materials accessible to City Staff and consultants;
- P. Coordinate with City staff and HCD as necessary (minimum of 10 progress meetings with City staff);
- Q. Upon adoption of the Final Draft Housing Element and Final General Plan amendments and other regulatory amendments by the City Council, the consultant will prepare a final adopted version with the date of adoption prominently displayed on the front cover and throughout the document to distinguish it as the official document from other versions of the Housing Element. The consultant shall provide ten (10) bound copies, one (1) electronic copy in Microsoft Word, and one (1) PDF of the adopted Housing Element for distribution to HCD, City Departments, and other stakeholders; and
- R. The consultant shall assist the City in achieving State certification of the Housing Element after adoption by the City Council and shall perform all tasks necessary to obtain HCD certification.

V. SCHEDULE

Important Dates

The end of the proposal period is April 5, 2021 at 4 p.m. We will begin our evaluation of the proposals shortly thereafter and provide notification shortly thereafter. Responses received after this date and time will not be considered.

Contract Execution

RFP Released	March 3, 2021
Pre-Bid Conference Call & Question Submittal	March 17, 2021 at 10 a.m.
Posting of Answers from Pre-Bid Conference	March 24, 2021 at 10 a.m.
Final Submittal	April 5, at 4 p.m.

Consultant Interviews	April 19, 2021, time TBD
City Council Authorization of Contract	May 3, 2021
Contract Execution/Kick-Off Meeting	May 20, 2021

The schedule may be modified and/or extended upon the City's discretion.

VI. PROPOSAL SUBMISSION REQUIREMENTS AND FORMAT

If interested in this RFP, please notify Kevin Jackson by email at PiedmontHousingRFP@piedmont.ca.gov so you may be added to the notification list for addendums. Failure to notify could result in missing important and required information and could result in disqualification.

Format

All submittals must follow the format described in this section. Respondents are encouraged to submit clear and concise responses to the RFP. The City of Piedmont reserves the right to include or exclude any part of the submittals in the final agreement with the selected consultant.

Four (6) bound copies of the submittal, one (1) unbound, reproducible copy, and one thumb drive (or other digital medium) containing a PDF copy must be submitted. Each submittal shall be on 8½" x 11" pages and the font shall be no less than 10 point. All pages shall be numbered. Drawings provided with the submittal shall not exceed 11" x 17."

To be considered for selection, submittals must arrive at the location shown below by the date and time specified in Section V. Proposers who mail packages should allow ample delivery time to ensure timely arrival.

Submittals shall be placed in a clearly marked envelope, titled Housing Element Update and hand-delivered or mailed to:

Kevin Jackson, AICP
 Director of Planning & Building
 City of Piedmont
 120 Vista Avenue, Piedmont, CA 94611

It is the sole responsibility of the Proposer to ensure timely delivery. Late proposals shall not be considered. Proposals will not be accepted at any other location other than the address specified above. Faxed or emailed proposals will not be accepted.

Content

The successful proposal will describe the approach, the process and costs to prepare and conduct the deliverables outlined in Section IV Scope of Services of this RFP. The content of your proposal should include the following in summary form:

- Part 1: Cover Letter/Executive Summary
- Part 2: Project Approach, Scope of Work and Deliverables
- Part 3: Consultant Identification and Team

- Part 4: Related Project Examples and References
- Part 5: Public Engagement Experience
- Part 6: Fee Proposal

Part 1 | Cover Letter/Executive Summary

In no more than three (3) pages, the Cover Letter and Executive Summary shall include:

1. The names of the key members of the consultant team;
2. The mailing address, telephone number, and the name of the main point of contact for the consultant team;
3. A summary of the consultant's experience and qualifications and the significant advantages to selecting the consultant; and
4. An acknowledgement of receiving any addendum(s) to the RFP document sent out by the City.

Part 2 | Project Approach, Scope of Work and Deliverables

Describe the strategy for achieving the goals and deliverables of the project. Include a detailed scope of work noting applicable deliverables as noted in this RFP. Provide a flowchart depicting overall schedule, milestone, community meetings and public hearings. Develop a timeline schedule with milestones for the review and appeal (if necessary) of RHNA and the certification of the Housing Element by HCD. The project schedule shall include a detailed explanation of all stages of the project, including, at a minimum:

1. Kick-off meeting with staff to collect and confirm baseline information needs and refine the scope of services;
2. Identification of major milestones, meetings, and work products;
3. Public engagement, meetings and workshops;
4. Delivery of analysis and findings during assessment and development of the RHNA and Housing Element update;
5. Response to the HCD review and City staff review times;
6. Delivery of draft and final draft Housing Element; and
7. Public hearings (Housing Advisory Committee, Planning Commission and City Council).

Part 3 | Consultant Identification and Team

Provide the name of the consultant, the consultant's principal place of business, and the name and telephone number of the contact person. Clearly identify team members, their roles, qualifications and relevant experience. Any professional services required but not proposed by the qualified consultant firm shall be listed and reasons should be provided for not including them as part of the proposal.

Part 4 | Related Project Examples and References

Provide recent (within the past 10 years) visual examples of relevant projects completed by the consultant that exhibit the team's ability to successfully complete a range of services as listed above. Along with each example, please include descriptive information such as location of the project, date, scope and scale, contract amount, name of the team member(s) involved in the project and their roles, name of the client, and email address and telephone number of the client contact.

Part 5 | Public Engagement Experience

Please provide a description of previous experience working with the public, commissioners and decision makers. Also include experience doing community engagement for Housing Element if applicable.

Part 6 | Fee Proposal

List by task the proposed fee. Include an hourly rate schedule for all personnel who may participate in current or future projects.

VII. SELECTION PROCESS

The selected consultant will be asked to enter into a Professional Services Agreement with the City of Piedmont and comply with the insurance requirements set forth therein. The City's Planning & Building Department will supervise the project and coordinate the work.

The Consultant will be selected based on demonstrated competence and professional qualifications. Negotiations shall begin with the most qualified consultant. Should negotiations not result in a price the City considers to be fair and reasonable, negotiations shall be formally terminated and the City shall then undertake negotiations with the second most qualified consultant. If the negotiation with the second most qualified firm is not successful, negotiation shall be formally terminated and the City shall then undertake negotiations with the third most qualified consultant, etc. until the price is determined to be fair and reasonable by the City.

VIII. PROPOSAL TERMS AND CONDITIONS**1. Examination of Proposal Materials**

The submission of a proposal shall be deemed a representation and warranty by the proponent that it has investigated all aspects of the RFP, that it is aware of the applicable facts pertaining to the RFP process and its procedures and requirements, and that it has read and understands the RFP. No request for modification of the provisions of the proposal shall be considered after its submission on the grounds the proponent was not fully informed as to any fact or condition.

2. Addenda Interpretations

If it becomes necessary to revise any part of this RFP, a written addendum will be provided to each firm that requested to be added to the notification list and said addenda will be uploaded to the City website. The City of Piedmont is not bound by any oral representations, clarifications or changes made in the RFP by the City or its agents, unless such clarification or change is provided in written addendum from the City of Piedmont.

3. Designated Contact

For the purposes of this RFP, the Director of Planning & Building is designated as the contact person. Any questions concerning the scope of work and the selection process shall be directed to Kevin Jackson at PiedmontHousingRFP@piedmont.ca.gov. Any and all

questions and responses concerning this RFP will only be accepted in writing, via email. All questions must be received by March 17, 2021 by 10 a.m.

Responses to questions will be posted on the City's website, https://piedmont.ca.gov/services__departments/public_works/city_projects, and will become part of the RFP. It is the consultant's responsibility to check the website for updates.

4. Public Records

This RFP document and all submittals in response thereto are public records. Prospective consultants are cautioned not to include any material into the proposal that is strictly proprietary in nature.

5. Proposal Costs

All costs associated with the preparation of RFP submittals shall be borne by the respondent. This RFP does not constitute any form of offer to contract.

6. Reservation of Rights

The City reserves the right, for any reason, to accept or reject any one or more proposals; to negotiate the terms and specifications of the proposal; to modify any part of the RFP; or issue a new RFP.

7. Product Ownership

Any documents resulting from the contract will be the property of the City of Piedmont, CA.

8. Professional Services Agreement

All Proposers must identify in their proposal any terms and conditions of the sample Professional Services Agreement (Exhibit A) that they wish to negotiate. Insurance is required as outlined in Section 5.3 of the sample agreement.

9. Causes for Disqualification

Any of the following may be considered cause to disqualify a proponent without further consideration:

- Evidence of collusion among proponents;
- Any attempt to improperly influence any member of the evaluation panel;
- A proponent's default in any operation of a professional services agreement which resulted in termination of that agreement; and/or
- Existence of any lawsuit, unresolved contractual claim, or dispute between proponent and the City.

EXHIBITS

- A. Professional Services Agreement Sample

AGREEMENT FOR CONSULTANT SERVICES

This Agreement for Consultant Services (the "Agreement") is made and entered into this _____ day of _____, ____, by and between THE CITY OF PIEDMONT, a municipal corporation (hereinafter referred to as "CITY") and _____ [a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation] (hereinafter referred to as "CONSULTANT"). CITY and CONSULTANT may be referred to individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, CITY requires _____ services in connection with the _____;

WHEREAS, CONSULTANT is qualified to perform such services; and

WHEREAS, CONSULTANT has agreed to provide CITY with such services on the terms and conditions set forth herein.

NOW, THEREFORE, for the considerations hereinafter set forth, CONSULTANT and CITY agree as follows:

ARTICLE 1 - SCOPE OF SERVICES

- 1.1. **Scope of Work.** CONSULTANT agrees to furnish the services set forth in Exhibit A, Scope of Work, which is attached hereto and incorporated herein (the "Services").
- 1.2. **Compliance with Law.** The Services shall be performed in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and orders.
- 1.3. **Time is of the Essence.** CONSULTANT agrees to diligently prosecute the Services. In the performance of this Agreement, time is of the essence.
- 1.4. **Professional Competence.** CONSULTANT represents that it has the professional skills necessary to perform the Services and that it will perform the Services in a skillful and professional manner. CONSULTANT represents that it has all the necessary licenses to perform the Services and shall maintain them throughout the term of this Agreement. CONSULTANT agrees that the Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged, in the same or similar geographical area in which CONSULTANT practices its profession, and will prepare all work products required by this Agreement in accordance with such standards. CITY and CONSULTANT agree that CONSULTANT is in responsible charge of the Services and CITY shall have no control over the method or means of performance of the Services. Acceptance by CITY of the Services does not operate as a release of CONSULTANT from professional responsibility for the Services performed.

- 1.5. **Independent Contractor.** CONSULTANT is an independent contractor and not an employee of CITY. CONSULTANT expressly warrants that it will not represent that it is an employee of CITY. Persons employed or utilized by CONSULTANT in the performance of the Services will not be employees or agents of CITY. CONSULTANT is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 1.6. **Confidentiality.** CONSULTANT agrees to maintain in confidence and not disclose to any person, firm, governmental entity, or corporation, without CITY's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of CITY. CONSULTANT further agrees to maintain in confidence and not to disclose to any person, firm, governmental entity, or corporation any data, information, technology, or material developed or obtained by CONSULTANT during the performance of the Services. The covenants contained in this Section 1.6 shall survive the termination of this Agreement for whatever cause.
- 1.7. **Ownership of Material.** Any reports and other material prepared by or on behalf of CONSULTANT under this Agreement (collectively, the "Documents") shall be and remain the property of CITY. All Documents not already provided to CITY shall be delivered to CITY on the date of termination of this Agreement for any reason. The Documents may be used by CITY and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes CITY may deem appropriate without further employment of or payment of any compensation to CONSULTANT.
- 1.8. **Documentation.** CONSULTANT shall keep and maintain full and complete documentation and accounting records, employee time sheets, and correspondence pertaining to the performance of the Services, and CONSULTANT shall make such documents available for review and/or audit by CITY and CITY's representatives at all reasonable times for at least four years after the termination of this Agreement or completion of the Services.
- 1.9. **Testimony.** CONSULTANT agrees to testify at CITY's request if litigation is brought against CITY in connection with the Services. Unless the action is brought by CONSULTANT or is based upon CONSULTANT's negligence, CITY will compensate CONSULTANT for the preparation and the testimony at CONSULTANT's standard hourly rates.

ARTICLE 2 - COMPENSATION

- 2.1. **Compensation.** Compensation for the Services shall be in accordance with Exhibit B, Compensation, attached hereto and incorporated herein. It is agreed that the compensation for the Services shall not exceed \$_____ ("Cost Ceiling").
- 2.2. **Invoices.** CONSULTANT shall submit monthly invoices in a form satisfactory to CITY on or before the tenth day of each month for Services provided during the preceding month. CONSULTANT shall submit time and cost records as necessary to substantiate performance of the Services. Within 35 days after receipt of each such invoice, CITY

shall verify the accuracy of the invoice, correct the charges where appropriate and as discussed and mutually agreed with CONSULTANT, and make payment to CONSULTANT in an amount equal to the amount of such invoice, as verified or corrected by CITY. No payment hereunder shall be construed as evidence of acceptance of any of CONSULTANT's work. CITY reserves the right to withhold payment from CONSULTANT on account of Services not performed satisfactorily, delays in CONSULTANT's performance of Services, or other defaults hereunder. CONSULTANT shall not stop or delay performance of the Services under this Agreement on account of payment disputes with CITY.

- 2.3. **Status Reports.** Together with each monthly invoice, CONSULTANT shall submit a status report detailing the amount expended on the Services to that date and the remaining amount to be expended before the Cost Ceiling is reached. CONSULTANT shall notify CITY in writing when payments have reached 90 percent of the Cost Ceiling.
- 2.4. **Withholding.** In lieu of holding retention, CITY shall withhold CONSULTANT's final payment until the Services are complete and CITY has received all Documents. CONSULTANT shall diligently continue and complete performance of the Services if the Services are not complete at the time CONSULTANT has performed services up to the Cost Ceiling.

ARTICLE 3 - TIME OF PERFORMANCE

- 3.1. **Effective Date.** This Agreement shall become effective upon execution of the second signature and shall remain in full force and effect until the Services are completed (the "Term"). CONSULTANT agrees to complete all services by _____.
- 3.2. **Termination.** This Agreement may be terminated at any time by CITY upon written notice to CONSULTANT.
- 3.3. **Final Payment.** CONSULTANT shall be entitled to compensation for Services performed up to the time of such termination, it being understood that any payments are full compensation for the Services rendered under this Agreement.
- 3.4. **Other Remedies.** Nothing in this Article 3 shall be deemed to limit the respective rights of the parties to terminate this Agreement for cause or otherwise to exercise any rights or pursue any remedies which may accrue to them.

ARTICLE 4 - DESIGNATED CONTACTS

- 4.1. **CITY Contact.** CITY designates _____, its _____, as its contact who shall be responsible for administering and interpreting the terms and conditions of this Agreement, for matters relating to CONSULTANT's performance under this Agreement, and for liaison and coordination between CITY and CONSULTANT. In the event CITY wishes to make a change in CITY's representative, CITY will notify CONSULTANT of the change in writing.

- 4.2. **CONSULTANT Contact.** CONSULTANT designates _____ as its contact, who shall have immediate responsibility for the performance of the Services and for all matters relating to performance under this Agreement. Any change in CONSULTANT's designated contact shall be subject to written approval by CITY.

ARTICLE 5 - INDEMNIFICATION AND INSURANCE

- 5.1. **Indemnification.** CONSULTANT shall, to the fullest extent allowed by law, with respect to claims, liability, loss, damage, costs, or expenses, including reasonable attorney's and expert witness fees, awards, fines, penalties, or judgments, arising out of or relating to the Services (collectively "Claims"), defend, indemnify, and hold harmless CITY, its Officials, officers, employees and agents (the "CITY Parties"), except to the extent the Claims are attributable to CITY Parties' gross negligence or willful misconduct. CONSULTANT shall defend the CITY Parties as required by California Civil Code Section 2778, and with counsel reasonably acceptable to those parties. CONSULTANT shall have no right to seek reimbursement from the CITY Parties for the costs of defense.

If CONSULTANT is a "design professional," as defined in California Civil Code Section 2782.8(c), CONSULTANT shall indemnify, defend, and hold the Indemnitees harmless against Liability only to the extent such Liability arises out of, pertains to, or relates to CONSULTANT's negligence, recklessness, or willful misconduct. In such an event, the cost to defend charged to CONSULTANT shall not exceed CONSULTANT's proportionate percentage of fault.

The obligations contained in this Section 5.1 shall survive the termination of this Agreement for whatever cause for the full period of time allowed by law and shall not in any way be limited by the insurance requirements of this Agreement.

- 5.2. **Health and Safety.** CONSULTANT may perform part of the Services at sites which contain unknown working conditions and contaminated materials. CONSULTANT shall be solely responsible for the health and safety of CONSULTANT's employees during the performance of the Services.
- 5.3. **Insurance.** CONSULTANT and all of CONSULTANTS employees, subcontractors, consultants and other agency shall procure, provide and maintain at all times during the performance of this Agreement, and for such additional periods as described herein, the insurance listed below with insurers licensed to do business in the State of California and with a Best's rating of no less than A:VII.
- A. Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance providing bodily injury liability and property damage, to protect against all liability arising out of the use of any owned, leased, passenger or commercial automobile at a minimum amount of \$1,000,000 combined single limit and \$2,000,000 aggregate. Coverage shall apply to hired and non-owned autos.

- B. Commercial General Liability Insurance. Commercial General Liability Insurance, with limits providing a minimum amount of \$1,000,000 combined single limit coverage for each occurrence, \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate. The insurance shall cover all operations including but not limited to the following: (1) premises, operations and mobile equipment liability; (2) completed operations and products liability; (3) contractual liability insuring the obligations assumed by CONSULTANT in this Agreement; (4) broad form property damage liability; (5) personal injury liability endorsement, including death; and (6) automobile bodily injury and property damage insurance, including all owned, hired and non-owned equipment.
- C. Professional Liability Insurance. Professional Liability Insurance protecting against liabilities arising out of or in connection with negligent acts, errors, or omissions of CONSULTANT and all of CONSULTANTS employees, subcontractors, consultants and other agency in connection with this Agreement, at a minimum amount of \$1,000,000 combined single limit coverage and \$1,000,000 aggregate, on a "claims made basis" with a continuation of coverage extension for liabilities for two years from the date the Services are substantially complete. Such professional liability policies shall include coverage for liability assumed by the CONSULTANT under this Agreement.
- D. Workers Compensation Insurance. Workers Compensation insurance, occupational disease insurance and employer's liability insurance shall be required with minimum limits as required by law, covering all workplaces involved in this Agreement.
- E. Policy Terms. Concurrently with execution of this Agreement, CONSULTANT shall provide CITY with Certificates of Insurance evidencing that CONSULTANT has obtained or maintains the insurance required by this Section 5.3. The Certificates shall be on forms acceptable to CITY. CONSULTANT shall also furnish CITY with original endorsements with the following documentation:
- Precluding cancellation or reduction in coverage before the expiration of thirty (30) days after CITY shall have received written notification thereof from CONSULTANT by United States mail;
 - Providing that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, and include a "separation of insureds" or "severability" clause which treats each insured separately, except with respect to the limits of the insurer's liability (cross-liability endorsement);
 - Excepting CONSULTANT'S professional liability insurance, naming CITY, its City Council, boards, commissions, committees, officers, employees and agents as additional insureds ("Additional Insureds"); and
 - Providing that for any claims relating to CONSULTANT's services hereunder, CONSULTANT's insurance coverage shall be primary insurance with respect to CITY, its City Council, boards, commissions, committees, officers, employees and agents, and that any insurance or self-insurance maintained by

CITY for itself, its City Council, boards, commissions, committees, officers, employees and agents shall be in excess of CONSULTANT's insurance and shall not be contributory with it.

- It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverages requirements and/or limits shall be available to the Additional Insured, including but not limited to any umbrella or excess insurance. Furthermore, the requirements for coverage and limits shall be the greater of: (a) the minimum coverage and limits specified in this Agreement; or (b) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

- F. Material Breach. If CONSULTANT fails to maintain insurance coverage or provided insurance documentation which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. CITY, at its sole option, may terminate this Agreement and obtain damages from CONSULTANT resulting from said breach. Alternatively, CITY may purchase the required insurance coverage, and without further notice to CONSULTANT, may deduct from sums due to CONSULTANT any premium costs advanced by CITY for such insurance. These remedies shall be in addition to any other remedies available to CITY.

ARTICLE 6 - NOTICES

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by facsimile or reputable overnight courier and shall be deemed received upon the earlier of: (1) if personally delivered, the date of delivery to the address of the person to receive such notice; (2) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day; (3) if sent by facsimile, with the original sent on the same day by overnight courier, the date on which the facsimile is received, provided it is before 5:00 P.M. Pacific Time; or (4) if sent electronically, the date of delivery on the confirmed read receipt. Notice of change of address shall be given by written notice in the manner described in this Article 6. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

If to CITY:	City Administrator [ADDRESS] Phone: Facsimile: Email:
-------------	---

If to CONSULTANT: _____

 Phone: _____
 Facsimile: _____
 Email: _____

ARTICLE 7 - MISCELLANEOUS

7.1. **Conflict of Interest Prohibition.** CITY and CONSULTANT will comply with the requirements of the CITY’s Conflict of Interest Code adopted pursuant to California Government Code §87300 et seq., the Political Reform Act (California Government Code §81000 et seq.), the regulations promulgated by the Fair Political Practices Commission (Title 2, §18110 et seq. of the California Code of Regulations), California Government Code §1090 et seq., and any other ethics laws applicable to the performance of the Services and/or this Agreement. CONSULTANT may be required to file with the CITY Clerk a completed Form 700 before commencing performance of the Services unless the CITY Clerk determines that completion of a Form 700 is not required, pursuant to CITY’s Conflict of Interest Code. Form 700 forms are available from the CITY Clerk.

CONSULTANT may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to CONSULTANT’s obligations pursuant to this Agreement. CONSULTANT agrees to cooperate fully with CITY and to provide any necessary and appropriate information requested by CITY or any authorized representative concerning potential conflicts of interest or prohibitions concerning CONSULTANT’s obligations pursuant to this Agreement.

CONSULTANT may not employ any CITY official, officer or employee in the performance of the Services, nor may any official, officer or employee of CITY have any financial interest in this Agreement that would violate California Government Code §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 CITY. If CONSULTANT was an employee, agent, appointee, or official of CITY in the previous twelve months, CONSULTANT warrants that it did not participate in any manner in the forming of this Agreement. CONSULTANT understands that, if this Agreement is made in violation of Government Code §1090 et seq., the entire Agreement is void and CONSULTANT will not be entitled to any compensation for CONSULTANT’s performance of the Services, including reimbursement of expenses, and CONSULTANT will be required to reimburse CITY for any sums paid to CONSULTANT under this Agreement. CONSULTANT understands that, in addition to the foregoing, penalties for violating Government Code §1090 may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by CONSULTANT of the requirements of this provision will constitute a material breach of this Agreement, and the CITY reserves all its rights and remedies at law and equity concerning any such violations.

- 7.2. **Subcontracting.** CONSULTANT may subcontract portions of the Services upon the prior written approval of CITY. CONSULTANT will be solely responsible for payment of such subcontract Services. No contractual relationship will exist between any such subcontractors of CONSULTANT and CITY. CONSULTANT's subcontractors agree to be bound to CONSULTANT and CITY in the same manner and to the same extent as CONSULTANT is bound to CITY under the Agreement. CONSULTANT's subcontractors further agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the CITY indemnity and insurance provisions will be furnished to CONSULTANT's subcontractors upon request.
- 7.3. **Entire Agreement.** This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by an amendment in writing signed by each party.
- 7.4. **No Assignment.** The Services are deemed unique and neither party shall assign, transfer, subcontract or otherwise substitute its interest in this Agreement or any of its obligations hereunder without the prior written consent of the other party. As limited by this Section 7.2, this Agreement is to be binding on the successors and assigns of the parties hereto.
- 7.5. **Severability.** If any part of this Agreement is determined to be unconstitutional, invalid or beyond the authority of either party, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.
- 7.6. **Counterparts.** This Agreement may be signed in counterparts and, when fully signed, such counterparts shall have the same effect as if signed in one document.
- 7.7. **Choice of Law.** This Agreement and all matters relating to it shall be governed by the laws of the State of California without reference to its choice of laws principles and venue shall be in the appropriate court in San Mateo County, California.
- 7.8. **Waiver.** No failure on the part of either Party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. A waiver by either CITY or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other further breach.
- 7.9. **Mediation.** In the event the parties are unable to resolve a dispute arising under this Agreement through good faith negotiations, the parties agree to submit the matter to mediation with a mutually agreeable mediator. Prior to the mediation, the parties shall exchange any documents reasonably necessary to resolve the matter to be mediated.

- 7.10. **Attorney's Fees.** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.
- 7.11. **Interpretation.** In the event this Agreement is ever construed in any dispute between the parties, it and each of its provisions shall be construed without regard to the party or parties responsible for its preparation and shall be deemed to have been prepared jointly by the parties. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement.
- 7.12. **Authority.** Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.
- 7.13. **Third Parties.** Nothing contained in this Agreement shall create a contractual relationship with, or cause of action in favor of, a third party against either the CITY or CONSULTANT. CONSULTANT's Services hereunder are being performed solely for the benefit of CITY. CITY shall be an express third-party beneficiary of all contracts between CONSULTANT and any subcontractors or subconsultants in connection with any services performed in connection with, or in furtherance of, this Agreement.

* * *

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CITY OF PIEDMONT

By: _____
Sara Lillevand, City Administrator

Date: _____

CONSULTANT

By: _____

Date: _____

By: _____

Date: _____

Attest

By: _____
John Tulloch, City Clerk

Approved As To Form

By: _____
Michelle Marchetta Kenyon, City Attorney

EXHIBIT A
SCOPE OF WORK

EXHIBIT B

Compensation

CITY shall pay CONSULTANT for the Services on a cost reimbursement basis, up to the Cost Ceiling (as defined in Section 2.1 of the Agreement). CONSULTANT agrees to use appropriate methods to contain its fees and costs under this Agreement. Compensation shall include only the following costs, which shall all count toward the Cost Ceiling:

1. Direct Labor

Direct labor costs shall be the total number of hours worked on the job by each employee times the agreed hourly rate for such employee's labor as set forth on the attached Exhibit B-1. CITY will pay all personnel at their regular straight-time rate, including any work performed on overtime or on holidays or weekends.

2. Subconsultant Costs

Subconsultant services shall be billed at cost plus a 10 percent markup. CONSULTANT shall provide a copy of each subconsultant's invoice for which it seeks payment from CITY with any invoice in which such payment is requested.

3. Other Direct Costs

The following categories of costs are eligible for reimbursement, which shall be made at the actual cost to CONSULTANT without any additional mark-up:

a. Reasonable living and traveling expenses of employees when away from home office on business in its prosecution of the Services. CONSULTANT must have prior approval of CITY to be reimbursed for these expenses.

b. Automobile expenses for personal vehicle use, if necessary, at the IRS approved mileage rate.

c. Reproduction of drawings and specifications by CONSULTANT as required under this Agreement, at rates prevailing in this community for bulk reproduction or at other reasonable rates approved by CITY.

d. Special overnight delivery or messenger services.

Payments to CONSULTANT for reimbursable costs/expenses will be made only after the specific costs/expenses have been incurred and CONSULTANT has submitted substantiating documentation, such as copies of paid invoices or other documentation confirming that such costs/expenses have been incurred.

EXHIBIT B-1