

**REQUEST FOR PROPOSALS**  
**FOR**  
**TOWN OF HILLSBOROUGH**  
**FOR**  
**TOWN OF HILLSBOROUGH AUDIO VISUAL SYSTEM UPGRADE**

**TOWN OF HILLSBOROUGH**  
**1600 Floribunda Ave.**  
**Hillsborough, CA 94010**  
**Telephone: 650-375-7505**

## **TOWN OF HILLSBOROUGH**

### **NOTICE INVITING PROPOSALS TOWN HALL AUDIO VISUAL SYSTEM UPGRADE**

PUBLIC NOTICE IS HEREBY GIVEN that proposals will be received until 5:00 p.m. on February 18, 2019, at the office of the City Clerk, located at 1600 Floribunda Ave., Hillsborough, CA 94010, for the furnishing to Town of professional audio visual system upgrade services for the Town Hall Audio Visual System Upgrade project.

Interested parties may obtain copies of the above mentioned RFP at: 1600 Floribunda Avenue, Hillsborough, CA 94110 or online at <https://www.hillsborough.net/204/Public-Bids-RFPs>.

\*\*A mandatory pre-proposal meeting will be held on January 25, 2019 at 11:00 a.m. at 1600 Floribunda Avenue, Hillsborough, CA 94110. All prospective proposers are required to attend this meeting.

\*\*The Town has established February 22, 2019, as the date to conduct interviews. All prospective proposers will be asked to keep this date available.

The award of this contract is subject to available budget adequate to carry out the provisions of the proposed agreement including the identified scope of services. The Town reserves the right to reject any or all proposals determined not to be in the best interest of the Town.

Pursuant to Labor Code Section 1773, the Town has obtained the prevailing rate of per diem wages and the prevailing wage rates for holiday and overtime work applicable in San Mateo County from the Director of the Department of Industrial Relations for each craft, classification, or type of worker needed to execute the scope of services. A copy of these prevailing wage rates may be obtained via the internet at: [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/). In addition, a copy of the prevailing rate of per diem wages is available at the Town's offices and shall be made available to interested parties upon request. It shall be mandatory upon the Proposer to whom the contract is awarded, and upon any subcontractors, to comply with all applicable Labor Code provisions, which include but are not limited to the payment of not less than the said specified prevailing wage rates to all workers employed by them in the execution of the contract, contractor registration, certified payroll records, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

**TOWN OF HILLSBOROUGH  
REQUEST FOR PROPOSALS**

**PROFESSIONAL AUDIO VISUAL SYSTEM UPGRADE SERVICES FOR THE  
TOWN OF HILLSBOROUGH AUDIO VISUAL SYSTEM UPGRADE**

**I. BACKGROUND AND INTRODUCTION**

The Town of Hillsborough (“Town”) is requesting proposals from qualified firms<sup>1</sup> for Professional Audio Visual System Upgrade Services (“Services”).

The Town of Hillsborough is a residential community located in San Mateo County, California. It is west of Highway 101 and El Camino Real and east of Highway 280 within a short commute to San Francisco and minutes from San Francisco International Airport. Please visit <https://www.hillsborough.net/280/About-Hillsborough> for more information.

The Town’s Council Chambers, located in Town Hall (1600 Floribunda Avenue), provides a facility for public meetings of the city council, various commissions and other public and internal meetings. Construction of the Town Hall and City Council Chambers was completed in 1994.

The audiovisual (“AV”) systems in the Council Chambers are over nine years old and experiencing performance and operational challenges. This project is to update the existing AV system to a high quality, high definition, state-of-the-art, user friendly, expandable and automated system. The Town wishes to fully integrate the AV system from the dais to the AV control desk to the ancillary closet. The proposed project will include the ability to display the Council Meetings into the Town Hall atrium for overflow crowds. The system requirements are provided in the specifications and drawings in Exhibits “A” and “B”. However, the Town desires an AV system that is easily expandable in the future for capabilities not in the base specification (e.g., home viewing of civic meetings, capture HD TV video/audio for archive, web casting, cable casting, CCTV and AV switching system).

**II. REQUEST FOR PROPOSALS**

**A. Scope of Services**

The Services sought under this RFP are set forth in more detail in Exhibits “A” and “B”, attached hereto and incorporated herein by this reference. Notwithstanding the inclusion of such Services in Exhibits “A” and “B”, the final scope of Services negotiated between Town and the successful Proposer shall be set forth in the General Services Agreement (“Agreement”) executed by and between Town and the successful Proposer. A copy of the Agreement is attached hereto as Exhibit “D” and incorporated herein by this reference.

1. The successful Proposer shall provide all engineering, labor, commissioning, materials, transportation and equipment to provide a complete functional AV system in accordance

---

<sup>1</sup> Use of the term “firm” throughout this document shall mean individual proprietorship, partnership, limited liability company, corporation or joint venture.

with the specifications.

2. The successful Proposer is to have the following licenses and certifications prior to submitting a response to the RFP and employees carrying valid certifications are to be assigned to this project:

a. A current and valid California C-7 Low Voltage Contractor's License.

b. Crestron Programmer used on the project must be Crestron Certified Programmer with at least a Silver Level.

c. As provided in Exhibit A, Common Work Results, Section 27 41 00, Item E.6.

3. It is the responsibility of the successful Proposer to ensure that the documents including the Cost Proposal Form, drawings, and other documents are sufficient to build the AV system as designed. Any potential changes needed are to be brought to the attention of the Town prior to submission of a proposal.

4. The successful Proposer and/or its subcontractor must be a direct dealer in good standing for Crestron and all associated components.

5. All work is to be done in compliance with the design intent as specified in the design documentation and the RFP. The successful Proposer shall indicate any variance from the design intent by notifying the Town. Variances are not approved until all applicable documents have been updated and all parties have approved the variance in writing. All changes are to be approved in writing by Town.

6. The successful Proposer is responsible for all coordination with other trades as applicable to ensure a functional complete AV system. The successful Proposer is responsible for resolution of conflicts with connection and/or interaction with other systems.

7. The successful Proposer is responsible for ensuring that all work is done in accordance with all local, state and federal building codes.

8. The AV system is not a complete functional system acceptable to the Town until all equipment is online, tested and functioning without defect. All power supplies, accessory cables, portable equipment, equipment manuals and as-built system documentation must also be provided to and accepted by the Town. No training can take place until the AV system is completed and accepted by the Town.

The successful Proposer will provide a red-lined "as built" drawing set, no later than 20 days after acceptance of the project by the Town. It is only after delivery of these items that the project will be considered complete and final payment can be made.

9. Training: As Provided in Exhibit A, Common Work Results, Section 27 41 16 Part 1 Item I

10. The successful Proposer shall provide all intellectual property relating to any configuration

files including but not limited to DSP, Crestron programming and code including the uncompiled code for later modification, and any other system element programming. This shall be provided on both USB drive and DVD or Blu-ray disc. These items must be provided in order for the project to be accepted. The completed AV system is the property of the Town.

11. The Town uses the City Council Chambers, Atrium and Administration Room for Town business, including public meetings and/or hearings. The following dates/times are meetings that cannot be rescheduled and must be accommodated by the project schedule. The aforementioned spaces must be in a usable condition by these meeting dates/times. Additional details will be provided during the mandatory pre-proposal meeting.

- a. City Council Meetings: The second Monday of every month, beginning at 4:00 p.m.
- b. ADRB Meetings: The second Wednesday of every month, beginning at 4:00 p.m.
- c. As needed, to be coordinated and mutually agreed upon (maximum 3 events of several hours each)

## **B. Content and Format of Proposal**

Proposals shall be concise, well organized and demonstrate qualifications and applicable experience. Proposals shall be in the following order and shall include:

1. Executive Summary: Summarize the content of your firm's proposal in a clear and concise manner.
2. Table of Contents.
3. Identification of Proposer:
  - a. Legal name and address of the company.
  - b. Legal form of company (partnership, corporation).
  - c. If company is a wholly owned subsidiary of a "parent company," identify the "parent company."
  - d. Name, title, address and telephone number of the proposed representative to contact concerning the Proposal Submittal.
  - e. Current and Valid California State Contractors License Number.
4. Staffing Resources:
  - a. Firm Staffing

- (i) Describe proposed team organization and responsibilities of key personnel.
- b. Subcontractors/Subconsultants
  - (i) The Proposer shall identify functions that are likely to be subcontracted and identify the subcontractor / sub-consultant that is anticipated to perform each function, if known at this time.

5. Experience and Technical Competence:

a. Experience

- (i) The Proposer shall provide a description of how the Proposer's experience, technical and professional skills will meet the goals and fulfill the general functions identified in this RFP.
- (ii) The Proposer shall state the number of years the firm has conducted business.
- (iii) Provide three (3) most current/applicable references to this project, regarding the Proposer's experience and performance performing similar services. Include the following information: (1) organization name, contact name, phone number, e-mail address; and (2) project size and description, if applicable, and description of services.
- (iv) If any of the following has occurred, please describe in detail:
  - (a) Failure to enter into a contract or professional services agreement once selected or awarded the contract.
  - (b) Withdrawal of a proposal as a result of an error.
  - (c) Termination or failure to complete a contract prior to the expiration of the contract.
  - (d) Debarment by any municipal, county, state, federal or local agency.
  - (e) Involvement in litigation, arbitration or mediation. Conviction of the firm or its principals for violating a state or federal antitrust law by bid or proposal rigging, collusion, or restrictive competition between

bidders or proposers, or conviction of violating any other federal or state law related to bidding or professional services performance. Knowing concealment of any deficiency in the performance of a prior contract.

- (f) Falsification of information or submission of deceptive or fraudulent statements in connection with a contract.
- (g) Willful disregard for applicable rules, laws or regulations.

Information regarding any of the above may, at the sole discretion of the Town, be deemed to indicate an unsatisfactory record of performance.

- b. **Technical Competence:** As defined by Exhibit A, Section 27 41 00 Item E.6.
  - (i) Description of applicable in-house resources.

6. **Proposed Method to Accomplish the Work:** Describe the technical and management approach to providing the Services to the Town. Proposer should take into account the scope of the Services, goals of the Town, and general functions required. Include a draft schedule of tasks, milestones, and deliverables that will provide for timely provision of the Services. In reviewing the scope of Services and goals described in **Exhibits “A” and “B”**, the Proposer may identify additional necessary tasks and is invited to bring these to the Town’s attention within the discussion of its proposed method to accomplish the work.

7. **Fee Proposal:** In a **separate sealed envelope** marked “Cost Proposal” please provide a lump-sum, not-to-exceed fee for the scope of Services, on the Cost Schedule attached hereto as **Exhibit “C”**. The fee proposal must be submitted on the attached Cost Schedule in order to be considered and shall additionally include hourly rates for all personnel for “Additional Services” (as such term is defined in the Agreement attached hereto as **Exhibit “D”**).

8. **Insurance:** See the Agreement, attached hereto as **Exhibit “D,”** for a description of the insurance requirements.

9. **Litigation:** Provide litigation history for any claims filed by your firm or against your firm related to the provision of any services in the last five (5) years.

10. **Appendices.**

### **C. Mandatory Pre-Proposal Meeting**

Each Proposer will attend a mandatory pre-proposal meeting to be held at 1600 Floribunda

Avenue, Hillsborough, CA 94010 on January 25, 2019 at 11 a.m. Failure to attend this meeting will preclude a firm from submitting a proposal. Attendance at the pre-proposal meeting will ensure the Proposer understands the full scope of the Services requested.

#### **D. Selection Process**

1. Town will evaluate proposals based on the following criteria:
  - a. The firm is independent and properly licensed to practice and authorized to do business in the State of California.
  - b. The firm has no conflict of interest with regard to any other work performed by the firm for the Town.
  - c. Clarity and conformance of proposal to RFP.
  - d. Content of the proposal.
  - e. Proposer's experience and performance.
  - f. Team members' experience and performance.
  - g. Reference's comments.

2. It is the Town's intent to select a firm evidencing demonstrated competence and professional qualification sufficient to perform the Services. The Town reserves the right to reject all proposals, select by proposal review only or interview as needed. Certain firms may be selected to make a brief presentation and oral interview after which a final selection will be made. The successful proposer will be selected on the basis of information provided in the RFP, in-person presentations, and the results of the Town's research and investigation. Upon selection of a firm, the Town will endeavor to negotiate a mutually agreeable professional services agreement with the selected firm. In the event that the Town is unable to reach agreement, the Town will proceed, at its sole discretion, to negotiate with the next firm selected by the Town. The Town reserves the right to contract for services in the manner that most benefits the Town including awarding more than one contract if desired.

3. After negotiating a proposed Agreement that is fair and reasonable, Town staff will make the final recommendation to the City Council concerning the proposed Agreement. The City Council has the final authority to approve or reject the Agreement.

#### **E. Protests**

1. Protest Contents: Proposer may protest a contract award if the Proposer believes that the award was inconsistent with Town policy or this RFP is not in compliance with law. A protest must be filed in writing with the Town (email is not acceptable) within five (5) business days after receipt of notification of the contract award. Any protest submitted after 2:00 p.m. of the fifth business day after notification of the contract award will be rejected by the Town

as invalid and the Proposer’s failure to timely file a protest will waive the Proposer’s right to protest the contract award. The Proposer’s protest must include supporting documentation, legal authorities in support of the grounds for the protest and the name, address and telephone number of the person representing the Proposer for purposes of the protest. Any matters not set forth in the protest shall be deemed waived.

2. Town Review: The Town will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing. The Town shall provide the Proposer submitting the protest with a written statement concurring with or denying the protest. Action by the Town relative to the protest will be final and not subject to appeal or reconsideration. The procedure and time limits set forth in this Section are mandatory and are the Proposer’s sole and exclusive remedy in the event of protest. Failure to comply with these procedures will constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

**F. RFP Schedule**

The tentative schedule is as follows:

| Action                                | Deadline |           |           |
|---------------------------------------|----------|-----------|-----------|
|                                       | Time     | Date      | Day       |
| Release of Request of Proposal        | 5 p.m.   | 1/11/2019 | Friday    |
| Mandatory Pre-Proposal Meeting        | 11 a.m.  | 1/25/2019 | Friday    |
| Proposer Questions Submittal Deadline | 5 p.m.   | 2/1/2019  | Friday    |
| Town Questions Response               | 5 p.m.   | 2/8/2019  | Friday    |
| Addendum to the RFP Posted            | 5 p.m.   | 2/12/2019 | Tuesday   |
| Proposals Due                         | 5 p.m.   | 2/18/2019 | Monday    |
| Tentative Interview                   | 9 a.m.   | 2/22/2019 | Friday    |
| Authorization to Negotiate Contract   | 5 p.m.   | 3/12/2019 | Tuesday   |
| Prepare/Execute Contract              | TBD      | 4/3/2019  | Wednesday |
| Project Kick-off Meeting              | TBD      | 4/5/2019  | Friday    |
| Anticipated Construction Start        | 8 a.m.   | 4/11/2019 | Thursday  |
| Project Substantially Complete        | 5 p.m.   | 5/10/2019 | Friday    |
| Training                              | TBD      | TBD       | TBD       |
| Project Complete                      | 5 p.m.   | 6/5/2019  | Wednesday |

The above scheduled dates are tentative and Town retains the sole discretion to adjust the above schedule. Nothing set forth herein shall be deemed to bind Town to award a contract for the above-described professional Services and Town retains the sole discretion to cancel or modify any part of or all of this RFP at any time.

## **G. Submittal Requirements**

1. General: It is required that the Proposer submit proposals in the format identified in Section B to allow the Town to fully evaluate and compare the proposals. All requirements and questions in the RFP should be addressed and all requested data should be supplied. The Town reserves the right to request additional information which, in the Town's opinion, is necessary to assure that the Proposer's competence, qualifications, number of qualified employees, business organization and financial resources are adequate to perform the Services according to the terms of the Agreement.

2. Preparation: Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Responses should emphasize the Proposer's demonstrated capability to perform work of this type. Expensive bindings and promotional materials, etc., are not necessary or desired. However, technical literature that supports the approach to providing the Services and work plan should be forwarded as part of the proposal. Emphasis should be concentrated on completeness, approach to the work and clarity of the proposal.

3. Site Examination: Proposers are required to visit Town and its physical facilities and determine the local conditions which may in any way affect the performance of the Services; familiarize themselves with all federal, state and local laws, ordinances, rules, regulations, and codes affecting the performance of the Services; make such investigations, as it may deem necessary for performance of the Services at its proposal price within the terms of the Agreement; and correlate its observations, investigations, and determinations with the requirements of the Agreement.

4. Number of Copies: One executed original of the proposal shall be submitted along with a cost proposal in a separate, sealed and marked envelope.

5. Authorization: The proposal shall be signed by an individual, partner, officer or officers authorized to execute legal documents on behalf of the Proposer.

6. Confidentiality of Proposal: Pursuant to *Michaelis, Montana, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, proposals submitted in response to this RFP shall be held confidential by Town and shall not be subject to disclosure under the California Public Records Act (Cal. Government Code section 6250 *et seq.*) until after either Town and the successful proposer have completed negotiations and entered into an Agreement or Town has rejected all proposals. All correspondence with the Town including responses to this RFP will become the exclusive property of the Town and will become public records under the California Public Records Act. Furthermore, the Town will have no liability to the Proposer or other party as a result of any public disclosure of any proposal or the Agreement.

If a Proposer desires to exclude a portion of its proposal from disclosure under the California Public Records Act, the Proposer must mark it as such and state the specific provision in the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if a Proposer submits trade secret information, the Proposer must plainly mark the information as "Trade Secret" and refer to the appropriate section of the

California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the Town may not be in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked “Confidential”, “Trade Secret” or “Proprietary”, the Town will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

7. Proposal Delivery

Delivery: The proposal must be received no later than 5:00 pm PST, on or before February 18, 2019 at the office of:

**City Clerk  
Town of Hillsborough  
1600 Floribunda Ave.  
Hillsborough, CA 94010**

If you have any questions contact Ed Cooney at [ecooney@hillsborough.net](mailto:ecooney@hillsborough.net).

**H. Miscellaneous**

1. Exceptions Certification to this RFP: In submitting a proposal in response to this RFP, Proposer is certifying that it takes no exceptions to this RFP including, but not limited to, the Agreement. If any exceptions are taken, such exceptions must be clearly noted in the proposal and may be reason for rejection of the proposal. As such, Proposer is directed to carefully review the proposed Agreement and, in particular, the insurance and indemnification provisions therein.

2. Amendments to Proposals: No amendment, addendum or modification will be accepted after a proposal has been submitted to Town. If a change to a proposal that has been submitted is desired, the submitted proposal must be withdrawn and the replacement proposal submitted to Town prior to the proposal due date and time.

3. Cancellation of RFP: Town reserves the right to cancel this RFP at any time prior to contract award without obligation in any manner for proposal preparation, interview, fee negotiation or other marketing costs associated with this RFP.

4. Price Validity: Prices provided by Proposers in response to this RFP are valid for 120 days from the proposal due date. The Town intends to award the contract within this time but may request an extension from the Proposers to hold pricing, until negotiations are complete and the contract is awarded.

5. No Commitment to Award: Issuance of this RFP and receipt of proposals does not commit the Town to award a contract. Town expressly reserves the right to postpone the RFP process for its own convenience, to accept or reject any or all proposals received in response

to this RFP, to negotiate with more than one Proposer concurrently, or to cancel all or any part of this RFP.

6. Requests for Clarification: All requests for information and/or clarification must be submitted to Ed Cooney, [ecooney@hillsborough.net](mailto:ecooney@hillsborough.net) no later than the Date and Time provided in the RFP Schedule above. Such requests should contain the following in the subject line: "QUESTIONS: COUNCIL CHAMBERS AV SYSTEM UPGRADE RFP". Answers to all questions will be issued to all prospective proposers via e-mail. Each Proposer is responsible for ensuring that it has received all addenda, clarifications, supplemental information and responses to questions prior to submitting a proposal.

7. Right to Negotiate and/or Reject Proposals: Town reserves the right to negotiate any price or provision, task order or service, accept any part or all of any proposals, waive any irregularities, and to reject any and all, or parts of any and all proposals, whenever, in the sole opinion of Town, such action shall serve its best interests and those of the tax-paying public. The Proposers are encouraged to submit their best prices in their proposals, and Town intends to negotiate only with the Proposer(s) whose proposal most closely meets Town's requirements at the lowest estimated cost. The Agreement, if any is awarded, will go to the Proposer whose proposal best meets Town's requirements.

8. Non-Discrimination: The Town does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability or gender in consideration for an award of contract.

9. Prevailing Wage: Proposers shall take cognizance of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public work" and "maintenance" projects. The Proposer must agree to fully comply with and to require its subcontractors/subconsultants to fully comply with such Prevailing Wage Laws to the extent applicable.

Publication Date of RFP: January 11, 2019

**EXHIBIT "A"**

**SCOPE OF SERVICES**

**AV COMMON WORK RESULTS**

**(provided separately)**

**EXHIBIT “B”**

**SCOPE OF SERVICES**

**AV SYSTEM DRAWINGS**

**(provided separately)**

**EXHIBIT C: COST SCHEDULE: TOWN HALL AUDIO VISUAL SYSTEM UPGRADE**

| ITEM #                       | BID ITEM  | QTY. | UNIT | UNIT PRICE | TOTAL |
|------------------------------|---|------|------|------------|-------|
| 1.                           | Furnish all labor, materials, tools, equipment, transportation, expertise and incidentals to complete the work for the City Council Chambers, Control Room and Atrium Audio Visual System, Equipment and Training in accordance with the bid specifications and drawings. | 1    | LOT  |            |       |
|                              |   |      |      |            |       |
| <b>TOTAL PROPOSAL PRICE:</b> |   |      |      |            |       |
|                              |   |      |      |            |       |

***NOTE:** The Total Proposal Price is the total for all materials, equipment, tools, labor and incidentals necessary to complete the work, including necessary insurance cost and bond requirements. In case of discrepancy between the item unit price and total set forth for the item, the item unit price shall prevail.*

**NAME OF BIDDER:**

\_\_\_\_\_

licensed in accordance with an act for the registration of Contractors, and with license

number: \_\_\_\_\_ Expiration: \_\_\_\_\_

Contractor's Representative:

\_\_\_\_\_  
(Name/Title)

\_\_\_\_\_  
(Contact email)

\_\_\_\_\_  
(Phone Number)

**EXHIBIT “D”**

TOWN OF HILLSBOROUGH

**AGREEMENT FOR [INSERT TYPE OF GENERAL SERVICE] SERVICES**

1. Parties and Date.

This Agreement for [INSERT TYPE OF SERVICE] Services (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **Town of Hillsborough**, (“Town”) and [INSERT NAME OF COMPANY], a [INSERT TYPE OF BUSINESS e.g., CORPORATION], with its principal place of business at [INSERT ADDRESS] (“Contractor”). Town and Contractor are sometimes individually referred to herein as “Party” and collectively as “Parties.”

2. Recitals.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain [INSERT TYPE OF SERVICES] services required by Town on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing [INSERT TYPE OF SERVICES] services to public clients, is licensed in the State of California, and is familiar with the plans of Town. Contractor shall maintain a C-7 Low Voltage Contractor's License for the term of this Agreement.

2.2 Project.

Town desires to engage Contractor to render such services for the [INSERT NAME OF PROJECT AND CONTRACT NUMBER, IF APPLICABLE] project (“Project”) as set forth in this Agreement.

3. Terms.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to Town all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the services and advice on various issues affecting the decisions of Town regarding the Project and on other programs and matters affecting Town (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from the date first specified above to [INSERT ENDING DATE], unless earlier terminated as provided herein. Contractor

shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.1.3 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Services under this Agreement within the term set forth above (“Performance Time”). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits “A” or “B” attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the Town will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the Town as fixed and liquidated damages, and not as a penalty, the sum of Five Hundred Dollars (\$500) per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

### 3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Town retains Contractor on an independent contractor basis and not as an employee of Town. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of Town and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit “B” attached hereto and incorporated herein by reference. Contractor represents that it has the skilled personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, Town shall respond to Contractor's submittals in a timely manner. Upon request of Town, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of Town.

3.2.4 Substitution of Key Personnel. Contractor has represented to Town that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence and experience upon written approval of Town. In the event that Town and Contractor cannot agree as to the substitution of key personnel, Town shall be entitled to

terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to Town, or who are determined by Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by Contractor at the request of Town. The key personnel for performance of this Agreement are as follows: **[INSERT NAME(S)]**.

3.2.5 Town's Representative. Town hereby designates **[INSERT NAME OR TITLE]**, or his or her designee, to act as its representative for the performance of this Agreement (“Town's Representative”). Town's Representative shall have the power to act on behalf of Town for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than Town's Representative or his or her designee.

3.2.6 Contractor's Representative. Contractor hereby designates **[INSERT NAME OR TITLE]**, or his or her designee, to act as its representative for the performance of this Agreement (“Contractor's Representative”). Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Contractor agrees to work closely with Town staff in the performance of Services and shall be available to Town's staff, contractors and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by contractors in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from Town, any services necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein, and shall be fully responsible to Town for all damages and other liabilities provided for in the indemnification provisions of this Agreement arising from the Contractor's errors and omissions.. Any employee of Contractor or its subcontractors who is determined by Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to Town, shall be promptly removed from the Project by Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the

performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to Town, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold Town, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

### 3.2.10 Insurance.

(a) Time for Compliance. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall not commence work under this Agreement until it has provided evidence satisfactory to Town that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to Town that the subcontractor has secured all insurance required under this section.

(b) Types of Required Coverages. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, Contractor in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance.

(i) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as the latest version of the Insurance Services Office “occurrence” form CG 0001, with minimum limits of at least \$1,000,000 per occurrence. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1) products and completed operations; (2) contractual liability; (3) third party action over claims; or (4) cross liability exclusion for claims or suits by one insured against another.

(ii) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as the latest version of Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1) with minimum limits of \$1,000,000 each accident.**[NOTE: Contractor and employees of Contractor may not be able to purchase a business automobile policy and consideration may be given to accepting a personal automobile policy with minimum limits of \$1,000,000 each accident. ALWAYS DELETE THIS NOTE.]**

(iii) Workers' Compensation and Employer's Liability: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

**[NOTE: This requirement may be deleted if Contractor has no employees. ALWAYS DELETE THIS NOTE.]**

(iv) Contractors Pollution Liability: Contractors Pollution Liability Insurance covering all of Contractor's operations to include onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, defense costs and cleanup costs with minimum limits of \$5 million per loss and \$10 million total all losses. Non-owned disposal site coverage shall be provided if handling, storing or generating hazardous materials or any material/substance otherwise regulated under environmental laws/regulations.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

**[NOTE: *This requirement may be deleted if Contractor will not be required to work with Hazardous Materials.* ALWAYS DELETE THIS NOTE.]**

(c) Endorsements.

(i) The policy or policies of insurance required by Section 3.2.10(b) (i) Commercial General Liability and (ii) Automobile Liability Insurance and (iv) Contractor's Pollution Liability [**KEEP THIS REFERENCE TO “and (v) Contractor's Pollution Liability” ONLY IF IT IS REQUIRED; OTHERWISE ALWAYS DELETE THE REQUIREMENT FROM THIS SENTENCE.**] shall be endorsed to provide the following:

- (1) Additional Insured: Town, its officials, officers, employees and agents shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Endorsements shall be issued on a combination of ISO CG 20 10 and CG 20 37 or exact equivalents. Additional Insured Endorsements shall not (1) be restricted to “ongoing operations”; (2) exclude “contractual liability”; (3) restrict coverage to “sole” liability of Contractor; or (4) contain any other exclusions contrary to the Agreement.
- (2) Primary Insurance and Non-Contributing Insurance: This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the Town, its officials, officers, employees and agents shall not contribute with this primary insurance.
- (3) Severability: In the event of one insured, whether named or additional, incurs liability to any other of the insureds, whether named or additional, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.

- (4) Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon Town except ten (10) days prior written notice shall be allowed for non-payment of premium.
- (5) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the Town, its officials, officers, employees and agents.
- (6) Duties: Any failure by the named insured to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the Town, its officials, officers, employees and agents.
- (7) Applicability: That the coverage provided therein shall apply to the obligations assumed by Contractor under the indemnity provisions of the Agreement, unless the policy or policies contain a blanket form of contractual liability coverage.

(ii) The policy or policies of insurance required by Section 3.2.10(b) (iii) Workers' Compensation shall be endorsed, as follows:

- (1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the Town, its officials, officers, employees and agents.
- (2) Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon Town except ten (10) days prior written notice shall be allowed for non-payment of premium.

(d) Deductible. Any deductible or self-insured retention must be approved in writing by Town and shall protect the Town, its officials, officers, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

(e) Evidence of Insurance. Contractor, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by Town. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with Town. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation

or reduction of coverage, file with Town evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Failure to Maintain Coverage. Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to Town. Town shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Agreement.

In the event that Contractor's operations are suspended for failure to maintain required insurance coverage, Contractor shall not be entitled to an extension of time for completion of the work because of production lost during suspension.

(g) Acceptability of Insurers. 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 authorized to do business 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.

(h) Insurance for Subcontractors. Contractor shall be responsible for causing subcontractors to purchase the appropriate insurance in compliance with the terms of this Agreement, including adding Town as an Additional Insured to the subcontractor's policies.

3.2.11 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed [INSERT WRITTEN DOLLAR AMOUNT] dollars (\$[INSERT NUMBER]) without written approval of Town's [INSERT TITLE]. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to Town a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through

the date of the statement. Town shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by Town.

3.3.4 Extra Work. At any time during the term of this Agreement, Town may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by Town to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from Town's Representative.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth in Exhibit "C" shall be adjusted each year at the time of renewal in accordance with the Consumer Price Index, All Urban Consumers, **[fill in appropriate consumer price index]**, or at the percentage rate set forth in Exhibit "C." **[IF NO RENEWAL OPTION IS INCLUDED IN THIS AGREEMENT, DELETE THIS SECTION 3.3.5 AND INSERT "RESERVED"]**

3.3.6 California Labor Code Requirements

(a) Contractor 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, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor 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 Contractor and all subcontractors 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 Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, 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 Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Services, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the Town. Contractor 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 Contractor or any subcontractor.

### 3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of Town during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### 3.5 General Provisions.

#### 3.5.1 Termination of Agreement.

(a) Grounds for Termination. Town may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been fully and adequately rendered to Town through the effective date of the termination, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

(b) Effect of Termination. If this Agreement is terminated as provided herein, Town may require Contractor to provide all finished or unfinished Documents and Data, as defined below, and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

(c) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, Town may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

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

Town:

Town of Hillsborough  
1600 Floribunda Ave.  
Hillsborough, CA 94010  
Attn: **[INSERT NAME & DEPARTMENT]**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.4 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.5.5 Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold 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, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Town, its officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against Town or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse Town and its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Town or its officials, officers, employees, agents or volunteers. This Section 3.5.5 shall survive any expiration or termination of this Agreement.

3.5.6 Warranty. The delivered or installed goods, equipment or services shall be warranted to be free from defects in material and workmanship. The warranty period shall begin upon acceptance of the Project by the Town. At a minimum, all goods, equipment and services shall be warranted to operate satisfactorily in accordance with the requirements of these specifications, representations of the Contractor and the published specifications of the manufacturer(s) for a period of at least one (1) year. Any defective goods, equipment or services shall be replaced or repaired quickly at the Town's location during the warranty period at no expense to the Town. If repairs cannot be made at the Town's location, the Contractor shall transport/ship the equipment to a repair facility. All repairs must be completed and the equipment returned to the Town within seventy-two (72) hours of a call for service. If the Contractor fails to have the equipment repaired within seventy-two (72) hours, the Contractor shall provide an equal "loaner" piece of equipment until the Town's equipment is returned in operating condition.

3.5.7 Site Appearance. The Contractor shall maintain the Project site in a neat appearance throughout the Agreement term. Debris generated by the Project shall be disposed of concurrently with its removal. If stockpiling is necessary, the material shall be removed or disposed of daily or at the direction of the Town. If the Contractor damages any improvements, the Contractor shall repair or replace the damaged improvements to the satisfaction of the Town. The repair or replacement work shall be of equal or greater quality and in appearance to prior condition. The Contractor shall solely be responsible for and bear the costs of repairing or replacing damaged improvements. Excess materials generated from the repair or replacement work shall be disposed of off-site by the Contractor at the Contractor's own expense.

3.5.8 Disposal of Materials and Project Waste. Any damaged equipment needing removal is to be disposed of off-site in a legal manner. The Contractor shall not stockpile debris, rubbish, garbage, excess materials, or other unwanted materials on the sidewalk or on the street. All demolition rubble, debris and other excess materials resulting from the Contractor's operations shall be disposed of off-site in a safe and legal manner at the Contractor's sole expense without reimbursement by Town. All debris, or other excess materials must be removed at the end of each workday.

3.5.9 Site Cleanup. If the Contractor fails to perform site cleanup work to the satisfaction of the Town, the Town may withhold payment until the Contractor satisfactorily performs Project site cleanup to a broom clean condition. If the final cleanup is deemed unsatisfactory, the Contractor shall remedy the work within two (2) working days after receipt of notice from the Town. If the Contractor fails to remedy the work as directed, the Town may, at its own option, hire a third party to perform the work and deduct the cost of the cleanup work from any payment due the Contractor.

3.5.10 Public Convenience/Safety. The Contractor shall maintain sufficient safeguards against the occurrence of accidents, injuries, or damage to any person or property. Signs, barricades, and protection barriers shall be placed around all Project work areas until completion and acceptance of the Project by the Town.

3.5.11 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be supplemented, amended or modified by a writing signed by both Parties.

3.5.12 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Mateo County.

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

3.5.14 Town's Right to Employ Other Contractors. Town reserves the right to employ other Contractors in connection with this Project.

3.5.15 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.16 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of Town. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.17 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to Town include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.18 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.19 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.20 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.21 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.22 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor 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 Contractor, 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 member, 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.

3.5.23 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. 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. Contractor shall also comply with all relevant provisions of any minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.24 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.25 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.26 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.27 Employment Adverse to Town. Contractor shall notify Town, and shall obtain Town's written consent, prior to accepting work to assist with or participate in a third-party lawsuit or other legal or administrative proceeding against Town during the term of this Agreement.

3.5.28 Conflict of Employment. Employment by Contractor of personnel currently on the payroll of Town shall not be permitted in the performance of this Agreement, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, the employment by Contractor of personnel who have been on Town's payroll within one year prior to the date of execution of this Agreement, where this employment is caused by and or dependent upon Contractor securing this or related Agreements with Town, is prohibited.

3.5.29 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, and the obligations related to receipt of subpoenas or court orders, shall survive any such expiration or termination.

3.5.30 Subcontracting. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of Town. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**SIGNATURES ON FOLLOWING PAGE**

**SIGNATURE PAGE FOR AGREEMENT  
FOR [INSERT TYPE OF SERVICE] SERVICES**

**IN WITNESS WHEREOF**, this Agreement was executed on the date first written above.

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

TOWN OF HILLSBOROUGH

[INSERT NAME OF CONTRACTOR]

By: \_\_\_\_\_  
[INSERT NAME]  
[INSERT TITLE]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Printed Name: \_\_\_\_\_

CSLB License #: \_\_\_\_\_

DIR Registration #: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

EXHIBIT "A"  
SCOPE OF SERVICES

**[INSERT SCOPE OF SERVICES]**

EXHIBIT "B"  
SCHEDULE OF SERVICES

**[INSERT SCHEDULE OF SERVICES]**

**[INSERT THE FOLLOWING PROVISION IF THE AGREEMENT WILL AUTOMATICALLY RENEW:** In the event that this Agreement is renewed pursuant to Section 3.1.2, the first renewal period shall be from **[INSERT BEGINNING AND ENDING DATE; USUALLY FISCAL YEAR]**. The second renewal period shall be from **[INSERT BEGINNING AND ENDING DATE; USUALLY FISCAL YEAR]**. **[REPEAT THE SENTENCE FOR EACH RENEWAL PERIOD. ALWAYS DELETE OTHERWISE]**

EXHIBIT "C"  
COMPENSATION

**[INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES]**

**[INSERT THE FOLLOWING PROVISION IF THE AGREEMENT WILL AUTOMATICALLY RENEW:** In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above shall be adjusted each year at the time of renewal described in Exhibit "B" in accordance with **[THE CPIU AS FOLLOWS:** the Consumer Price Index, All Urban Consumers, fill in appropriate consumer price index] **[AT A FIXED PERCENTAGE RATE AS FOLLOWS:** the following percentage rate: \_\_\_\_%].