

TOWN OF FAIRFAX

STAFF REPORT

TO: Mayor, Members of the Town Council

FROM: Garrett Toy, Town Manager *GT*

DATE: May 1, 2013

SUBJECT: Approval of contract with Coastland Engineering for construction management and re-bidding services for the Sir Francis Drake Striping Project

Recommendation

Authorize the Town Manager to execute a contract with Coastland Engineering for re-bidding and construction management services for the Sir Francis Drake Bike Striping Project (Project) in an amount not to exceed \$24,000.

Discussion

Coastland prepared the specifications and bid packet for the Sir Francis Drake Bike (SFD) Striping Project. The Project was originally bid in September 2012 and no bids were received. In an effort to make the project more feasible for asphalt marking contractors, the paving portion of the contract was removed from the bid documents and the project was re-bid. Two bids were received, but neither bidder properly completed the required DBE documentation and the bids were subsequently rejected by the Town.

The bid documents now require minor modifications and updating prior to re-advertising the project. The original scope of work did not envision having to bid out the project three times. The proposed scope of work for re-bidding the project includes additional outreach to plan-holders to ensure they comply with the DBE good faith requirements. The cost for this portion of the work is approximately \$7,000.

The proposed scope of work also includes construction management for the Project. The project is funded with federal monies with funding administration provided by Caltrans. As a result, the project requires a significant amount of documentation and reporting to meet federal requirements. Staff currently lacks the time and expertise to provide the necessary project oversight. The estimated cost for this service is approximately \$17,000. The actual cost could be lower depending on the amount of field inspection services needed.

Due to Coastland's familiarity with the Project and, the probability that cost savings would be minimal (if any) due to the size of the project, staff did not seek other proposals. However, in order to save costs, staff has determined that we will now manage the Bike Spine project in-house, thus, saving the Town upwards of \$27,500 in construction management costs. However, staff may consult with Coastland as needed for the Bike Spine Project. We believe it is more cost effective to have Coastland manage the SFD Project rather than the Bike Spine Project.

Fiscal Impact

The Project is budgeted in Fund 51-CIP-Grants (Project #51-891-821). The Project is funded with \$80,000 through the federal Nonmotorized Transportation Pilot Program. We have spent approximately \$20,000 for design costs of which \$12,000 was reimbursable under the grant. As a result, there is \$68,000 remaining in project funds. The engineer's estimate is approximately \$33,000 with a bid alternate estimate of \$12,000. The total remaining project cost including the added scope of work would be approximately \$69,000. The capital improvement fund will cover the costs (est. \$9,000) not reimbursed by the grant. The actual amount contributed by the capital improvement fund will depend on the bids received.

Attachments

Proposed contract

AGENDA ITEM # **11**

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Fairfax, California, as of _____, 20___, by and between the Town of Fairfax, a municipal corporation (the "TOWN") and ___ Coastland Civil Engineering Inc, a California Corporation("CONSULTANT"), who agree as follows:

1. **SERVICES.** Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the TOWN the services described in Exhibit "A," which consists of the proposal submitted by CONSULTANT. CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit "A."

2. **PAYMENT.** TOWN shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "B." The payments specified in Exhibit "B" shall be the only payments to be made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to the TOWN in the manner specified in Exhibit "B."

3. **FACILITIES AND EQUIPMENT.** CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4. **GENERAL PROVISIONS.** The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.

5. **INSURANCE REQUIREMENTS.** The insurance requirements set forth in Exhibit "D" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.

6. **EXHIBITS.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

EXECUTED as of the day first above-stated.

Town of Fairfax, a municipal corporation

By: _____

CONSULTANT

By: _____

EXHIBIT "A"

SCOPE OF SERVICES

Attached is the CONSULTANT'S proposal for re-bidding and construction management services

If there are any inconsistencies between CONSULTANT's proposal and this Agreement, the provisions of this Agreement shall control.

SIR FRANCIS DRAKE BLVD BIKE LANE

PROJECT UNDERSTANDING

The Town of Fairfax is proposing striping improvements on Sir Francis Drake Boulevard eastbound between Olema Road and Claus Drive. The improvements will provide new Class II bicycle lanes to better connect the Manor area to the west with downtown Fairfax. This project is funded through the federal Nonmotorized Transportation Pilot Program (NMTPL). Accordingly, the project will involve funding administration and processing through Caltrans Office of Local Assistance.

The original bid documents for this project included widening of a segment of the asphalt concrete roadway shoulder. The project was bid in September of 2012 and no bids were received. In an effort to make the project more accessible to pavement marking contractors, the asphalt concrete works was removed from the bid documents and the project was again advertised for bids. Two bids were received on October 30, 2012. Unfortunately, neither bidder properly completed the required Good Faith DBE documentation and the Town subsequently rejected all bids.

The bid documents now require minor modifications and updating prior to re-advertising the project. During the bid period, we propose to provide additional outreach to plan-holders to make sure they are aware of the DBE good faith requirements.

Our scope of services below includes preparation of the federal-aid Post-Award submittal package required by Caltrans. Please note that preparation of federal-aid invoices and the final Federal Report of Expenditures submittal package are included in our scope of services for construction management and inspection for this project.

The following scope of services describes the tasks we will be completing for the successful bidding of this project and outlines our approach.



SCOPE OF SERVICES

Task 1 – Preparation of Bid Documents

Once minor modifications are made to the plans and specifications, we will send an electronic submittal to the Town for a brief review prior to preparing bid documents. It is assumed that no significant additional changes will be requested by the Town.

Upon completion of the Town's review we will proceed with final bid documents including stamped and signed mylar drawings and camera ready specifications. These documents along with an electronic copy of the drawings and specifications will be provided to the Town for their records.

Task 2 – Bid Assistance

Coastland will prepare the Notice to Bidders and provide to the Town for advertisement. The Town will be responsible for placing the advertisement for bidding in the local paper. We will reproduce and distribute the bid documents, including placing the bid packages in up to five (5) local plan rooms. We will answer any questions that may arise during bidding and maintain a phone log of inquiries. We will prepare any addendum that may be necessary. We assume that there will not be a pre-bid meeting for this project. Coastland will conduct the bid opening in Fairfax and tabulate results.

The Town will be responsible for coordinating with the Town's attorney to review the apparent low bidder's insurance and bonds prior to issuing the notice to proceed.

Task 3 – Funding Assistance

Due to the federal-aid funding of this project, a significant amount of documentation must be prepared and submitted to the Caltrans Office of Local Assistance. Coastland will review the low bidder's DBE good faith documentation and prepare the "Good Faith Effort" memorandum. After award of a the construction contract, Coastland will prepare the Post-Award submittal package including the DBE Low Bidder Commitment and Information, "Good Faith Effort" memorandum, Detail Estimate, Finance Letter, Local Agency Contract Award Checklist, Resident Engineer's Construction Contract Administration Checklist and a copy of the Low Bidder's Proposal.

Task 4 – Design Assistance During Construction

This task includes providing the Town with design support during construction. Design support during construction will include assistance in answering contractor requests for information and one site visit.

EXCEPTIONS TO APPROACH:

The following work is not included in our proposal. However, Coastland would be pleased to provide these services if the Town desires:



- Construction management and inspection services.
- Funding assistance beyond that specified.
- Environmental assistance/soil contamination.
- Right-of-way determination or preparation of associated documents.
- Obtaining right-of-entries for work on private property.
- Permitting fees.
- Potholing of utility locations, associated survey or coordination.
- Construction staking (to be provided by contractor).
- Materials testing.

SCHEDULE:

We will work with the Town to meet the desired schedule and completion goals for the project.



WORK ESTIMATE

We are proposing that the design services associated with this project all be completed for a not-to-exceed fee of \$6,994. This amount assumes all of the work for this project will fall under the Scope of Work described in our proposal.

The above fee quotation should be considered a negotiable offer. If the Town wishes to modify the Scope of Work, we would be happy to discuss such a change and how it would affect the overall project cost. We can either discuss amendments to the existing Scope or provide these services on a time and materials basis per our adopted schedule of hourly rates and then modify the Work Estimate accordingly.

SIR FRANCIS DRAKE BLVD BIKE LANE

PROJECT UNDERSTANDING

The Town of Fairfax is proposing striping improvements on Sir Francis Drake Boulevard eastbound between Olema Road and Claus Drive. The improvements will provide new Class II bicycle lanes to better connect the Manor area to the west with downtown Fairfax.

To complete these improvements and ensure the project is constructed in compliance with the project plans and specifications, Caltrans requirements and funding provisions, the Town of Fairfax is requesting construction management and inspection services.

The engineer's estimate is \$49,655.50 with an additive alternate of \$16,685. The estimated number of working days for the base bid is 15. This project is funded through the Nonmotorized Transportation Pilot Program (NTPP) established by SAFEATEA-LU Section 1807. Accordingly, the project will involve funding administration and processing through Caltrans Local Assistance.

To meet the scheduling and budgeting goals of the project, it is important for the construction management consultant to be committed to identifying issues and constraints early on in order to provide a cost-effective approach to the Town's project. Because the project was designed by Coastland, we have in-house design staff who are already intimately familiar with the project. Our design staff will provide project oversight and coordination to minimize potential cost overruns and delays.

The following scope of services describes the tasks we will perform for the successful construction management of this project and outlines our approach.



CONSTRUCTION SCOPE OF SERVICES

Task 1 – Pre-Construction Meeting

Immediately following the award of the construction contract, our Construction Manager will schedule and administer the pre-construction meeting. During this meeting we will establish lines of communication and decision making roles with all project stakeholders. We will also discuss safety requirements, responsibilities of the project team members, working hours, quality control procedures, submittal requirements, project schedule, change order and potential claim procedures, and safety procedures.

Coastland will be responsible for generating pre-construction meeting invitations including the meeting agenda. Agenda items include lines of communication, public relations, safety, submittals, change procedures, payments, progress schedules, contract time, requests for information, expectations, and other applicable items. Coastland will prepare and distribute meeting minutes to all parties.

Task 2 –Site Visit and Documentation

Coastland will take pre-construction digital photos of the construction site with special attention given to sensitive areas including all private property affected by and adjacent to the project. These photos will be logged, labeled and filed with the project files.

Task 3 – Project Start-Up

Coastland will assemble project files in accordance with the Town's standard format for administration. Coastland uses Primavera Contract Manager software which provides an efficient centralized system for document control to create, store, organize, track, and link all project information. Primavera Contract Manager software will distill the constant flow of paperwork to a form that quickly and easily identifies trends and critical issues and will help keep the project moving as it helps document the work. The use of Contract Manager reduces administrative costs, facilitates clearer communication, enhances the sense of a "team effort," and eliminates disputes.

Task 4 - Daily Field Inspections and Documentation

A critical aspect of our services is maintaining close communication with Town staff to ensure scheduling/quality goals are met. To help maintain close communication, Coastland's inspector will be accessible to the Town at all times at one of the project sites (Pastori Avenue or Sir Francis Drake Bike Path) and through the use of email and cellular phones. Coastland's on-site inspector will work part-time on this project. If two critical operations occur simultaneously on both projects, we would require an additional on-site inspector which is not included in this updated proposal. While on-site the inspector will examine all construction activities and ensure that the contract work adheres to the contract documents, Town standards and the established schedule. Please note that our proposal assumes that both projects will be constructed concurrently and our inspector will divide his time between the Pastori and Sir Francis Drake projects.



We will maintain records and provide documentation of the work in the form of daily reports, working days statements, weekly summary of construction activities, deficiency lists, and progress photographs of construction activities. Daily reports will describe the contractor's level of effort, specific work being done, started, or finished, and relevant points raised by the contractor that may require consideration and response. We also document proposed change orders and claims, important conversations, safety issues or accidents, extra work in progress, materials testing performed, information for "as-built" drawings, quantities for progress payments, environmental concerns and hazardous materials.

Coastland will provide a digital photo logbook of construction activities, progress, and areas of concern or interest. The photo log will be compiled on CD's and will identify the location and date of each photo. The log will be maintained through the duration of the project to assure continuity from one week to the next, and will be submitted to the Town at the close of the project.

Coastland will continually review the specifications and plans to ensure the work is of good quality and meets the requirements of the contract documents. This review can improve constructability, reduce costs, eliminate ambiguities and improve clarity. We will immediately report any deviation from the approved contract documents.

Task 5 – Progress Meetings

Coastland will conduct bi-weekly or as needed coordination and progress meetings to focus on completed and upcoming work, any construction delays, updating the schedule, proposed changes, change orders, contractor's questions, public relations, safety and other concerns that are identified by a project team member. We will work to foster honest, open communication at these weekly meetings which will help in timely resolution of any disputes and/or potential claims.

Task 6 – Status Reports and Documentation

6a – Reports: It is important to keep the Town informed regarding public relations, progress of the work and costs of the project. We will document construction issues with the following: Weekly Statement of Working Days, Progress Meeting Minutes, Field Directive Log, change order tracking and regular phone calls and e-mails. We will also assist with funding administration in the field, including interviewing workers to ensure compliance with EEO requirements.

6b – Submittal Management: Coastland will coordinate all submittals and monitor the status of the submittals to assure the contractor provides timely response. At the pre-construction conference, we will provide the contractor with a log of all required submittals and due dates. Submittals will be stamped, logged and distributed to the designer for complete review and approval. Submittals will be filed numerically and approved copies will be distributed to the Town, project members, and the contractor.

6c – Requests for Information (RFI): Coastland will receive and log all Requests for Information (RFI's) from the Contractor, and forward the RFI to the designer. Coastland will track the status of all RFI's by generating a weekly RFI log that lists the "Ball-in-court" status, description, and if an RFI results in a potential change order.



Task 7 – Construction Management

Our goal is to ensure that construction and contract administration are performed in compliance with the Town's requirements and the project plans and specifications. To accomplish this goal, our Construction Manager will provide part-time assistance to oversee inspection and manage the construction activities with the contractor. He will be accessible to the Town at all times. The Construction Manager will be responsible for keeping the Town informed of the progress of the project, changes that may be needed, pay estimate input and releasing information to the public. Our Construction Manager will be available to discuss the best possible options for uncommon situations or contractor issues that impact the project. In addition, our Construction Manager will complete all contract administration documentation in a timely, accurate and orderly fashion.

Task 8 – Cost and Schedule Management

Coastland will continually review the construction progress and perform field measurements and quantity calculations. Each month Coastland will provide accurate calculations for all work items completed and accepted to provide progress payment recommendations to the Town. Coastland will review the contractor's progress pay estimate request and schedule of values to assess if they are accurate, and will compare this to the field measurements and quantity calculations. Coastland will continually monitor project costs and keep the Town informed on a regular basis.

Coastland will review the contractor's construction schedule for accuracy, reasonableness, and will verify that it meets the project schedule, order of work, and contract requirements. Progress schedules will be reviewed weekly to ensure the contractor is meeting the critical dates. If he fails to meet critical dates, it will immediately be brought to his attention and remedies to get back on schedule will be accomplished. Schedule updates may be required once a month or more. We will negotiate any time extensions for the contractor due to change orders, weather, or other delays. Coastland will also maintain an as-built progress schedule.

Task 9 – Public Relations and Notifications

Coastland will ensure every effort is made to keep residents and businesses informed of construction progress and minimize disruptions due to limited access and excessive noise on Sir Francis Drake Boulevard. Our Construction Manager will proactively meet with the local residents, businesses, church and the library to address any concerns from those affected by the project.

We will monitor traffic control and flagging procedures to ensure construction proceeds smoothly and public impact is minimized. Our Construction Manager will make introductions to the property owners and provide his 24-hour contact phone number as appropriate. A 48-hour advance notice will be given to residents and 120-hour notice given to businesses regarding roadwork and lane closures. Additionally, our inspector will accurately document pre-construction conditions with a photolog to verify the project area is restored to its original form following construction.



Task 10 – Funding Support

Complete and accurate record keeping is essential to avoid loss of federal funds. Our Construction Manager will be responsible for record keeping, coordination, and approvals through Caltrans District 4 office of Local Assistance. All project documents will be prepared in accordance with the State Local Assistance Procedures Manual and Local Assistance Program Guidelines. Coastland will work closely with the City and Caltrans to provide the continuity needed to assure that details and special circumstances of the project are not overlooked during construction. These special requirements include nondiscrimination provisions, labor compliance and Federal-aid invoicing.

Task 11 – Conflict Resolution

Coastland's goal is to avoid all unnecessary claims and resolve conflicts during construction. The starting point for avoiding conflicts or notices of potential claims is a clear, biddable set of plans and specifications. Coastland will work to eliminate conflicts by keeping the lines of communication open, and being open and responsive with the contractor. Progress meetings are important to foster communications and to resolve conflicts quickly. We have found that most conflicts (or just RFI's) can be thoroughly discussed and defused at these meetings. The key is to foster a good, working rapport with the contractor and demonstrate that we are trustworthy, honest and professional which Coastland staff currently has with local contractors. Additionally, Coastland will maintain thorough documentation of the contractor's field activities so that we know exactly what, when, where and why an issue or conflict occurred, and not have to rely on memory or the contractor's version of what happened.

These tasks help reduce the likelihood of change orders during construction or post-construction claims from the contractor; however, if claims are filed at the completion of the project we will have the documentation to assist in any negotiations. No work will be performed under this task unless specifically authorized in writing by Town staff.

Task No. 12 – Post-Construction Meeting

Following completion of the work, Coastland will organize and conduct the post-construction meeting. The meeting will document all requirements necessary for final closeout and payment, and confirm all contract obligations have been met. Recommendations for improvement will be made and incorporated into future projects. The results of the meeting will be summarized in meeting minutes.

Task 13 – Project Closeout

Coastland will help the Town comply with all pertinent requirements and verify completion of punch list items, obtain closing documentation from permitting agencies, verify mitigation measures have been implemented, issue Notice of Completion, prepare recommendations for final acceptance of the project, review as-builts for accuracy and completeness and prepare and recommend final payment. At the completion of the project, we will provide the following:

- Record drawings consisting of bond copies with mark-ups.
- All contract files and records (hard file & electronic)
- Annotated journal of photos and CD of digital photos



EXCEPTIONS TO APPROACH:

The following work is not included in our proposal. However, Coastland would be pleased to provide these services if the Town desires:

- Environmental assistance/soil contamination.
- Right-of-way determination or preparation of associated documents.
- Obtaining right-of-entries for work on private property.
- Permitting fees.
- Potholing of utility locations, associated survey or coordination.
- Construction staking (to be provided by contractor).
- Materials testing.

SCHEDULE:

We will work with the Town to meet the desired schedule and completion goals for the project.



WORK ESTIMATE

Based on our Scope of Work, we have prepared a detailed budget that identifies staffing rates, total cost per task, and direct expenses. Please note that our budget is based on the following assumptions:

- The Sir Francis Drake Boulevard Bike Path and Pastori Sidewalk projects bid at the same time and are under construction at the same time. Accordingly, our inspector will work part-time on each project.
- 15 working days (base bid).
- Our proposal for construction management & inspection does not include the bid alternates.
- Part-time inspection (4 hours daily) for entire project duration (15 working days).
- Part-time construction management is budgeted at four (4) hours a day.
- If two critical operations occur simultaneously, we would require an additional on-site inspector. This is not included in our proposal.
- Coastland is only responsible for proper public safety and traffic control operations when we are on-site.

We are proposing that the construction services be completed for a not-to-exceed fee of \$17,012 (see Work Estimate on following page). This amount assumes all of the work for this project will fall under the Scope of Work described in our proposal.

The above fee quotation should be considered a negotiable offer. If the Town wishes to modify the Scope of Work, we would be happy to discuss such a change and how it would affect the overall project cost. We can either discuss amendments to the existing Scope or provide these services on a time and materials basis per our adopted schedule of hourly rates and then modify the Work Estimate accordingly.



WORK ESTIMATE

Sir Francis Drake Blvd Bike Lane		Proposal for Construction Management & Inspection Services					Town of Fairfax			
TASK INFORMATION							HOURS AND COST INFORMATION			
Task No. (Costland Code)	Task Information	CM	Inspector	Superv. Engineer	Funding Support	Admin	Direct Costs	Total Hours	Total Costs	Comments
		\$135	\$110	\$154	\$103	\$70				
1 (700)	Pre-Construction Meeting	3	3			1		7	\$805	
2 (700)	Site Visit & Documentation	1	2					3	\$355	Job walk / photos
3 (700)	Project Start-Up	2	4			4		10	\$990	Set up filing / CM program
4 (702)	Daily Field Inspection and Documentation		3					3	\$330	Based on 15 working days
5 (704)	Progress Meetings	3	3					6	\$735	Assumes attendance at 1 meeting
6 (704)	Status Reports & Documentation	5	15			4		24	\$2,805	Review of progress/documentation
6a	Reports	0	8			2		10	\$1,020	
6b	Submittal Management	3	4			2		9	\$985	Based on 7 submittals
6c	Requests For Information	3	3			2		8	\$875	Based on 1 RFI
7 (704)	Construction Management	1						1	\$135	
8 (704)	Cost and Schedule Management	3	4			2		9	\$985	Based on 1 monthly payment
9 (710)	Public Relations & Notifications	1	1					2	\$245	
10 (704)	Funding Support									
	Caltrans Coordination			10				10	\$1,540	
	Caltrans Invoices				8			8	\$824	
	Monthly on-line Reports				3			3	\$309	
	Final Report				8			8	\$824	
11 (710)	Conflict Resolution	1	2					3	\$355	
12 (710)	Post Construction Meeting	3	3					6	\$735	Walk through
13 (709)	Project Closeout	2	5			4		11	\$1,100	As-builts / files
	Vehicle & expenses						\$1,260		\$1,260	90 hours x \$14/hr= \$1,260
	Total Hours	31	60	10	19	21		141		
	Project Total	\$4,185	\$8,600	\$1,540	\$1,957	\$1,470	\$1,260		\$17,012	

NOTES:

- 1 Based on 15 working days (base bid)
- 2 Based on part-time inspection (4 hours/day) for 15 day overlap with Pastori project
- 3 Based on part-time construction management (4 hours/day)
- 4 Based on the estimated number of RFIs, change orders and submittals shown above.



EXHIBIT "B"

PAYMENT

1) The total contract price for services rendered by CONSULTANT under this Agreement shall not exceed \$24,000, which shall be paid on a time and materials basis, as specified in the PROPOSAL.

Other fees, costs, expenses and rates as described in the PROPOSAL (Exhibit A). In the event of any inconsistency between the terms of this Exhibit "B" and the PROPOSAL, the terms of this Exhibit "B" shall control.

2) Payment shall be made to CONSULTANT on a time and materials basis, and CONSULTANT shall submit monthly invoices to the Town of Fairfax, Attention: Town Manager, 142 Bolinas Road, Fairfax, CA 94930, for the same.

3) Any additional meetings or work required beyond that set forth in Exhibit "A" shall be mutually agreed to by the TOWN and CONSULTANT, and shall be billed on a time and materials basis to the Town of Fairfax, Attention: Town Manager, 142 Bolinas Road, Fairfax, CA 94930.

EXHIBIT "C"

GENERAL PROVISIONS

1) INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of TOWN. TOWN shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, TOWN shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

2) LICENSES; PERMITS; ETC. CONSULTANT represents and warrants to TOWN that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT's profession. CONSULTANT represents and warrants to TOWN that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement.

4) CONSULTANT NOT AN AGENT. Except as TOWN may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of TOWN in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind TOWN to any obligation whatsoever.

5) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that TOWN, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from TOWN of the desire of TOWN for the removal of such person or persons.

7) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement. 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 geographical area in which CONSULTANT practices its profession. All products which CONSULTANT delivers to TOWN pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. TOWN shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

8) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the TOWN at its discretion upon written notification to CONSULTANT. CONSULTANT is entitled to receive full payment for all services performed and all costs incurred up to and including the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of TOWN.

9) PRODUCTS OF CONSULTING. All products of the CONSULTANT provided under this Agreement shall be the property of the TOWN.

10) INDEMNIFY AND HOLD HARMLESS.

a) If this AGREEMENT is an agreement for design professional services subject to California Civil Code § 2782.8(a) and CONSULTANT is a design professional, as defined in California Civil Code § 2782.8(b)(2), CONSULTANT shall hold harmless, defend and indemnify the TOWN, its officers, agents, employees, and volunteers from and against all claims, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, except where caused by the active negligence, sole negligence, or willful misconduct of the TOWN.

b) If this AGREEMENT is not an agreement for design professional services subject to California Civil Code § 2782.8(a) or CONSULTANT is not a design professional as defined in subsection (a) above, CONSULTANT shall indemnify, defend, and hold harmless the TOWN, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the TOWN, its officers, agents, employees or volunteers.

c) It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

d) Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

11) PROHIBITED INTERESTS. No employee of the TOWN shall have any direct financial interest in this Agreement. This Agreement shall be voidable at the option of the TOWN if this provision is violated.

12) LOCAL EMPLOYMENT POLICY. The TOWN desires wherever possible, to hire qualified local residents to work on Town projects. Local resident is defined as a person who resides in Marin County. The TOWN encourages an active affirmative action program on the part of its contractors, consultants, and developers. When local projects require, subcontractors,

contractors, consultants and developers will solicit proposals from qualified local firms where possible.

13) FEDERAL REQUIREMENTS. If federal funds are involved in this Agreement, CONSULTANT shall comply with the federal requirements in Exhibit "E". As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked, to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

14) CONSULTANT NOT A PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the TOWN or any TOWN official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any TOWN decision beyond these conclusions, advice, recommendation, or counsel.

EXHIBIT "D"

INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

2) INDUSTRY SPECIFIC COVERAGES

The following insurance is also required:

Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.

3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the TOWN. At the option of the TOWN, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the TOWN, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

i) The TOWN, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by

or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; or automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the TOWN, its officers, officials, employees or volunteers.

- ii) For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the TOWN, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the TOWN, its officers, officials, employees or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the TOWN, its officers, officials, employees or volunteers.
- iv) The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the TOWN.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT's policy limits of coverage.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the TOWN.

d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the TOWN with original endorsements effecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the TOWN or on forms equivalent to CG 20 10 11 85 subject to TOWN approval. All insurance certificates and endorsements are to be received and approved by the TOWN before work commences. At the request of the TOWN, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.