

City of Piedmont
COUNCIL AGENDA REPORT

DATE: January 17, 2023

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Consideration of the Issuance of a Request for Proposals seeking Professional Services for the preparation of a Moraga Canyon Specific Plan

RECOMMENDATION

Authorize staff to issue a Request for Proposals (RFP) seeking professional services for the preparation of a Moraga Canyon Specific Plan.

EXECUTIVE SUMMARY

Program 1.L of the 6th Cycle Draft Housing Element calls for the preparation of a specific plan for the City-owned parcels in the Moraga Canyon area and the Moraga Avenue roadway that intersects them (“Study Area”). In order to have a specific plan in place for the Study Area by Spring of 2025, staff is requesting Council authorization for the issuance of an RFP to initiate the process. The proposed specific plan is expected to facilitate the development of below-market-rate housing and the accommodation of at least 132 housing units at all income levels while continuing existing recreational and Public Works uses and services as well as providing open space. A goal of the proposed specific plan is to prioritize the identification of a site for the development of affordable housing that meets the criteria and timelines to secure Alameda County Measure A-1 funding. Accordingly, Staff recommends the issuance of the attached RFP to procure consulting services at a fair market value that achieve the development and completion of a Moraga Canyon Specific Plan.

BACKGROUND

Piedmont’s Draft 6th Cycle Housing Element for the 2023-2031 Term

In response to City Council direction given on November 15, 2022, staff submitted Piedmont’s Draft 6th Cycle Housing Element to the California Department of Housing and Community Development (HCD) on November 18th. It demonstrates how the City will allow for the development of 587 new housing units during the eight-year cycle through the implementation of the policies and programs included in the Element. Generally, the State requires that local jurisdictions implement a substantial portion of the policies and programs in its housing element within the first three years of the eight-year term. Of the 67 programs included in the Draft Housing Element, Program 1.L Specific Plan may be the most significant.

Draft Housing Element Program 1.L Specific Plan

Program 1.L Specific Plan is described on pages 44-46 of the [6th Cycle Housing Element HCD Review Draft](#). A summary of its provisions is provided below.

As described in [Housing Element] Appendix B, Section B.3.1, the City owns four sites (comprised of APN 050457901900, 050457908000, 048A700200303, and 050457906100) totaling roughly 18 acres on both the north and south sides of Moraga Avenue near Red Rock Road. The City of Piedmont has the ability to subdivide the parcels and declare them to be surplus and used for the development of housing under the Surplus Land Act (“SLA”, California Government Code §54222, et seq.). The intent of this process would be to facilitate the development of below-market-rate housing to help meet the demand for affordable housing in the City. In order for the City to meet its RHNA requirements, these sites need to accommodate at least 132 housing units at all income levels. Given the size of the site, existing constraints, and the desire to preserve the existing public uses (open space, recreation, and City Corporation Yard), the area will be planned, using the specific plan process outlined in Government Code §65450 et seq. This process requires the orderly development of the area, including the following: phasing; subdivision; adequate infrastructure; identification of financing; protection of amenities and City facilities; and production of affordable housing.

Specific Plan Goals

The first goal is to enable construction of housing at a minimum of 132 units on portions of the site, yielding a minimum of 60 units of housing affordable to households earning less than 80 percent of the area median income (AMI) and a minimum of 72 units affordable to households earning more than 80 percent of the AMI.

In addition, specific plan goals include improved safety. New habitable structures shall be built to meet fire code requirements for Wildland Urban Interface Areas.

The specific plan must include replacement and/or modernization of existing Public Works Department facilities, offices, storage areas, vehicle storage areas, etc., so that service capacity is maintained or increased, and so that the facilities meet current building and fire code requirements.

The specific plan must include recreation facilities, including but not limited to an under-14 size soccer field, youth baseball/softball field, batting cages, artificial field turf, ballfield seating, a skate spot, a picnic area, and parking for these facilities.

The specific plan must provide all public utilities to new housing and all City facilities to be constructed within the specific plan area in a manner consistent with public safety standards and Piedmont Climate Action Plan goals and programs.

The specific plan must include improvements to pedestrian and vehicular circulation, as determined necessary by the City Engineer, to provide safe pedestrian, bicycle, and motor vehicle movements, ensure safe evacuation routes, and provide optimal emergency response.

The goals of the specific plan include a comprehensive landscape plan for areas planned for development. The landscape plan shall prioritize to the extent practicable: fire safety; and the preservation of significant open space, scenic views, and native and heritage trees.

Housing density in the plan area will be determined at the time of plan development, which entails a public process, and could range from 40 to 60 dwelling units per acre, including housing for seniors, disabled persons, single-parents, low-income families, and/or people requiring supportive services. This program requires an amendment to the City's General Plan and the preparation of a specific plan to accommodate the density and create development standards for the unique site conditions. The required amendments would be reviewed by the City Attorney for conformance with the City Charter and other legal requirements. If it is determined that it is infeasible to develop this site during the planning process, the City will consider utilizing other City-owned properties as alternative sites (see Appendix B).

Specific Plan Objective and Timeframe

- Objective: Develop a specific plan to accommodate at least 132 dwelling units at a density of 40 to 60 dwelling units per acre affordable to a variety of households, including seniors, disabled persons, single-parents, low-income families, and people requiring supportive services.
- Timeframe:
 - Issue RFP in January 2023 seeking professional services for the preparation of specific plan.
 - Apply for available Measure A-1 grant funding by mid-2024.
 - Begin subdivision of site and Surplus Land declaration no later than early 2024.
 - Prepare specific plan with the goal of completion by the end of 2025.
 - Adopt specific plan, General Plan amendments (See Program 1.P), and associated development standards by the end of 2026.
 - Pursue goal of entering into exclusive negotiating agreement with development partners by the end of 2026.

DISCUSSION

Attributes of a Specific Plan

A specific plan is a tool for the systematic implementation of the general plan. It effectively establishes a link between implementing policies of the general plan and the individual development proposals in a defined area. Area plans and community plans are planning tools similar to specific plans, but unlike these alternatives, specific plans have an emphasis on implementation and are addressed in State law (Govt. Code 65450-65457). It is this emphasis on the plan's implementation that makes the specific plan the planning tool most attractive to HCD. It was at a meeting with HCD early in the preparation of Piedmont's Draft Housing Element that the agency representative strongly recommended the specific plan approach when planning for housing in the Moraga Canyon area.

The specific plan process must provide opportunities for the general public, as well as residents located within planning areas, to assist in the planning of their particular communities. Public involvement helps define the community's vision of future growth and development.

Section 65451 of the Government Code mandates that a specific plan be structured as follows:

- (a) A specific plan shall include a text and a diagram or diagrams which specify all of the following in detail:
 - (1) The distribution, location, and extent of the uses of land, including open space, within the area covered by the plan.
 - (2) The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan.
 - (3) Standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources, where applicable.
 - (4) A program of implementation measures including regulations, programs, public works projects, and financing measures necessary to carry out paragraphs (1), (2), and (3).
- (b) The specific plan shall include a statement of the relationship of the specific plan to the general plan.

Scope of Services for the Preparation of a Moraga Canyon Specific Plan

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

- a. The distribution, location, and extent of proposed land uses in the study area;
- b. Detailed guidance on phasing and subdivision that accommodates the housing identified for the study area in Housing Element program 1.L and the Sites Inventory (Housing Element Appendix B), and that prioritizes and expedites the identification of a site for the development of affordable housing that meets the criteria and timelines to secure Alameda County Measure A-1 funding;
- c. The preparation of a surplus land declaration;
- d. The provision of open space and the standards for its ongoing conservation;
- e. The inclusion of recreation facilities, including but not limited to an under 14 soccer field, youth baseball/softball field, batting cages, artificial field turf, ball field seating, a skatespot, a picnic area, and parking for these facilities;
- f. The inclusion of Public Works Department facilities (corporation yard) that replace and/or modernize the existing facilities, including but not limited to offices, storage areas, and vehicle storage areas so that service capacity is maintained or increased, and so that the facilities meet current building and fire code requirements;
- g. Multi-modal circulation and emergency access needed to support the land uses in the plan;
- h. Necessary infrastructure and services including fire and public safety, sewer and wastewater, water service, drainage, solid waste disposal and recycling, energy provision and conservation, stormwater quality and quantity, water reuse and conservation, and other essential facilities proposed to be located within the specific plan area and needed to support the land uses described in the plan;

- i. Standards and criteria by which development will proceed, including objective development and design standards tailored for this area, and standards related to mitigating fire risk within the wildland urban interface;
- j. A program of implementation measures including regulations, programs, infrastructure projects, and financing measures necessary to implement the specific plan;
- k. Analysis of the relationship of the specific plan to the City of Piedmont General Plan, including the identification of General Plan amendments necessary for consistency;
- l. A fiscal analysis of potential revenues and expenses (both one-time and ongoing) to be considered by the City of Piedmont and Piedmont Unified School District. Potential revenue sources include but are not limited to property tax, sales tax, capital facilities fees, school impact fees, traffic fees, affordable housing fees and park fees. Revenue sources to (re)cover the cost of preparing the Specific Plan should be considered; and
- m. CEQA analysis.

Project Timeline

The RFP requests that the proposer recommend a timeline for the specific plan's development and adoption with the recognition of the following important dates:

- April 2023 – Award of Contract / Project kick-off
- December 2024 - Due date for County approval of a Measure A-1 funded project
- Spring 2025 - Adoption of Specific Plan by the City Council

RFP Timeline

The timeline for the RFP would begin with the issuance of the RFP on January 23rd, proposals due a month later on February 27th and consultant interviews tentatively scheduled for the week of March 6th. Council consideration of the contract is anticipated in April.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The California Environmental Quality Act (CEQA) requires that public agencies study and disclose the potential impacts of proposed projects before making a decision. The action of approving the issuance of an RFP does have an environmental impact.

While not directly related to the consideration of the RFP before the Council in this item, for contextual awareness it is important to note that physical changes that would result from the implementation of policies and programs proposed in the Housing Element resulting in maximum buildout are currently being studied as part of a programmatic Environmental Impact Report (EIR) covering updates to the City's General Plan and changes to the City Code that would happen after the Housing Element is adopted. The scope of services sought in this RFP includes any additional environmental review for the development envisioned in the Specific Plan that is not addressed in the programmatic EIR.

FISCAL CONSIDERATIONS

Under the RFP, the consultant will be selected based on demonstrated competence and professional qualifications. Negotiations regarding the amount of the contract will commence after

identifying the most qualified consultant. The RFP does not set a price, but according to the [*Planning Costs Guidebook*](#) published by the Association of Bay Area Governments (ABAG) and based on research conducted by the Institute for Local Government (ILG) in 2019, the preparation of a specific plan cost an average of \$544,237.

Payments to cover the expenses incurred by the preparation of a specific plan will come from the City's General Fund and budgeted in Fiscal Years 2022/2023, 2023/2024, and 2024/2025. Opportunities to mitigate the burden on the General Fund include:

- Funds generated by General Plan Maintenance fee instituted by the City on July 1, 2019. Currently, the fee is \$0.013 x the construction cost valuation on building permits. The fee generated \$427,000 in FY 21-22 and we expect a similar amount this fiscal year. The funds must be spent on updates and amendments to the General Plan and other auxiliary documents (e.g., Climate Action Plan, Zoning Ordinance, Hazard Mitigation Plan, and a specific plan). The City Council might consider increasing this fee to help cover the rising costs of land use planning.
- The scope of work requested in the RFP includes a fiscal analysis of potential expenses and revenues (both one-time and ongoing), including revenue sources to (re)cover the cost of preparing the specific plan. In other words, the City could consider levying a fee on market rate housing development to help recoup the cost of developing the specific plan.
- Grant funds. Staff is investigating grant opportunities that could be applied to the costs of the preparation of the Moraga Canyon Specific Plan. The most promising may be a Priority Development Area Planning Grant from MTC.

CONCLUSION

Piedmont's 6th RHNA of 587 housing units, including 257 affordable housing units, is a challenging objective. Draft Housing Element Program 1.L calling for the preparation of a Moraga Canyon Specific Plan is a critical part of achieving that objective, critical to activating Alameda County Measure A1 funding for affordable housing in Piedmont, and a significant signal to HCD that Piedmont fully intends to implement the programs in its Housing Element. Because the scope and cost of the Specific Plan 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 Professional Services for the Preparation of a Moraga Canyon Specific Plan



CITY OF PIEDMONT CALIFORNIA

REQUEST FOR PROPOSALS (RFP) FOR PROFESSIONAL SERVICES **for the preparation of a** **MORAGA CANYON SPECIFIC PLAN**

DATE ISSUED: January 23, 2023
DATE DUE: Monday, March 13, 2023, at 4 p.m.

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

I. PURPOSE

The City of Piedmont (“City”) is seeking proposals from qualified consultants or consultant teams to assist City staff and engage the community in developing a specific plan for Piedmont’s Moraga Canyon area.

II. BACKGROUND

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-significant, well-maintained single-family detached residences 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 its reputation as one of the best places to live in the Bay Area region. Approximately 86 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.

Proposed Specific Plan

Piedmont’s Draft 6th Cycle Housing Element for the 2023-2031 planning period is posted on the project website: <https://www.piedmontishome.org/housing-element-update>. It includes Program 1.L which calls for the preparation of a specific plan for the City-owned parcels in the Moraga Canyon area and the Moraga Avenue roadway that intersects them (“Study Area”), located near Piedmont’s northern border with the City of Oakland. The proposed specific plan is expected to facilitate the development of below-market-rate housing and the accommodation of at least 132 housing units at all income levels while continuing existing recreational and Public Works Department uses and services. The specific plan must identify housing on portions of the site and must yield a minimum of 60 units of housing affordable to households earning less than 80 percent of the area median income (AMI) as described in Housing Element Part IV.B Program 1.L, and should have the capacity to yield a minimum of 72 housing units affordable to households earning more than 80 percent of the AMI. The specific plan should prioritize the identification of a site for the development of affordable housing that meets the criteria and timelines to secure Alameda County Measure A-1 (2016) funding.

The specific plan approach, outlined in housing program 1.L (see the Draft 6th Cycle Housing Element for specifics), would give the City the opportunity to study the future transportation and circulation system in the area; study the public infrastructure needs, such as any roadways, bridges, utilities, sewer, and evacuation routes; and design solutions to potential environmental impacts, such as wildfire mitigations and safe emergency

response. A key takeaway is that all of the City-owned land in Moraga Canyon would be studied together in order to improve access, build new housing, address potential hazards, and improve City facilities, while establishing protected open space and conserving and improving recreational amenities. The Moraga Canyon Specific Plan will also require analysis per the California Environmental Quality Act (CEQA). An Initial Study/Negative Declaration has been prepared for the adoption of Piedmont's 6th Cycle Housing Element update. Separately, a programmatic EIR is being prepared for maximum build-out provided by the City Code revisions and General Plan amendments resulting from implementation of the Housing Element. Each proposal submitted in response to this RFP must identify how the proposal would complement the environmental review being conducted for the Housing Element implementation.

Specific Plan Success

A successful Moraga Canyon Specific Plan would:

- Develop from a robust public engagement process that might include surveys, flyers, media posts, open houses, design charrettes, study sessions, stakeholder meetings, and other methods of engagement;
- Result in the subdivision of parcels and development standards that are attractive to builders of housing at all income levels, and providing at least 60 units of housing affordable to households earning less than 80 percent of the area median income (AMI) (i.e., 20 low-income units, 20 very low-income units, and 20 extremely low-income units), and at least 72 units of housing affordable to households earning more than 80 percent of the AMI;
- Result in the identification of a site for the development of at least one affordable housing project that qualifies for Piedmont's allocation of \$2.2 million from the Alameda County Measure A1 low-interest loan program;
- Improve public safety in regards to design standards for structures in an Wildland Urban Interface Area;
- Improve pedestrian, bicycle and vehicular safety in the Moraga Canyon roadway, and design for safe evacuation routes in developed areas;
- Include recreation facilities including but not limited to: a) sports field(s) sized for under-14 soccer and youth baseball/softball with batting cages, artificial field turf, and ballfield seating; b) a skate spot; c) a picnic area; and d) parking for these facilities;
- Provide a modern Public Works corporation yard;
- Address the supply of all public utilities to new housing and City facilities in a manner consistent with public safety standards and Piedmont Climate Action Plan goals and programs;
- Provide a comprehensive landscape plan prioritizing to the extent practicable fire safety, open space, native trees, hiking trails and significant viewsheds;
- Provide a program for implementation including General Plan amendments, regulations, design standards, infrastructure projects, and financing measures necessary to implement the specific plan; and
- Provide a fiscal analysis of potential expenses and revenues (both one-time and ongoing) for the consideration of the City of Piedmont and Piedmont Unified School District. Potential revenue sources include but are not limited to property tax, sales tax, capital facilities fees, school impact fees, traffic impact fees, affordable housing fees

and park fees. Revenue sources to (re)cover the cost of preparing the Specific Plan should be considered.

Proposed Study Area

Figure 1. Proposed Study Area



The City owns four sites (comprised of APN 050457901900, 050457908000, 048A700200303, and 050457906100) totaling roughly a little more than 18 acres on both the north and south sides of Moraga Avenue near Red Rock Road. North of Moraga Avenue are two parcels totaling approximately 13.65 acres that contain Coaches Field and Kennelley Skate Park recreational facilities, the Public Works corporation yard, two small parking lots, and open space on sloping terrain. South of Moraga Avenue are two parcels totaling approximately 4.85 acres that provide an open space area known as Blair Park. The study area abuts Mountain View Cemetery to the north, and single-family residential neighborhoods to the east, south and west.

The City has the ability to subdivide the parcels and declare them to be surplus under the Surplus Land Act (SLA- California Government Code §54222 et seq.) with the purpose of

allowing for the development of 132 housing units at all income levels while continuing to provide on-site City facilities and services. Additional provisions of Program 1.L can be found in the City of Piedmont Draft 6th Cycle Housing Element.

Concurrent and Recent Planning Efforts

In addition to this Specific Plan initiative, the City has several planning initiatives either underway or recently completed. Table 1 provides an overview of the planning efforts that may influence or relate to the Moraga Canyon Specific Plan Process

Table2. Concurrent and Recent Planning Efforts

Initiative	Status (Timeframe)	Description and hyperlink
Piedmont 6 th Cycle Housing Element	Underway (2021-2023)	Comprehensive update to General Plan Housing Element and Zoning Code https://www.piedmontishome.org/housing-element-update
Objective Design and Development Standards	Underway (2020-2023)	Objective design and development standards for multifamily and mixed-use residential projects that are measurable and verifiable
Piedmont General Plan	Adopted (2009)	Comprehensive set of long-range policies and programs for land use and development. https://piedmont.ca.gov/cms/One.aspx?portalId=13659823&pageId=15671118
Piedmont Safer Streets Plan	Adopted (2020)	Active transportation plan that identifies specific projects and policies to enhance the walkability, bikeability, and safety of Piedmont https://piedmont.ca.gov/cms/One.aspx?portalId=13659823&pageId=17122647
Piedmont Climate Action Plan 2.0	Adopted (2018)	Piedmont's strategic plan to reduce greenhouse gas emissions and adapt to changing climate conditions https://piedmont.ca.gov/cms/One.aspx?portalId=13659823&pageId=14125326
Piedmont Local Hazard Mitigation Plan	Adopted (2019)	Policies and actions to mitigate and reduce the impacts of natural hazards https://piedmont.ca.gov/cms/One.aspx?portalId=13659823&pageId=14125298
Coaches Field Expansion Concept Plan	Conceptual	Concept plan to expand and improve recreation facilities at Coaches Field. 2017 Council Report: https://piedmont.ca.gov/common/pages/DisplayFile.aspx?itemId=14249111 Concept plan: https://piedmont.ca.gov/UserFiles/Servers/Server_13659739/File/Government/Projects/Coaches-Field-Concept-Plan-20190109.pdf

III. QUALIFICATIONS

The consultant team should demonstrate experience preparing specific plans consistent with California State Government Code Sections 65450-65457. The proposal should include enough information for judging the quality and competence of the personnel dedicated to preparation of the Moraga Canyon Specific Plan. It 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.

The successful consultant or consultant team will demonstrate professional experience and knowledge of the general principles and background law applicable to specific plans, land development and affordable housing development requirements. Including examples of your work and including former clients will be helpful in determining expertise.

Demonstrated professional experience and ability to make project presentations, provide public engagement activities, and work with diverse groups of people, representing varied points of view, are essential.

IV. SCOPE OF SERVICES

The consultant team should propose a scope of services to prepare a full specific plan consistent with California State Government Code Sections 65450-65457. All of the City-owned land in Moraga Canyon will be studied together in order to build new housing, improve public safety (traffic, fire, etc.), replace and/or modernize Public Works facilities, maintain and/or improve recreation facilities, and provide open space. The future Moraga Canyon Specific Plan should include the following components at a minimum, consistent with the programs and policies of the City of Piedmont Draft 6th Cycle Housing Element, and with the policy requirements of the City of Piedmont and other stakeholder agencies:

- The distribution, location, and extent of proposed land uses in the study area;
- Detailed guidance on phasing and subdivision that accommodates the housing identified for the study area in Housing Element program 1.L and the Sites Inventory (Housing Element Appendix B), and that prioritizes and expedites the identification of a site for the development of affordable housing that meets the criteria and timelines to secure Alameda County Measure A-1 funding;
- The preparation of a surplus land declaration, if appropriate;
- The provision of open space and the standards for its ongoing conservation;
- The inclusion of recreation facilities, including but not limited to an under 14 soccer field, youth baseball/softball field, batting cages, artificial field turf, possible field lighting, ballfield seating, a skatespot, a picnic area, and parking for these facilities;
- The inclusion of Public Works Department facilities (corporation yard) that replace and/or modernize the existing facilities, including but not limited to offices, storage areas, and vehicle storage areas so that service capacity is maintained or increased, and so that the facilities meet current Building and Fire Code requirements;
- Multi-modal circulation and emergency access system needed to support the land uses in the plan;
- Necessary infrastructure and services including emergency fire and public safety response, sewer and wastewater, water service, drainage, solid waste disposal and recycling, energy provision and conservation, stormwater quality and capacity, water reuse and conservation, and other essential facilities proposed to be located within the specific plan area and needed to support the land uses described in the plan;
- Standards and criteria by which development will proceed, including objective development and design standards tailored for this area, and standards related to mitigating fire risk within the wildland urban interface;
- A program of implementation measures including regulations, programs, infrastructure projects, and financing measures necessary to implement the specific plan;
- Analysis of the relationship of the specific plan to the City of Piedmont General Plan, including the identification of General Plan amendments necessary for consistency.
- A fiscal analysis of potential revenues and expenses (both one-time and ongoing) to be considered by the City of Piedmont and Piedmont Unified School District. Potential revenue sources include but are not limited to property tax, sales tax, capital facilities

fees, school impact fees, traffic impact fees, affordable housing fees and park fees. Revenue sources to (re)cover the cost of preparing the Specific Plan should be considered.

The proposed specific plan scope of services should include all tasks necessary for a process of developing and adopting a specific plan, including a complete and comprehensive program of community engagement, planning-level technical studies, development of planning concepts, CEQA analysis, and completion of any zoning or general plan amendments necessitated by the Moraga Canyon Specific Plan. It is anticipated that there will be significant community interest in this project. The proposed scope of work will need to include sufficient budget and designated staff or sub-consultant support for community outreach efforts. The scope of work should also include all necessary CEQA studies for the Specific Plan including analysis of environmental and ecological conditions. As noted on page 3, an Initial Study/Negative Declaration has been prepared for the adoption of Piedmont's 6th Cycle Housing Element update. Separately, a programmatic EIR is being prepared for maximum build-out provided by the City Code revisions and General Plan amendments resulting from implementation of the Housing Element. The EIR will analyze the impacts of the additional housing in the Moraga Canyon study area, but not the impacts resulting from specific plan projects unrelated to housing or possible environmental impacts that can only be identified during preparation of the specific plan. The proposed scope of work should also include CEQA analysis to environmentally clear a project application for an affordable housing project application for the Measure A-1 bond program.

Staff anticipates a comprehensive specific plan and environmental review process taking between 18-24 months. Staff anticipates the project to be completed by a full-service firm or team of firms representing a range of disciplines including land use, environmental, engineering, community engagement, transportation, and other required topics.

The City anticipates that there may be a continued process of scoping and confirming assumptions in collaboration with the selected consultant team before the project contract is executed and the planning process is initiated. Submitted scopes of work should state assumptions about data availability, necessary technical studies, or other technical coordination that is anticipated between the City, the specific plan team, and a future development applicant.

V. SCHEDULE

Important Dates

Proposals are due no later than March 13, 2023 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.

<i>Schedule Event</i>	<i>Date</i>
RFP Released	January 23, 2023
Pre-Bid Conference Call & Question Submittal	February 8, 2023 at 10 a.m.

Posting of Answers from Pre-Bid Conference	February 10, 2023 at 10 a.m.
Final Submittal	March 13, 2023, at 4 p.m.
Consultant Interviews	March 22, 2023, time TBD
City Council Authorization of Contract	April 17, 2023
Contract Execution/Kick-Off Meeting	April 26, 2023

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 kjackson@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.

Proposals will only be accepted electronically. Proposals should be submitted to the attention of Kevin Jackson, Director of Planning & Building. Please send a PDF of the full proposal (or link to a downloadable copy) to kjackson@piedmont.ca.gov. Each submittal shall be formatted as 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."

It is the sole responsibility of the Proposer to ensure timely delivery. Late proposals shall not be considered.

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

Provide a statement regarding the proposing firm(s)' project understanding and anticipated project approach and 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 including major work tasks, sub-tasks, deliverables, assumptions about data availability and necessary technical studies, and identification of proposed sub-consultants for specialized topics such as community engagement, transportation, infrastructure, and environmental review. Provide a project schedule depicting the sequence of work tasks, milestones, community meetings and public hearings. The work plan 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 plan, meetings, workshops, and online tools; and
4. Public hearings (Park Commission, Recreation Commission, Budget Advisory & Financial Planning 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, relevant experience and the office locations of those individuals. 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 current 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 a specific plan if applicable.

Part 6 | Fee Proposal

List by task the proposed fee and provide a not-to-exceed total budget amount. 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. The proposals will be ranked and the highest scoring teams will be asked to interview. 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 kjackson@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 February 8, 2023 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 \$2,000,000 combined single limit and \$4,000,000 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 \$2,000,000 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
	120 Vista Avenue
	Piedmont, CA 94611
	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