



REQUEST FOR PROPOSALS

**FACILITIES CONDITION & NEEDS ASSESSMENT FOR THE TOWN OF
FAIRFAX**

**PREPARED BY THE TOWN OF FAIRFAX
PUBLIC WORKS DEPARTMENT
UNDER THE DIRECTION OF**

Loren Umbertis, Public Works Director

DATE ISSUED: Monday, September 9, 2024
DATE DUE: 2:00 PM, Wednesday, October 9, 2024

CONTACT: Loren Umbertis, Public Works Director
lumbertis@townoffairfax.org
415-342-7114

ALL RESPONSES MUST BE MAILED OR HAND-DELIVERED TO:

TOWN OF FAIRFAX
PUBLIC WORKS DEPARTMENT C/O TOWN HALL
142 BOLINAS ROAD
FAIRFAX, CA 94930

ATTN: LOREN UMBERTIS

NOTE: The deadline for RFI's is Monday, October 7, 2024. No questions will be answered after this date.

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Attachments: Sample Consultant Services Agreement

I. Introduction

The Town of Fairfax is located north of San Francisco located within central Marin and is noted as the birthplace of mountain biking. The proximity to San Francisco, Muir Woods, Mt. Tamalpais, the mix of unique retail businesses, restaurants and the gateway to west Marin including Pt Reyes and the coast make Fairfax a unique and interesting community within Marin County.

II. Description of Project

The Town of Fairfax is seeking proposals from qualified consultants to provide comprehensive professional Facilities Condition and Needs Assessment (FCNA) services for seven Town facilities:

- Town Hall/Police Station Approximately 3634 SF
- DPW Corporation Yard Approximately 3388 SF
- Pavilion (Gym/Community Center) Approximately 9380 SF
- Fire Station 21 Approximately 6104 SF
- Community Center Approximately 1512 SF
- Women’s Club/Council Chamber Approximately 2288 SF
- Little League Facility Structures Approximately 1464 SF

The purpose of the FCNA is to provide comprehensive documentation and analysis of the seven built facilities. This analysis will be utilized for prioritizing capital improvements and maintenance requirements, as well as assisting with on-going maintenance schedules.

Prospective firms will be required to provide team qualifications, proposed work plans, proposed schedule, and other related items as part of the proposal submittal. The deadline for submitting proposals is **2:00 p.m. Tuesday, October 9, 2024.**

A **Non-Mandatory Pre-Proposal Conference** will be held on **Thursday September 19, 10:00 a.m., 2024** to familiarize prospective organizations to the buildings, facilities and locations. **Meeting location shall be 142 Bolinas Road, Fairfax, CA 94930** This meeting is not intended as a comprehensive inspection opportunity to inspect the facilities. Should prospective organizations wish to perform additional inspections or walkthroughs of the facilities, prospective consultants shall schedule any inspections with the Public Works Director Loren Umbertis and if approved, shall not overly impact or impede Town operations and services in the performance of any walkthrough inspections.

It is expected the consultant team will be interdisciplinary and will likely include an Architect, California Licensed Civil/Structural Engineer, Mechanical Engineer, and Electrical Engineer as appropriate.

It is expected the Consultant team shall have a thorough understanding of ASTM Designation E2018, Standard Guide for Property Condition Assessments: Baseline Property Condition

Assessment Process and Americans with Disabilities Act (ADA). A final comprehensive report for each of the seven buildings is required. Two sets of hard copies and a digital copy are required.

Interested Parties may access information about the project from the Town of Fairfax's website at <https://www.townoffairfax.org/requests-for-proposals-and-bids/> including addendums and other relevant information.

III. Scope of Work

The proposals shall include, but may not be limited to, the following services

1. Identify the current conditions of the existing facilities, including structural integrity, physical state of each building, and compliance with modern building codes.
2. Identify the replacement and/or renovation costs of each building and make recommendations as to which (if any) buildings should be renovated, replaced, relocated, etc., as needed. Recommend alternative locations and/or civic facility combination as necessary.
3. Recommend corrections for all deficiencies, near term, intermediate and long term.
4. Provide a suggested priority list and/or timeline for accommodating the recommended repairs, rehabilitation and/or reconstruction work.
5. Provide cost estimates for corrections, replacement, and/or reconstruction work for each of these facilities.
6. Forecast future facility/reconstruction costs.
7. Provide an assessment of maintenance efforts to date as compared to industry standards. Provide preventative maintenance recommendations to include minimum standards of day-to-day upkeep and their associated costs based on industry standards, including, but not limited to: on-going building maintenance, equipment replacement, janitorial needs and staffing, basic cleaning/deep cleaning, painting, flooring, lighting, etc.

Consultant is expected to address observed seismic deficiencies and general hazardous materials conditions and or concerning environmental considerations based on known/assumed age and type of construction for each facility. Specialized destructive seismic testing or hazardous material sampling/testing is not included in the scope of work.

Consultant will meet with Town staff to identify reliable sources of existing data such as facility inventory lists, plans, maps, studies, etc. Where applicable, existing studies and reports will be provided to the consultant for incorporation into the FCNA final report.

The types of building systems surveyed may vary with each building and shall include, but are not limited to following:

SITE topography, drainage, access/egress, paving, curbing, parking, flatwork, utilities

SEISMIC observed seismic deficiencies (specialized testing is not in the scope of work)

HAZMAT observed general hazardous/environmental conditions based on known/assumed age and type of construction for each facility (specialized or destructive testing is not in the scope of work)

EXTERIOR SYSTEMS foundation, roofs, walls, window systems, exterior doors, civil/structural components

INTERIOR SYSTEMS walls, doors, flooring, ceiling, hardware, lighting, architectural components

FIRE/LIFE SAFETY ISSUES hazards, alarms, fire escapes

HVAC including controls and terminal units

ELECTRICAL including internal electrical distribution and back-up generators

PLUMBING SYSTEMS fixtures, supply, storm and sanitary sewer drainage, valving, irrigation

FIRE PROTECTION

SPECIALIZED CONSTRUCTION AND OUTBUILDINGS

SPECIALIZED EQUIPMENT AND SYSTEMS

IV. General Terms and Conditions

The Town reserves the right, at its sole discretion, to determine whether or not any aspect of a proposal satisfactorily meets the criteria established in this RFP. The Town reserves the right to seek additional clarification or information from the consultant, to confer with any consultant, and to reject any or all proposals with or without cause. In the event that the RFP is withdrawn by the Town, the Town shall have no liability to any consultant for any costs or expenses incurred with the preparation of a proposal or related work. The cost of preparing, submitting, and presenting a proposal is at the sole cost and expense of the Consultant.

The Town reserves the right to approve all key personnel, individually, for work on this contract. All key staff shall be named in the contract. After the contract is signed, the proposer may not replace key staff unless their employment is terminated or the replacement is agreed upon by the Town. The Town must approve replacement staff before the substitute person is assigned to the Project. The Town reserves the right to request that the proposer replace a staff person assigned to the contract, should the Town consider such a replacement to be for the good of the project.

V. Proposal Format

1. **Cover Letter:** Identify the prime consultant, the proposed project manager, and describe any subcontract arrangements. Identify the name of the individual authorized to negotiate the contract on behalf of the consulting firm. The latter should sign the cover letter.
2. **Project Understanding and Approach:** Describe your understanding of the project and describe your approach to meeting the task objectives outlined in this RFP. Include additional information that may be deemed appropriate to complete the services. In addition to items you identify, please discuss:
 - a. What experience your firm has working with the Town of Fairfax or a Town/City of comparable size and/or geophysical nature on similar types of projects.
 - b. What anticipated issues the Town should consider prior to and/or during the course of the assessment? What measures are recommended to avoid these issues?
3. **Organization Chart:** Describe your team organization, including the qualifications of the project manager and any sub-consultants included in the team. Please provide evidence of your team's experience in each of the areas identified in this proposal, with emphasis on those relating to similar projects.
4. **Staffing Plan:** Identify key team members and their relevant experience. This section should present all staff that will actively participate in the project. Provide a resume for each team member.
5. **Work Plan / Schedule/ Deadlines:** Provide a detailed description of services your firm anticipates to be performed for this project. The description shall include:
 - a. Identification of major tasks or range of tasks anticipated.
 - b. A schedule of expected start dates, milestones, and completion dates for each task.
 - c. A matrix showing the estimated hours to complete each task and level of effort from identified key staff.
6. **Project Cost:** In a separate sealed envelope, provide a project cost table showing the cost for each task, as outlined in this RFP. Include level of effort and billing rate for each person. Identify overhead rates and all other applicable charges. Fixed costs should be separately identified and tallied.
7. **References:** Provide at least three (3) relevant references for each key project staff member. References must be from similar work performed within the last three (3) years and include

name, affiliation, and current phone number, as well as a brief description of the project and role of each member.

8. **Professional Services Contract:** Indicate your willingness, or any exceptions, to accept the terms and conditions in the Sample of Agreement for Consultant Services (attached).

VI. Method and Criteria for Selection

The Town will award consultant services contracts on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications per the provisions of the Brooks Act (40 USC 544) and 23 CFR, Section 172.

Based on the evaluation of submitted proposals, a list of the top qualified Consultants will be established. Consultants may be requested to participate in an oral presentation. Upon completion of the proposal evaluations and interviews (if requested), the Consultants will be ranked and the top-ranked firm will be identified. If for any reason an acceptable contract cannot be negotiated with the top ranked Consultant, negotiations will commence with the next ranked Consultant.

The Town reserves the right to select the top-ranked Consultant solely based on the written proposal. Only written proposals shall be considered. All materials submitted shall become part of the proposal, and may be incorporated into a subsequent contract between the Town and the selected firm. The Town of Fairfax reserves the right to further negotiate the terms and conditions of the contract.

The following technical criteria and their relative weights will be used to evaluate and rank the consultant proposals:

Experience with similar kinds of work	30 points
Qualifications of staff for work to be done	30 points
Proposed Methodology	20 points
Proposed schedule & proven ability to perform in a timely manner	20 points
Total	100 points

PROPOSAL SUBMISSION

Submit proposals to: Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
ATTN: Loren Umbertis

Submit Two (2) hardcopies and one digital copy (thumbdrive preferably) of the proposal to the Town of Fairfax, no later than 2:00 PM on Wednesday, October 9, 2024. Proposals may be mailed or hand delivered. Late submittals will not be accepted and will be returned unopened to sender.

Please submit cost proposal in a separate sealed envelope marked “CONFIDENTIAL – Facilities Condition & Needs Assessment – Town of Fairfax” along with proposer’s name and address.

Any RFI’s should be emailed directly to the Director of Public Works Loren Umbertis. Written responses to questions will be posted to the Town web site at <https://www.townoffairfax.org/requests-for-proposals-and-bids/> and available to all document holders.

Loren Umbertis, 415-342-7114
lumbertis@townoffairfax.org

IMPORTANT NOTE: The deadline for RFI’s is Monday October 7, 2024. Any RFI’s received after October 7, 2024 will not be accepted.

Exhibit A – Professional Services Agreement for Consultant Services

**TOWN OF FAIRFAX
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of _____, 20____ by and between the Town of Fairfax, a public agency organized and operating under the laws of the State of California with its principal place of business at 142 Bolinas Rd., Fairfax, CA 94930 (“Town”), and [***INSERT NAME***], a [***INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY***] with its principal place of business at [***INSERT ADDRESS***] (hereinafter referred to as “Consultant”). Town and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. Town is a public agency of the State of California and is in need of professional services for the following project:

Facilities Condition and Needs Assessment (hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for Town to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the Town with the services described in the Scope of Services attached hereto as Exhibit “A – Facilities Condition and Needs Assessment RFP”

2. Compensation.

a. Subject to paragraph 2(b) below, the Town shall pay for such services in accordance with the Exhibit “A – Facilities Condition and Assessment RFP”

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$_____ [Insert amount of compensation]. This amount is to cover all printing and related costs, and the Town will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the Town, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the Town by Consultant with a

statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the Town and executed by both Parties before performance of such services, or the Town will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by Town.

5. Term.

The term of this Agreement shall be from [Insert start date] to [Insert end date], unless earlier terminated as provided herein. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Project. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon receipt of written notice from the Town to proceed ("Notice to Proceed"). The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither Town nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the Town, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the Town, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor

Consultant is retained as an independent contractor and is not an employee of Town. No employee or agent of Consultant shall become an employee of Town. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from Town as herein provided.

11. Insurance. Consultant shall not commence work for the Town until it has provided evidence satisfactory to the Town it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the Town.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Contractors Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give Town, its officials, officers, employees, agents and Town designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the Town, and provided that such deductibles shall not apply to the Town as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the Town.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give Town, its officials, officers, employees, agents and Town designated volunteers additional insured status.

(iv) Subject to written approval by the Town, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the Town as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall

maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the Town and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the Town evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the Town at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General

Liability Additional Insured Endorsement to the Town at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the Town or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the Town, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against Town, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the Town and shall not preclude the Town from taking such other actions available to the Town under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the Town, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the Town, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is

canceled and not replaced, Town has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Town will be promptly reimbursed by Consultant or Town will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Town may cancel this Agreement.

(iii) The Town may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the Town nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the Town that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the Town as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, Town may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of Town's choosing), indemnify and hold the Town, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the Town, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total

compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the Town. Consultant shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Marin, State of California.

17. Termination or Abandonment

a. Town has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event,

Town shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. Town shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by Town and Consultant of the portion of such task completed but not paid prior to said termination. Town shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to Town only in the event of substantial failure by Town to perform in accordance with the terms of this Agreement through no fault of Consultant.

18 Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the Town.

19. Organization

Consultant shall assign [REDACTED] as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the Town.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

TOWN:

Town of Fairfax

142 Bolinas Rd.

Fairfax, CA 94930

Attn: Loren Umbertis, Public Works Director

CONSULTANT:

[**INSERT NAME, ADDRESS & CONTACT PERSON**]

and shall be effective upon receipt thereof.

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Town and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of Town and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

26. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of Town. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

28. Time of Essence

Time is of the essence for each and every provision of this Agreement.

29. Town's Right to Employ Other Consultants

Town reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN TOWN OF FAIRFAX
AND *****INSERT NAME*******

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

TOWN OF FAIRFAX

*****INSERT NAME OF CONSULTANT*****

By: _____
Heather Abrams
Town Manager

By: _____
Its: _____

Printed Name: _____

ATTEST:

By: _____
Town Clerk

EXHIBIT A
Scope of Services

