

REQUEST FOR PROPOSALS
FROM THE
TOWN OF HILLSBOROUGH
FOR
As-Needed Consulting and Engineering Services

TOWN OF HILLSBOROUGH
1600 Floribunda Ave.
Hillsborough, CA 94010
Telephone: (650) 375-7444

TOWN OF HILLSBOROUGH
NOTICE INVITING PROPOSALS

As-Needed Consulting and Engineering Services

PUBLIC NOTICE IS HEREBY GIVEN that proposals will be received until **4:00PM, Wednesday, June 24, 2020** electronically by Irfan Aziz at iaziz@hillsborough.net, for the furnishing to the Town of Hillsborough for professional As-Needed Consulting and Engineering Services.

Interested parties may obtain copies of the above mentioned RFP at: <https://www.hillsborough.net/207/Request-for-Proposals>.

A pre proposal meeting will not be held. Please direct all questions about the meaning or intent of the RFP to Irfan Aziz at iaziz@hillsborough.net, or (650) 375-7509.

******The Town has established July 14, 2020 – July 16, 2020 as the dates to conduct interviews. All prospective proposers will be asked to keep these dates 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/. 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**

AS NEEDED CONSULTING AND ENGINEERING SERVICES

I. BACKGROUND AND INTRODUCTION

The Town of Hillsborough (“Town”) is requesting proposals from qualified firms¹ for professional As-Needed Consulting and Engineering Services (“Services”), which shall be provided under the general direction of the Director of Public Works / City Engineer or his or her designee.

The Town of Hillsborough is seeking a contract(s) for professional As-Needed Consulting and Engineering Services. Services are sought in two manners, as-needed municipal engineering and project management services, and as-needed consulting and engineering services for various disciplines. The Town requires these as-needed professional services on a project-by-project basis. The Proposer has the option to propose on one or more types of the requested services, and shall clearly identify the type of service in their proposal.

II. REQUEST FOR PROPOSALS

A. Scope of Services

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

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: (limit: 1 pages) Summarize the content of your firm’s proposal in a clear and concise manner.
2. Table of Contents: (limit: 1 page)
3. Identification of Proposer: (limit: 1 page)

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

- 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.

4. Staffing Resources: (limit: 2 pages)

- a. Firm Staffing and Key Personnel
 - (i) Provide the number of staff to be assigned to perform the Services and the names/discipline/job title of each as well as your firm’s capacity to provide additional personnel as-needed.
 - (ii) Identify three (3) persons that will be principally responsible for working with the Town. Indicate the role and responsibility of each individual. If the Proposer is chosen as a finalist, these principal individuals must attend the interview and in-person presentation.
 - (iii) Describe proposed team organization, including identification and responsibilities of key personnel. Please include one-page resumes.
 - (iv) Provide brief biographies of individuals that will be working directly with the Town.
- 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. Fiscal Stability: (limit: 1 pages- not including supporting documentation)

- a. The Proposer should provide evidence of corporate stability including:

- (i) A current report from any commercial credit rating service such as Dunn and Bradstreet or Experian; or
- (ii) A letter from a financial institution stating a current line of credit; and
- (iii) Latest audited financial statement and/or annual report that has been certified by a CPA. This information will remain confidential and is not subject to public disclosure.

6. Experience and Technical Competence: (limit: 5 pages)

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) Describe the past experience of the staff to be assigned to perform the Services in performing similar services.
- (iii) The Proposer shall state the number of years the firm has conducted business. Proposer must have at least four (4) years' experience in providing the required scope of Services for public clients.
- (iv) Provide five (5) references 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.
- (v) Describe the firm's local experience and knowledge of Town's operations.

b. Project Specific Experience

- (i) The Proposer shall provide a description of the three most relevant service contracts held by the firm within the last five years, one page per project, to include:
 - (a) Role of the firm
 - (b) Dollar value of the services

- (c) Dollar value of the fee
 - (d) Description of services
 - (e) Staffing
 - (f) Duration of providing services
 - (g) Relationship to client
 - (h) Contact name, position, entity name, telephone number, fax number and e-mail address for each project.
- (ii) 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.

c. Technical Competence

- (i) Description of in-house resources (i.e., computer capabilities, software applications, security protocols, modeling programs, etc.)
- (ii) Ability to draw upon multi-disciplinary staff to address the Services requested in this RFP.

7. Proposed Method to Accomplish the Work: (limit: 3 pages)

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 **Exhibit "A,"** 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.

8. Fee Proposal: (limit: 1 pages) Please provide hourly rates for all personnel for the Proposed Scope of Services (**Exhibit "A"**).

9. Insurance: (limit: 1 page - not including supporting documentation) See the Agreement, attached hereto as **Exhibit "B"** for a description of the insurance requirements.

10. Litigation: (limit: 1 pages) 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.

11. Other Information: (limit: 1 pages) This section shall contain all other pertinent information regarding the following:

- a. Demonstration of record of staffing tasks efficiently and completing projects on time and within the allocated budget.
- b. Description of community involvement.
- c. Description of any previous involvement with the Town.

12. Appendices: (limit: 1 pages)

C. Pre-Proposal Meeting

A pre proposal meeting will not be held. Please direct all questions about the meeting or intent of the RFP to Irfan Aziz at iaziz@hillsborough.net, or (650) 375-7509.

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. Fee proposal.
 - h. 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 5 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. Proposal Schedule

The tentative schedule is as follows:

ACTION	DATE
Release of Request for Proposal	May 29, 2020
Last Day to Submit Questions for Clarification received by the Town on or before 5:00pm	June 12, 2020
Clarifications Issued by Town on or before 5:00pm	June 17, 2020
Deadline for Receipt of Proposals submitted on or before 4:00pm	June 24, 2020
Notification of Finalist(s)	July 8, 2020
Interview of Finalist(s)	July 14-16, 2020
Notification of Intent to Award	July 22, 2020

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 strongly recommended 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 encouraged 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 proposal shall be submitted electronically.

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, Montanari, & 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. Delivery: Proposals must be submitted electronically via email to Irfan Aziz at iaziz@hillsborough.net no later than June 24, 2020 at 4:00pm. The subject title of the email shall include "As-Needed Consulting and Engineering Services RFP". If you have any questions, contact Irfan Aziz at (650) 375-7509 or by email.

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 90 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 Irfan Aziz at iaziz@hillsborough.net no later than 5 p.m., June 12, 2020. Answers to all questions will be issued to all prospective proposers via e-mail or posted on <https://www.hillsborough.net/207/Request-for-Proposals>. 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.

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.

EXHIBIT "A"

PROPOSED SCOPE OF SERVICES

Background

The Town of Hillsborough is seeking a contract(s) for professional As-Needed Consulting and Engineering Services. Services are sought in two manners, as-needed municipal engineering and project management services, and as-needed consulting and engineering services for various disciplines. The Town requires these as-needed professional services on a project-by-project basis. The Proposer has the option to propose on one or more types of the requested services, and shall clearly identify the type of service in their proposal.

Municipal Engineering and Project Management Services

The Town is seeking as-needed Municipal Engineering and Project Management services to fill 2.5 full time equivalent (FTE) positions in the Public Works Department, located at 1320 La Honda Road, Hillsborough, CA 94010. Though the sum of proposed personnel hours shall be equivalent to 2.5 FTEs, the Proposer has flexibility to use a combination of staff (minimum 3 personnel) to meet this requirement. Services will be engaged on a project-by-project basis.

Senior Civil Engineer / Project Manager

Essential Duties and Responsibilities

Serves as team leader in the development of designs, plans, specifications, and estimates for the construction of public works projects; assists with solicitation and selection of consultant contracts; manages consultant contracts on behalf of the Town for environmental, right of way, design and construction phases of public works projects; provides competent technical feedback to design engineers and contractors to create high quality, technically sound public works projects that meet Town standards, needs and practices; responds to public inquiries and complaints; coordinates with other Town departments and outside agencies.

Supervision Received and Exercised

This position will act as "office manager" for Municipal Engineering and Project Management services and will be responsible to coordinate efforts of all Municipal Engineering and Project Management personnel. General guidance and work assignments will be provided by the Director of Public Works and his or her designees.

General Qualifications

Knowledge of:

- Principles of supervision
- Principles and practices of civil engineering in a municipal setting

- Principles, practices, procedures and standards related to Town infrastructure development and maintenance
- Principles and practices of capital improvement cost estimation and contract estimation
- Knowledge and experience with capital improvement programs and budgeting
- Applicable laws, codes and regulations
- Effective communication with Town staff and the public
- Record keeping and file management

Experience and Licensure Required

- Must possess registration as a Professional Engineer in the State of California
- Minimum of four years of progressively responsible public works engineering experience, including two years in a supervisory capacity

Associate Engineer

Essential Duties and Responsibilities

Assists in the development of designs, plans, specifications, and estimates for the construction of public works projects; assists with solicitation and selection of consultant contracts; manages consultant contracts on behalf of the Town for environmental, right of way, design and construction phases of public works projects; assists with development review; reviews plans and provides feedback to design engineers and contractors to create high quality, technically sound public works projects that meet Town standards, needs and practices; responds to public inquiries and complaints; coordinates with other Town departments and outside agencies.

Supervision Received and Exercised

This position will report to the Senior Civil Engineer / Construction Manager (Municipal Engineering and Project Management “office manager”). General guidance and work assignments will be provided by the Director of Public Works and his or her designees both directly and through the Senior Civil Engineer / Construction Manager.

General Qualifications

Knowledge of:

- Principles and practices of civil engineering in a municipal setting
- Principles, practices, procedures and standards related to Town infrastructure development and maintenance
- Principles and practices of capital improvement cost estimation and contract estimation
- Applicable laws, codes and regulations
- Effective communication with Town staff and the public
- Record keeping and file management

Experience and Licensure Required

- Registration as a Professional Engineer in the State of California is desired
- Minimum of four years of responsible public works engineering experience

As-Needed Consulting and Engineering Services

The Town is seeking the following as-needed engineering and consulting services for various disciplines that will be engaged on a project-by-project basis. The Proposer has the option to propose on one more of the services by discipline listed below, and shall clearly identify the discipline in their proposal.

General Engineering Services

As-needed general engineering services include, but are not limited to, the design and preparation of storm water, sanitary sewer, potable water, traffic, and paving PS&E for Public Works construction projects, construction inspection, contract administration, and general Public Works project management.

Geotechnical Engineering Services

As-needed geotechnical engineering services include, but are not limited to, the analysis of site specific geology and subsurface conditions, soil classifications, seismicity, and groundwater conditions; providing recommendations related to foundations, retaining walls, backfill, slope stability, grading, and drainage; and the preparation of geotechnical investigation reports.

Environmental Services

As-needed environmental consulting services include, but are not limited to, the preparation of CEQA documents, regulatory agency permitting and coordination, and construction compliance monitoring and support.

Material Testing Services

As-needed material testing services include, but are not limited to, the testing of base rock, native soil, structural fill, asphalt, and concrete.

Length of Agreement

The target start date and contract duration for the proposed services is a two year term from September 2020 to September 2022, with an optional one-year extension to September 2023, subject to negotiation of a final agreement.

EXHIBIT "B"

[Agreement attached behind this cover page]

**TOWN OF HILLSBOROUGH
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of _____, 20____ by and between the Town of Hillsborough, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 1600 Floribunda Ave., Hillsborough, CA 94010 ("Town"), and [***INSERT NAME***], a [***INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY***] with its principal place of business at [***INSERT ADDRESS***] (hereinafter referred to as "Consultant"). Town and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

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

(hereinafter referred to as "the Project").

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

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

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the Town with the services described in the Scope of Services attached hereto as Exhibit "A." **[Alternatively, Scope of Services can be included here and all subsequent exhibits renumbered accordingly.]**

2. Compensation.

a. Subject to paragraph 2(b) below, the Town shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B." **[Alternatively, Schedule of Charges may be included here and all subsequent exhibits renumbered accordingly.]**

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

3. Additional Work.

If changes in the work seem merited by Consultant or the Town, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the Town by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the Town and executed by both Parties before performance of such services, or the Town will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

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

5. Time of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the Town to proceed ("Notice to Proceed"). Consultant shall complete the services required hereunder within **[Insert number of calendar days for performance of the services – if more detail is required attach "Activity Schedule" as Exhibit C, otherwise delete Exhibit C.]** The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

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

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

7. Compliance with Law.

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

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

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

8. Standard of Care

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

9. Assignment and Subconsultant

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

10. Independent Consultant

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

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

a. Commercial General Liability

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

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

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

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

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability

- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Contract
- (8) Broad Form Property Damage
- (9) Independent Consultants Coverage

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

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

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

b. Automobile Liability

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

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

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

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

c. Workers' Compensation/Employer's Liability

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

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

indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

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

e. Minimum Policy Limits Required

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

	<u>Combined Single Limit</u>
Commercial General Liability	\$2,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$2,000,000 per occurrence
Professional Liability	\$2,000,000 per claim and aggregate (errors and omissions)

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

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

f. Evidence Required

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

g. Policy Provisions Required

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

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

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

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

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

h. Qualifying Insurers

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

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

i. Additional Insurance Provisions

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

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Town has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Town will be promptly reimbursed by Consultant or Town will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Town may cancel this Agreement.

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

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

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

12. Indemnification.

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

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

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). If the services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

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

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

14. Verification of Employment Eligibility.

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

[Delete the following provision and renumber all further provisions, if not applicable.]

15. Town Material Requirements.

Consultant is hereby made aware of the Town's requirements regarding materials, as set forth in **[Insert the name of the document that contains the Town's standard material requirements]**, which are deemed to be a part of this Agreement.

16. Laws and Venue.

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

17 Termination or Abandonment

a. Town has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, Town shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. Town shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by Town and Consultant of the portion of such task completed but not paid prior to said termination. Town shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

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

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

19. Organization

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

20. Limitation of Agreement.

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

21. Notice

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

TOWN:

Town of Hillsborough
1600 Floribunda Ave. Hillsborough, CA 94010

Attn: *****INSERT NAME & DEPARTMENT*****

CONSULTANT:

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

and shall be effective upon receipt thereof.

22. Third Party Rights

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

23. Equal Opportunity Employment.

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

24. Entire Agreement

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

25. Severability

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

26. Successors and Assigns

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

27. Non-Waiver

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

28. Time of Essence

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

29. Town's Right to Employ Other Consultants

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

30. Prohibited Interests

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

[SIGNATURES ON FOLLOWING PAGE]

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

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

TOWN OF HILLSBOROUGH

INSERT NAME OF CONSULTANT

By: _____
INSERT NAME
INSERT TITLE

By: _____
Its: _____

Printed Name: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT A
Scope of Services

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice Town on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform Town regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract.

EXHIBIT C
Activity Schedule