



**REQUEST FOR QUALIFICATIONS/
REQUEST FOR PROPOSALS
(RFQ/RFP)**

FOR

LED Street Lighting Project

December 3, 2018

Submit Qualifications/Proposals to:

City of Goleta
Public Works Department
Attn: Michael Winnewisser
130 Cremona Drive, Suite. B
Goleta, CA 93117

**Due by 3:00 p.m.
January 10, 2019**

I. Introduction

The City of Goleta Public Works Department (PWD) invites you to provide qualifications and proposals for professional services to assist in the transition from a Southern California Edison (SCE)-owned street lighting system to a City-owned and operated asset. Additional services in the Request for Qualifications/Request for Proposals (RFQ/RFP) include administering the transition from high pressure sodium type luminaires to LED and management of a long-term maintenance program.

The LED Street Lighting Project (Project) is a multi-phased project to provide improved lighting quality for our streets, sidewalks, and crosswalks that also uses less energy and provides a decrease in the utility bills. The three phases include the following:

- Phase 1 – acquiring and transitioning the streetlights from SCE to the City,
- Phase 2 – Converting to LED, and
- Phase 3 – On-going streetlight maintenance.

II. Project Goals

The Project goals include the following:

- Reduce the City's streetlight electricity bill,
- Reduce energy consumption by the City,
- Reduce streetlight maintenance costs,
- Improve lighting conditions in order to improve public safety, and
- Lease revenue opportunities for the City as cell providers expand their networks.

Purpose of the Plan

- Define scope, cost, as well as priority and potential scheduling of the acquisition, conversion to LED, and maintenance of street lights in the City of Goleta.

III. Background

In April 2015, the Energy Network presented a report to the City Council including an overview of the City's energy consumption. Their analysis determined, for 2013, the City expended a significant portion of the City's total annual cost for electricity on street lighting of various types. The Energy Network attributed a significant portion of the energy use and total annual energy cost to Southern California Edison (SCE)-owned unmetered streetlights. The City began reviewing the feasibility of participating in the process SCE and the California Public Utilities Commission (CPUC) developed for cities to purchase SCE-owned streetlights and then convert them from High Pressure Sodium (HPS) lights to Light-Emitting Diode (LED) lights as both an energy and cost savings measure. In July 2015, Goleta completed the application for SCE to provide the acquisition costs and valuation. In 2016, SCE provided the City the sale price valuations for the poles, lights, additional assets, and transfer of ownership costs.

On April 4, 2017, Council authorized executing a Purchase and Sale Agreement with SCE to purchase 1,296 out of 1,576 streetlight poles. The City executed the agreement on November 30, 2017, for four hundred ninety-eight thousand, three hundred twelve dollars (\$498,312). Additional costs included an estimated severance cost of \$41,666

and all taxes arising in connection with the sale and transfer of the facilities. Additionally, Council authorized retrofitting the newly acquired streetlights with LED lights, with the associated agreements and financing options brought back to Council for consideration and approval at a future date.

IV. Scope of Services

Phase 1, Acquisition and Design: This phase will include a comprehensive GIS audit of all existing streetlights. The results of this audit will be reconciled with the audit data provided by SCE. Once an agreement is made and the streetlight inventory is agreed upon, the City will purchase the lights from SCE. This phase also includes the design of the LED conversion plan, the identification of LED fixtures to be implemented, implementation of a street light tagging system, support throughout the acquisition process, and lastly a financial analysis.

Deliverables:

- Weekly audit reports,
- GIS inventory records,
- Reconciliation report,
- Cut-over cost report,
- Replacement and pole labeling maps and recommendations,
- Fixture recommendations, and
- Financial analysis.

Phase 2, LED Conversion: This phase includes the procurement of materials required for LED retrofits, as well as assistance in the notification and outreach to the community, and management of all logistics. The LED fixtures will be installed and tagged in the case of a replacement. Other activities include assistance and coordination in the commissioning of these new LED lights, the rebate and tariff change, and City staff training. Lastly, one final report will be submitted to the City.

Deliverables:

- Product submittals,
- Product messaging and schedules,
- Installation routes, maps, and weekly reports,
- Updated database,
- Commissioning report,
- Training materials,
- Rebate and tariff documentation, and
- Final report.

Phase 3, On-Going Maintenance: The City requires full turn-key administration. The consultant is expected to provide monthly reports on maintenance services, as well

as purchase and store all materials. Emergency response times are expected to be within four hours of the service request.

The Consultant must provide monthly cost estimates for overhead and/or subcontractor maintenance fees for 1,296 poles, with 973 poles 60 years old or older, as part of the sealed cost proposal.

Deliverables:

- Non-emergency repair traffic control,
- Repair request coordination,
- Replacements of failed photocells, lamps, loose wires, and
- Repair reports.

V. Proposal Submittal Requirements

Consultants shall submit three (3) copies of their proposal limited to ten (10) double-sided pages exclusive of cover letter, resumes, and references. The proposal shall be organized in the following format and shall include the information in the below outline:

A. Cover Letter

The cover letter must be signed by an officer of the firm authorized to execute a contract with the City. The primary contact should be identified and a phone number, email, and mailing addresses provided.

B. General Qualifications

Provide a summary of the Consultant's/team's qualifications, general information about the firm(s), location of office(s), years in business and areas of expertise such as traffic engineering, design and public outreach. In addition, provide a brief description of projects that involved a similar scope of services.

C. Key Staff & Subconsultants

Identify key staff and include a description of their abilities, qualifications and experience. Attach resumes of key staff that will be assigned to this project. Include a proposed project management structure, organizational chart, and availability to work on this project.

Identify any portion of the scope of work that would be subcontracted. Include firm qualifications (brief) and key personnel, telephone number, email address, and contact person for all subcontractors. The City reserves the right to approve or reject all consultants, internal staff performing consulting services, or subconsultants proposed by the Consultant.

D. Project Workplan – outlined per each phase

Consultant(s)/Team shall describe understanding of the project, detailed work approach and methodology by phase. Consultant/team shall expand on the scope of work if appropriate to accomplish the overall objective of the project and provide suggestions which might enhance the results or usefulness of the study. Include assumptions about the number of meetings needed with City staff and other project stakeholders to complete the Scope of Work. Consultant shall provide an example of

a similar study prepared by the firm or proposed team. Consultant shall also include a schedule of work, including benchmarks and milestones.

E. References

Consultant shall provide a list of references for the firm and any subconsultants, including the names, addresses, email addresses, and telephone numbers of recent clients, preferably other public agencies for which Consultant has done similar work. Include a list of specific projects associated with each reference, date work was performed, cost and key personnel involved.

F. Budget

The sealed cost proposal shall include all labor costs, overhead costs, subconsultant costs, and an itemized list for direct expenses by each phase. Costs must be shown in a matrix format detailed by phase and associated tasks along with associated personnel hours per phase and task that includes the hourly labor rates. **The cost proposal shall be submitted in a separate sealed envelope.**

H. Insurance

Consultant shall submit a copy of their existing commercial liability insurance detailing their current level of coverage. Be advised that the selected Consultant shall be required to provide the following insurance coverage prior to the City issuing a Notice to Proceed:

Commercial general liability at least as broad as
ISO CG 0001 (per occurrence) 5,000,000

(General aggregate) 5,000,000

Commercial auto liability at least as broad as ISO CA 0001 (per accident)
4,000,000

Errors and omissions liability (per claim and aggregate) 1,000,000

Workers' compensation Statutory

VI. Consultant Selection Process

The basic elements of the Consultant selection process are as follows:

A. Evaluation of Submittals

The Proposals will be received and evaluated based on adequacy of meeting initial criteria including showing adequate competence and more than a satisfactory performance of the services required. Then, the proposals will be evaluated and ranked based on various qualifications, including but not necessarily limited to:

- Key staff's knowledge and experience,
- Availability of key staff personnel and resources,
- Experience and demonstrated competence on similar projects,
- Understanding of project scope,
- Understanding of the City of Goleta and region,
- Schedule, and

- References.

The City may elect to choose the three to five top ranked firms/teams for an interview with City staff. The City will notify all Consultants that submit Proposals of the evaluation results.

VII. General Information

A. Agreement

The Consultant/Team shall enter into agreement with the City using the City of Goleta Standard Agreement used by City for Professional Services (Attachment 2).

B. Proposal Submission

Consultants shall submit three (3) copies of their proposal limited to ten (10) double-sided pages exclusive of cover letter, resumes, and references, (1) copy should be an unbound reproducible copy. Proposals shall be received no later than **3:00 p.m. on Thursday, January 10, 2019**, at the following address. Please note that late submittals will be rejected and returned.

City of Goleta
Public Works Department
Attn: Michael Winnewisser
130 Cremona Drive, Ste. B
Goleta, CA 93117

C. Proposed Project Schedule

The following proposed schedule is subject to reasonable change:

Schedule	Date
RFP Issued	November 28, 2018
SCE Provides Audit Results	December 12, 2018
Deadline for Proposal Submission	January 10, 2019
Council Approval of Consultant Agreement	February 5, 2019
Audit Commencement	February 6, 2019
Audit Completion	February 28, 2019
Data Reconciliation	March 1, 2019
Purchase of Streetlights from SCE	March 8, 2019
LED Fixture Design and Testing Begins	March 8, 2019
Council Approval of LED Fixture	TBD
LED Installation	TBD
Maintenance	TBD

D. Qualifications/Proposal Property

All Statements of Qualifications/Proposals become the property of the City upon submission.

E. Non-Commitment of the City

This RFQ/RFP does not commit the City to select a Consultant, to pay any costs incurred in the preparation of a proposal for this request, or to produce or contract for services. The City reserves the right to accept or reject any or all proposals

received as a result of this request, or to modify or cancel in part or in its entirety the RFP if the City determines it is in the best interest of the City to do so.

F. Inquires

All inquiries concerning this RFQ/RFP shall be made in writing and directed to: Michael Winnewisser, Assistant Engineer, who can be reached via email at mwinnewisser@cityofgoleta.org. Response to questions will be in writing and transmitted to all consultants that showed interest, or posted on the City's web site.

G. Notification and Debriefing of Unsuccessful Proposers

City will notify all of the proposers of the selection panel's recommendation. Consultants desiring a debriefing will be allowed to make an appointment with the City. Debriefings will not be scheduled until the City Council has acted on the recommendations of staff.

Note: The City reserves the right to amend the RFQ/RFP by Addendum.

ATTACHMENT 1

SAMPLE CONSULTANT AGREEMENT

Attachment 2 – Sample Agreement

Project Name:

AGREEMENT FOR PROFESSIONAL DESIGN SERVICES BETWEEN THE CITY OF GOLETA AND

This AGREEMENT FOR PROFESSIONAL DESIGN SERVICES (herein referred to as "AGREEMENT") is made and entered into this _____ day of _____, 20____, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and, (Insert Legal Business Entity) (herein referred to as "CONSULTANT").

WHEREAS, the CITY does not have the personnel able and/or available to perform the services required under this AGREEMENT, and therefore, the CITY desires to contract for professional services to accomplish this work; and

WHEREAS, the CITY procured these services in compliances with Goleta Municipal Code Section (Insert applicable Municipal Code Section) by (Insert selection process - open bid, short list, etc.).

WHEREAS, the City Council, on this _____ day of _____, 20____, approved this AGREEMENT and authorized the City Manager to execute the AGREEMENT.

CITY and CONSULTANT agree as follows:

1. **RETENTION AS CONSULTANT**

CITY hereby retains CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the services described in Section 2. CONSULTANT warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. **DESCRIPTION OF SERVICES**

The services to be performed by CONSULTANT are as follows:

Professional (Insert services to be provided) Services in conjunction with (Insert City project name) Services shall generally include (Insert services to be provided) as more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein.

CONSULTANT shall deliver to CITY the deliverables defined in Exhibit "A." <or> as follows: (If brief, list scope of work here).

Attachment 2 – Sample Agreement

3. COMPENSATION AND PAYMENT

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$(Insert agreement amount) (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until (Insert agreement expiration date), after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

(b) **Payment.** CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager, as described in Section 5. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

4. EXTRA SERVICES

CITY shall pay CONSULTANT for those CITY authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to writing in advance of the incurrence of extra services by CONSULTANT. Unless CITY and CONSULTANT have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. The applicable hourly rates for extra services shall be at the hourly rates set forth in the compensation exhibit. Any compensation for extra services shall be part of the total compensation and shall not increase the not to exceed amount identified in Section 3.

5. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is (Insert **Project Manager name**) Project Manager shall have the authority to act on behalf of the CITY in administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

Attachment 2 – Sample Agreement

6. TERM, PROGRESS AND COMPLETION

The term of this AGREEMENT is from the date first written above to (Insert **agreement expiration date**), unless term of this AGREEMENT is extended, or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed within _____ calendar days following the notice to proceed <or> according to the following schedule: _____. <or> According to the schedule for delivery of services attached as Exhibit "C" and incorporated herein.

7. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports and other documentation (other than CONSULTANT's drafts, notes and internal memorandum), including duplication of same prepared by CONSULTANT in the performance of these services, are the property of CITY. CITY shall be entitled to immediate possession of the same upon completion of the work under this AGREEMENT, or at any earlier or later time when requested by CITY. CITY agrees to hold CONSULTANT harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications for purposes other than those described in this AGREEMENT, unless written authorization of CONSULTANT is first obtained.

8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

This AGREEMENT is for professional services which are personal to CITY. (Insert Consultant's Project Manager) is deemed to be specially experienced and is a key member of CONSULTANT's firm, and shall be directly involved in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate this AGREEMENT. This AGREEMENT may not be assigned or subcontracted without the City Manager's prior written consent.

SELECT APPLICABLE LANGUAGE FOR SECTION 9

9. HOLD HARMLESS AND INDEMNITY

LANGUAGE FOR PROFESSIONAL SERVICES (A-C):

(a) Hold Harmless for CONSULTANT's Damages. CONSULTANT holds CITY, its elected officials, officers, agents, and employees, harmless from all of CONSULTANT's claims, demands, lawsuits, judgments, damages, losses, injuries or

Attachment 2 – Sample Agreement

liability to CONSULTANT, to CONSULTANT's employees, to CONSULTANT's contractors or subcontractors, or to the owners of CONSULTANT's firm, which damages, losses, injuries or liability occur during the work required under this AGREEMENT, or occur while CONSULTANT is on CITY property, or which are connected, directly or indirectly, with CONSULTANT's performance of any activity or work required under this AGREEMENT.

(b) Defense and Indemnity of Third Party Claims/Liability. CONSULTANT shall investigate, defend, and indemnify CITY, its elected officials, officers, agents, and employees, from any claims, lawsuits, demands, judgments, and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, or professional errors and omissions arising out of, directly or indirectly, an error, negligence, or omission of CONSULTANT or any of CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, or the willful misconduct of CONSULTANT or any of CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, in performing the services described in, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions concerning any activity, product or work required under this AGREEMENT, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related thereto.

(c) No Waiver. CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

LANGUAGE FOR PROFESSIONAL DESIGN SERVICES (A-C):

(a) Indemnification and Defense for Professional Service. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless the CITY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT's duty to defend shall consist of reimbursement of defense costs incurred by CITY in direct proportion to the CONSULTANT's proportionate percentage of fault. CONSULTANT's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the CONSULTANT's percentage of fault, the parties agree to mediation with a third party neutral to determine the CONSULTANT's proportionate percentage of fault for purposes of

Attachment 2 – Sample Agreement

determining the amount of indemnity and defense cost reimbursement owed to the CITY.

(b) For All Other Liabilities. Notwithstanding the foregoing and without diminishing any rights of CITY, for any liability, claim, demand, allegation against CITY arising out of, related to, or pertaining to any act or omission of CONSULTANT, but which is not a design professional service, CONSULTANT shall defend, indemnify, and hold harmless CITY, its officials, employees, and agents (“Indemnified Parties”) from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of the CITY, except for the sole or active negligence of, or willful misconduct of the CITY.

(c) No Waiver. CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

10. INSURANCE

CONSULTANT shall, at CONSULTANT's sole cost and expense, provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating of A- or better, Class VII or better, or as otherwise approved by CITY.

Insurance shall include the following (or broader) coverage:

- a) Insurance Services Office Commercial Liability coverage “occurrence” form CG 00 01 or its exact equivalent with an edition date prior to 2004 and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- b) Insurance Services Office form number CA 00 01 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider’s commercial general liability policy.
- c) Workers’ Compensation insurance complying with California worker’s compensation laws, including statutory limits for workers’ compensation and an Employer’s Liability limit of \$1,000,000 per accident or disease.

Attachment 2 – Sample Agreement

- d) Professional liability insurance that covers the services to be performed in connection with this agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate.

Liability insurance policies required to be provided by CONSULTANT hereunder shall contain or be endorsed to contain the following provisions:

- a) CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10, with an edition date prior to 2004, or its equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37, or its equivalent.
- b) General and automobile liability insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage will not be limited to CITY's vicarious liability.
- c) Professional liability insurance policies inception date, continuity date, or retroactive date must be before the effective date of this agreement. CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.
- d) Liability coverage shall be primary and non-contributing with any insurance maintained by CITY.
- e) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.
- f) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.
- g) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.
- h) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by

Attachment 2 – Sample Agreement

CONSULTANT hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.

- i) CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

11. RELATIONSHIP OF CONSULTANT TO CITY

The relationship of the CONSULTANT to CITY shall be that of an independent contractor and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

12. CORRECTIONS

In addition to the above indemnification obligations, CONSULTANT shall correct, at its expense, all errors in the work that may be disclosed during CITY's review of CONSULTANT's report or plans. Should CONSULTANT fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONSULTANT or withheld from any funds due to CONSULTANT hereunder.

13. TERMINATION BY CITY

CITY, by notifying CONSULTANT in writing, may upon 10 calendar days notice, terminate without cause any portion or all of the services agreed to be performed under this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, CONSULTANT shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to CONSULTANT within 30 days following submission of a final statement by CONSULTANT unless termination is for cause. In such event, CONSULTANT shall be compensated only to the extent required by law.

Attachment 2 – Sample Agreement

14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by CONSULTANT of the final payment made under this AGREEMENT shall operate as and be a release of CITY from all claims and liabilities for compensation to CONSULTANT for anything done, furnished, or relating to CONSULTANT'S work or services. Acceptance of payment shall be any negotiation of CITY's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by CITY shall not constitute, nor be deemed, a release of the responsibility and liability of CONSULTANT, its employees, subcontractors, agents and CONSULTANTs for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by CITY for any defect or error in the work prepared by CONSULTANT, its employees, subcontractors, agents and consultants.

15. AUDIT OF RECORDS

At any time during normal business hours and as often as it may deem necessary, CONSULTANT shall make available to a representative of CITY for examination of all its records with respect to all matters covered by this AGREEMENT and will permit CITY to audit, examine and/or reproduce such records. CONSULTANT will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this AGREEMENT.

16. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this AGREEMENT by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this AGREEMENT, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

17. CONFLICT OF INTEREST

CONSULTANT is unaware of any CITY employee or official that has a financial interest in CONSULTANT'S business. During the term of this AGREEMENT and/or as a result of being awarded this AGREEMENT, CONSULTANT shall not offer, encourage or accept any financial interest in CONSULTANT'S business by any CITY employee or official.

Attachment 2 – Sample Agreement

18. **CONSTRUCTION OF LANGUAGE OF AGREEMENT**

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

19. **MITIGATION OF DAMAGES**

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

20. **GOVERNING LAW**

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

21. **NONDISCRIMINATION**

CONSULTANT shall not discriminate on the basis of race, color, gender, gender identity/expression, pregnancy, sexual orientation, disability, marital status, or any other characteristic protected under applicable federal or state law.

22. **TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

23. **NON-APPROPRIATION OF FUNDS**

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.

24. **MODIFICATION OF AGREEMENT**

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and CONSULTANT.

Attachment 2 – Sample Agreement

25. USE OF THE TERM “CITY”

Reference to “CITY” in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

26. PERMITS AND LICENSES

CONSULTANT, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this AGREEMENT.

27. CAPTIONS

The captions or headings in this AGREEMENT are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the AGREEMENT.

28. AUTHORIZATION

Each party has expressly authorized the execution of this AGREEMENT on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this AGREEMENT.

29. ENTIRE AGREEMENT BETWEEN PARTIES

Except for CONSULTANT'S proposals and submitted representations for obtaining this AGREEMENT, this AGREEMENT supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services.

30. PARTIAL INVALIDITY

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

31. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

Attachment 2 – Sample Agreement

TO CITY: Attention: Michelle Greene, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

TO CONSULTANT: (Insert Consultant’s Name & Contact information)

32. COUNTERPARTS AND ELECTRONIC/FACSIMILE SIGNATURES

This Agreement may be executed in several counterparts, which may be facsimile or electronic copies. Each counterpart is fully effective as an original, and together constitutes one and the same instrument.

In concurrence and witness whereof, this AGREEMENT has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

CONSULTANT

Michelle Greene
City Manager

By:
Title:

ATTEST

Deborah Lopez
City Clerk

By:
Title:

APPROVED AS TO FORM

Winnie Cai
Assistant City Attorney

Attachment 2 – Sample Agreement

**Exhibit A
Scope of Services**

Attachment 2 – Sample Agreement

**Exhibit B
Schedule of Fees**