



City of Alameda, California

Request for Proposals

PROJECT MANAGER / OWNER'S REPRESENTATIVE For Design and Construction of the Alameda City Aquatic Center

Important Dates

| | |
|---------------------------------|-----------------------------|
| RFP Issued | March 16, 2023 |
| Pre-proposal Conference | March 28, 2023 |
| Requests for Clarification | April 5, 2023 |
| Proposals Due | April 13, 2023 by 5:00 p.m. |
| Interviews with Top-Rated Firms | Week of April 24, 2023 |
| City Council Contract Award | May 23, 2023 |

The City reserves the right to revise this schedule at any time and for any reason.

Contact:

Amy Wooldridge, Assistant City Manager
2263 Santa Clara Avenue, Alameda CA 94501
Email: awooldridge@alamedaca.gov

PURPOSE OF THE REQUEST

The City of Alameda (City) intends to retain a qualified and committed professional firm, individual, team or combination thereof, to provide Project Management / Owner's Representative services to the City for the management, coordination, facilitation, oversight and monitoring of all phases of the Alameda City Aquatic Center Project, including the program and pre-design, design, design/build coordination and project close out (Project). Firms submitting a proposal to this Request for Proposal (RFP) are required to state their understanding of the Project and demonstrate experience with the full range of project phases for similar aquatic facilities, including managing projects for the public sector, specifically managing design-build projects for the public sector.

BACKGROUND

The City does not own or operate a city-owned aquatic facility. For many years, the City aquatic programs have been hosted at the two high school swim centers through a Joint Use Agreement with the Alameda Unified School District (AUSD). In 2019, the Alameda County Health Department notified AUSD and the City that one of those swim centers would be permanently closed unless a major renovation was undertaken. This led to a joint AUSD/City effort and public discussion on a replacement aquatic facility. The result was to build a City Aquatic Center located at Alameda High School. The City retained ELS Architecture + Design and in early 2020, the City held community workshops and developed a conceptual design. Due to the pandemic, the project was not funded and in June 2022, AUSD passed a bond that included renovation of that high school swim center which is now occurring separately from the City Aquatic Center. However, there remained a significant deficit of available pool space to accommodate all community aquatic programs. In September 2022, the City Council unanimously approved the concept of a City Aquatic Center located on the western side of the Jean Sweeney Open Space Park (Sweeney Park) near Constitution Way and Atlantic Avenue. In March 2023, City Council approved funding a City Aquatic Center in the amount of \$30 million, funded 50% from the General Fund Unassigned Reserves and 50% financed by a Certificate of Participation.

PROJECT DESCRIPTION

The Alameda City Aquatic Center will be constructed on the western side of Sweeney Park, located at 1925 Sherman Street and bounded by Sherman Street, Atlantic Avenue and Constitution Way (Figure 1). The Council approved the Conceptual Design (Figure 2) is a starting point for the current project design and significant further public input and redesign will occur. The current design includes a 30-meter competitive pool, a 4,430 square foot zero-depth entry recreational pool with water activity features and a water slide, and a supporting facility with locker rooms, office, mechanical rooms and a multi-purpose room. The project also includes a parking lot and associated amenities.

Building the Aquatic Center at Sweeney Park also provides opportunity to complete build-out of the entire park (11 acres of 25 acres are completed). The planned community garden and Alameda Free Library Tool Lending Library are proposed to be completed as part of the Aquatic Center project construction. This approach also presents economies

of scale to complete the site grading and infrastructure installation for the remainder of the park while doing that work for the Aquatic Center project. These park components will be included in the design process, however, inclusion of these park components in the construction will be determined upon final cost estimates. Funding and construction of the Aquatic Center project is the priority for the \$30 million project budget.

The Sweeney Park site is a former rail yard and significant work has been done on soil remediation and identifying groundwater contamination. Firms submitting a proposal should expect to coordinate closely with SLR International, the City's consultant for the Park soil and groundwater contamination issues. A Soil Management Plan and Operation and Maintenance Plan is under final review by the Department of Toxic Substance Control. The large majority of soil contamination was addressed in previous construction projects and is contained and capped under the Cross Alameda Trail, which bisects the entire park and is immediately south of the Project area. These factors, combined with groundwater and sea level rise, will be considered as part of design.

This Project will include public input to update the design and address a key community question of whether the competitive pool should be 50-meter or 30-meter. Public input will also include the park re-design, especially regarding the community garden. City staff will be responsible for outreach and engagement of the public process. The proposing firm will be responsible for ensuring public feedback is appropriately incorporated into the design.

The Project will be designed and constructed through a Design-Build model. This is a new construction process for the City and the selected Project Management firm will be expected to provide expertise in navigating the process, such as creating the Request for Proposal for a Design-Build team and proactively identifying and addressing opportunities and challenges throughout the Design-Build process.



Figure 1 - Maximum potential area for City Aquatic Center at Sweeney Park

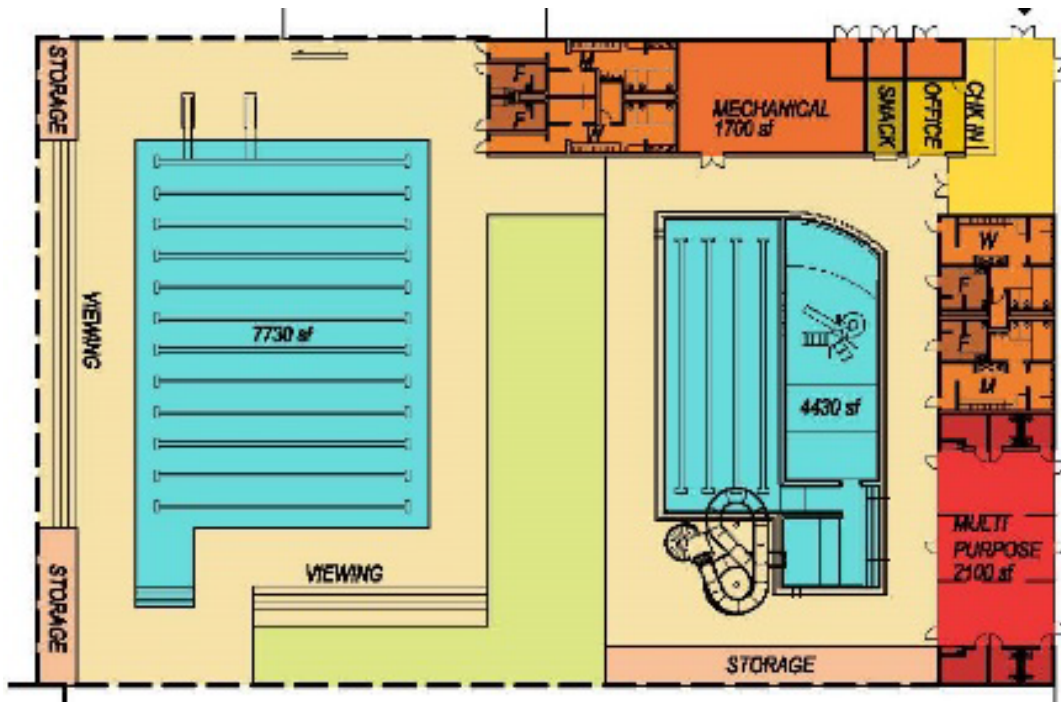


Figure 2 - City Aquatic Center Conceptual Design Approved in 2022

TENTATIVE SCHEDULE FOR SELECTION PROCESS

Responses to this Request for Proposal (RFP) are due and must be received via email in pdf format to awooldridge@alamedaca.gov. The following schedule has been established for this Request for Proposal (RFP):

| | |
|---------------------------------|-----------------------------|
| RFP Issued | March 20, 2023 |
| Pre-proposal Conference | March 28, 2023 |
| Requests for Clarification | April 5, 2023 |
| Proposals Due | April 13, 2023 by 5:00 p.m. |
| Interviews with Top-Rated Firms | Week of April 24, 2023 |
| City Council Contract Award | May 23, 2023 |

The City reserves the right to revise this schedule at any time and for any reason.

Project Manager

This project will be administered by the City of Alameda, City Manager's Office. All questions or correspondence must be addressed to:

Amy Wooldridge, Assistant City Manager
 Email: awooldridge@alamedaca.gov

SCOPE OF SERVICES

The City is seeking to retain the services of a Project Manager / Owner's Representative to guide and coordinate this Project through Design-Build process. One of the first duties will be to develop a Request for Proposals for Design-Build, assist the City in soliciting Design-Build Team proposals and negotiating the final scope of work. Once the Design-Build team is hired, the Project Manager will assist in the oversight of the design process and ongoing value engineering to ensure the project remains within budget.

The Project Manager will be expected to coordinate with various City staff and departments including, but not limited to, Recreation and Parks, Public Works, Planning and Building, City Manager's Office and Finance. It is anticipated that the Project Manager will be closely involved in reviewing design work product, ensuring public input is incorporated, coordinating internal departmental reviews, assisting with value engineering and design constructability, and generally ensuring the design meets the City and community needs.

The Project Manager will also coordinate with City staff to identify construction management and inspection consultant(s) for oversight of the daily construction. This includes creating a Request for Proposals, assisting with selection of a qualified firm and negotiation of scope of work.

During construction, the Project Manager is expected to serve as the Owner's Representative with respect to Project oversight, coordination with the construction management and inspection consultant(s), assisting with resolving issues, and keeping City staff and the public informed on progress. Upon completion of construction, the Project Manager will participate in the Project closeout, including but not limited to, final walk through and review and completion of the punch list.

Communication with City staff and the public are critical for this Project. The Project Manager will be expected to develop clear communication procedures with staff and other Project team members. The Project Manager will also assist in communicating public input to the design team and help maintain the balance between the design-build team, community input and budget constraints, particularly with respect to the Aquatic Center and park component design and construction. It is critical for the selected Project Manager to possess and exhibit proven, well-developed communication skills and tools as well as the ability to assist with navigating difficult decisions and addressing competing interests.

The Project Manager/Owner's Representative will provide comprehensive Project management services including, but not limited to, those listed below. If the responding individual/firm believes that the Project can be enhanced in any way by the addition of tasks or the deletion of any specified tasks, such information should be included in the proposal.

1. General and Ongoing Tasks

Act as the City's representative during all phases of the Project including but not limited to the Program and Pre-Design Phase, Design Phase, Construction Phase and Project Closeout Phase of the Alameda City Aquatic Center Project.

- Define project expectations (reporting, project completion schedule, invoicing, frequency of status meetings);
- Develop a project management plan, clearly defining roles, key tasks, project schedule and project management tools to be used. Updated project schedule shall be provided at regular intervals;
- Regularly meet with staff, at least once per month or more frequently as necessary. These meetings may be virtual.
- Assist with developing and maintaining a realistic Project budget that includes all construction and non-construction costs including permit fees, design/build costs, inspection services, park components, equipment costs, furniture and fixtures and project contingency. Update the Project budget regularly, and deliver Project status reports, no less than monthly; and
- Submit invoices to the City on a monthly basis. Each invoice will be itemized and show task performed, number of hours worked per person/consultant, and rate per hour for each person/consultant. Any outside reimbursable expenses claimed must be supported with copies of vendor receipts.

2. Program and Pre-Design Phase

- Assist the City in clearly defining the scope of the Project (refinement of the conceptual plan that has already been developed);
- Assist in soliciting (assist in developing a Request for Proposals) and retaining a qualified design/build team for the Project. This will include participating in a pre-proposal meeting with interested teams, review of all proposals received, coordinating the circulation of the proposals to a review team and collection of all ranking information, assist in developing a short list of design/build for interviews, schedule and participate in the interviews, coordinate the ranking results from the interview panel, and assist in negotiating with the selected team.
- Develop and maintain a master schedule for design/build and report deviations to the City and resolve schedule issues; and
- Establish Project controls and procedures.

3. Design/Build Phase

- Manage work of the design/build team;
- Collaboratively work with City staff to review design documents for completeness and for conformance with the City's objectives;
- Work with the design/build team to ensure that the design stays within budget, that the process stays on schedule, and to assist in ensuring constructability of the design;
- Work with City staff and the design/build team to make suggestions or identify changes that could improve the design, constructability, or reduce costs;
- Ensure that relevant comments and concerns from the public input process are appropriately addressed by the design team;
- Assist with value engineering studies and, if necessary, coordinate getting an independent estimate to ensure the Project will stay within the budget;
- Coordinate with all relevant regulatory agencies and assist with obtaining all required permits, building permits, and all required approvals;
- Coordinate with SLR International on any soil and/or groundwater contamination issues;
- Review/recommend payment requests from the design/build team. If necessary, assist in negotiating any changes to the scope of work and fee as the Project progresses; and
- Work with City staff to perform quality control of all design/build team deliverables (including those of subconsultants), such as plans, drawings and specifications, to ensure quality, completeness, and appropriateness. Note that the Project Manager will be expected to collect all comments from the various City Departments in the review of the comprehensive construction documents and to transmit them to the design team.

4. Construction Phase

Work with the City's selected Construction Manager and inspection team to oversee the Project during construction. Work in this phase of the Project may include, but not be limited to:

- Work in conjunction with the Construction Manager to monitor the construction schedule and budget and bring any issues to the Assistant City Manager or other City Departments involved;
- Attend Project meetings as necessary;
- Prepare monthly reports for updates and coordinate regular communication to City staff;

- Work in conjunction with the Construction Manager to monitor work completed verses budgets and note any issues; and
- Assist the Construction Manager and City staff with identification of appropriate changes in scope, as needed and assist with validating impact of changes.

5. Project Closeout

- Along with City staff, review any punch lists provided by the Construction Manager to ensure that all items are complete;
- Review the final pay documents with the Construction Manager and City staff and provide final budgetary information to the City; and
- Work with the City as needed to coordinate move in and startup operations of the facility.

PROPOSAL SUBMISSION INSTRUCTIONS

All requests for clarification regarding this RFP should be sent to Amy Wooldridge, Assistant City Manager, awooldridge@alamedaca.gov. Requests for clarification will only be accepted in writing via email and must be received by April 5, 2023 at 12:00 p.m. Responses will be provided via email to all consultants that attend the mandatory pre-conference and sent no later than April 10, 2023 at 5:00 p.m.

The City reserves the right to revise the RFP prior to the indicated due date. City may consider extending the due date for the RFP for any reason, including significant revisions to the "Scope of Services." Material changes, if any, to the scope of services or proposal procedures will only be transmitted by written addendum and posted to the City web site. Addendums and answers to submitted questions will be available on the City website at <https://www.alamedaca.gov/CITYWIDE-PROJECTS>

Mandatory pre-proposal conference on Tuesday, March 28, 2023 at 9:30 a.m. will be held at the future Aquatic Center site. Meet near the corner of Constitution Way and Atlantic Avenue. Parking is available at the eastern end of the park on Sherman Street or across the street in the public parking lot for Starbucks and Walgreens.

All proposals must meet the content requirements and format guidelines listed below in the "Proposal Content Guidelines" section. The proposal shall be submitted electronically in pdf format and emailed to Assistant City Manager Amy Wooldridge at awooldridge@alamedaca.gov. **Due by Thursday, April 13, 2023 at 5:00 p.m.**

Proposal Submittal Content Guidelines

Proposals shall be concise, well organized and include the following:

- A letter of introduction, no more than two (2) pages and signed by an official authorized to enter into contracts for the firm. It should briefly describe an

understanding of the requested scope of work and qualifications to undertake this work such as experience in providing similar services.

- Additional material such as brochures and photos, promotional material, references, and supplemental graphics, applicable to the content of the proposal.
- A detailed cost proposal. Include a detailed fee structure, including the rate for all staff involved in the renovation and construction project. All direct costs, handling charges and profit/overhead shall be included in the hourly billing rate. Any proposed reimbursable expenses should also be listed.

Company Profile

Describe the firm and provide a complete and concise description of the firm's ability to meet the RFP requirements. This should also include the firm's primary address, contact information, a description of the organization (corporation, partnership, etc.) and disclose any conflict of interest.

Project Team

- a) Prime Consultant(s): Name of entity submitting the proposal, its mailing address, telephone and facsimile number, the name of contact individual as well as the signature of principal/owner/officer in case of joint venture or other.
- b) Briefly describe the project responsibility of each team member.

Project Personnel

Description of organization, management, and team members. Provide a description of team/consultant organization and briefly describe the project responsibility of each team member. The organization description should clearly identify the project manager and the day-to-day contact person for the project. Contract terms will not permit substitution of lead personnel without prior approval by the City. A description of qualifications of the professional personnel to be employed with a summary of similar works performed and a resume for each professional. List sub-consultants with individual contact information and areas of expertise.

Related Project Experience and References

Describe experience in providing Project Management / Owner's Representative services for projects of the size and scope similar to this project for other municipalities/public agencies within the last ten years. Experience must include Project Management of at least two (2) public aquatic centers. List must include project name, location and description as well as project costs and consultant's work scope and fee. Also describe how the consultant addressed the interests of the client and other stakeholders. Include references for each project with client information, including contact's name, email, and telephone number with a minimum of three client references.

Contract

Comments and exceptions, if any, to the City's standard consultant agreement and insurance requirements should be noted. It is understood that prospective Consultants have reviewed the agreement (Exhibit 2) and will take exception only to those items identified in the proposals. If there are any concerns or proposed exceptions requested to the standard consultant agreement, these issues are to be discussed at the time of the interview.

SELECTION PROCESS

The selection process shall proceed as follows:

1. Based upon the submitted written responses to this RFP, the City selection team shall select up to three Consultant teams to interview.
2. At the interview, the selection team will expect the Consultant team to present its team members and their qualifications. The project manager must be present for the interview/presentation. The presentation will be followed by a question and answer period by the selection team.

The final selection will be based upon the following criteria:

- The team's past experience with similar projects. (30%)
- The team's understanding of the scope of work and demonstrated ability to complete the work successfully. (25%)
- The quality and experience of the project manager and key staff persons who will be working on the project on a daily basis and percentage of time/commitment of key team leaders to the project. (15%)
- The team's project delivery approach with innovative techniques. (15%)
- The firm's demonstrated technical ability. (10%)
- Alameda-based firm – Local Preference (5%)

The City will not discriminate against any interested firm or individual on the grounds of race, creed, color, sex, age, disability, or national origin in the contract award. The City reserves the right to reject any and all proposals at its discretion, thus not awarding the contract to any firm. The City reserves the right to modify this RFP or the criteria for selection in any manner, to cancel this RFP, or to reject any one or more or all submittals.

The City reserves the right to invite the top candidate(s) for an oral interview, or to request additional clarifying information. The firm with the highest rating may be invited to negotiate a final agreement. If an agreement is not reached, negotiations may be terminated and commenced with the next most qualified firm. The City Council will award the contract.

Limitations

All reports and pertinent data or materials shall be the sole property of the City, and may not be used or reproduced in any form without the explicit written permission of the City.

The City reserves the right to extend the time allotted for the proposal, to verbally examine the bidder in person, request copies of previous work prepared by the Consultant, and to request a best and final offer, should the City deem that it is in its best interests to do so.

This RFP does not commit the City to award a contract, or to pay any costs incurred in the preparation of the proposal. The City reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified Consultant, or to cancel this request in part or in its entirety. The City may require the selected Consultant to participate in negotiations and to submit such technical, price, or other revisions of their proposals as may result from negotiations.

Oral and Written Explanations

The City shall not be bound by oral explanations or instructions given at any time during the process or after the award. Oral explanations given during the bid walk, review process and after award become binding when confirmed in writing by an authorized City official. Written responses to question(s) asked by one proposer will be provided to all proposers who received Requests for Proposals.

City Responsibilities

This project shall be administered by the City of Alameda Recreation and Parks Department. All questions, correspondence and information requests should be addressed to:

Amy Wooldridge, Assistant City Manager
2226 Santa Clara Avenue, Alameda CA 94501
Email: awooldridge@alamedaca.gov

Protest Procedures

Any protest challenging the City's selection or the selection process must be submitted within five business days following the City's issuance of the Notice of Selection. The protest must be submitted in writing via email to awooldridge@alamedaca.gov, and must clearly specify the basis for the protest. The protest will be reviewed by the Assistant City Manager in consultation with the City Attorney, and their determination on the protest is final. No public hearing will be held on the protest. Time being of the essence, the City reserves the right to proceed with award of the contract and commencement of the Project notwithstanding any pending protest or legal challenge.

CONDITIONS OF REQUEST

General Conditions

The City reserves the right to cancel or reject all or a portion or portions of the request for proposals without notice. Further, the City makes no representations that any agreement

will be awarded to any organization submitting a proposal. The City reserves the right to reject any and all proposals submitted in response to this request or any addenda thereto.

The City also reserves the right to reject any subconsultant or individual working on a consultant team and to replace the sub-consultant or individual with a mutually acceptable replacement.

Any changes to the proposal requirements will be made by written addendum.

Liability of Costs and Responsibility

The City shall not be liable for any costs incurred in response to this request for proposals. All costs shall be borne by the person or organization responding to the request. The person or organization responding to the request shall hold the City harmless from any and all liability, claim or expense whatsoever incurred by or on behalf of that person or organization. All submitted material becomes the property of the City of Alameda, and may be disclosed to the public in response to requests under the California Public Records Act.

The selected lead consultant will be required to assume responsibility for all services offered in the proposal whether or not they possess them within their organization. The selected lead consultant will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

Validity

The proposer agrees to be bound by its proposal for a period of ninety (90) days commencing April 13, 2023, during which time the City may request clarification or correction of the proposal for the purpose of evaluation. Amendments or clarifications shall not affect the remainder of the proposal, but only that portion so amended or clarified.

Standard Consultant Agreement

A sample service provider agreement has been provided as Exhibit 1 for the proposer's review and comment. If a proposer wishes to take exception to any of the terms and conditions contained in the service provider agreement, these should be identified specifically; otherwise it will be assumed that the proposer is willing to enter into the agreement as it is written. Failure to identify contractual issues of dispute can later be the basis for the City disqualifying a proposer. Any exceptions to terms, conditions, or other requirements must be clearly stated. Otherwise, the City will consider that all items offered are in strict compliance with the RFP, and the successful proposer will be responsible for compliance. The City will consider such exceptions as part of the evaluation process which may constitute grounds for rejection of the proposal. The service provider agreement will not be executed by the City without first being signed by the proposer.

Permits and Licenses

Proposer, and all of proposer's sub-consultants, at its and/or their sole expense, shall obtain and maintain during the term of any agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License which will be required in connection with the performance of services hereunder.

Proposer's Representative

The person signing the proposal must be a legal representative of the firm authorized to bind the firm to an agreement in the event of the award.

Deliverables

One unbound copy of each final document and a computer disk containing all final documents and all information are to be provided. The consultant will develop a system to assemble, organize, store and utilize data in an electronic format. At the outset of the agreement, the consultant will submit a description of the software to be used in preparation of the reports and graphics. 15 copies, plus an electronic copy of the drawings will be required to be submitted during the design review process. Approximately six (6) sets of the construction bid documents will be required during the plan check review.

Insurance

General Liability, Automobile, Professional Liability, and Worker's compensation insurance are required in the amount set forth in the attached sample service provider agreement.

EXHIBIT 1

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT ("**Agreement**") is entered into this ___ day of _____, 20__ ("**Effective Date**"), by and between the CITY OF ALAMEDA, a municipal corporation ("the **City**"), and COMPANY, a (California corporation, LLC, LP, GP, sole proprietor/individual), whose address is ADDRESS ("**Provider**"), in reference to the following facts and circumstances:

RECITALS

A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.

B. The City is in need of the following services: _____. City staff issued an RFP/RFQ on DATE and after a submittal period of NUMBER days received NUMBER of timely submitted proposals. Staff reviewed the proposals, interviewed qualified firms and selected the service provider that best meets the City's needs.

C. Provider possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

D. The City and Provider desire to enter into an agreement for _____, upon the terms and conditions herein.

AGREEMENT

NOW, THEREFORE, in consideration of the forgoing, which are incorporated herein by reference, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Provider agree as follows:

1. TERM:

The term of this Agreement shall commence on the ___ day of _____ 20__, and shall terminate on the ___ day of _____ 20__, unless terminated earlier as set forth herein.

The parties may agree to extend the term of this Agreement on a year-by-year basis, for up to xxxx (x) additional years. Any extension shall be documented in a signed amendment. In the event that the parties agree to extend the Agreement, all provisions of the Agreement shall remain unchanged with the exception that the compensation shall be adjusted by the Consumer Price Index for the San Francisco Bay area as reported by the U.S. Department of Labor, Bureau of Labor Statistics for the previous calendar year.

2. SERVICES TO BE PERFORMED:

Provider agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included in Exhibit A as requested. Provider acknowledges that the work plan included in Exhibit A is tentative and does not commit the City to request Provider to perform all tasks included therein.

3. COMPENSATION TO PROVIDER:

a. By the 7th day of each month, Provider shall submit to the City an invoice for the total amount of work done the previous month. Pricing and accounting of charges are to be according to the fee schedule as set forth in as set forth in Exhibit B and incorporated herein by this reference. Extra work must be approved in writing by the City Manager or their designee prior to performance and shall be paid on a Time and Material basis as set forth in Exhibit B.

The total five-year compensation for this Agreement shall not exceed \$XXX,XXX. Use of contingency shall be for items of work outside the original scope and requires prior written authorization by the City. Use of contingency shall be for items of work outside the original scope and requires prior written authorization by the City.

4. TIME IS OF THE ESSENCE:

Provider and the City agree that time is of the essence regarding the performance of this Agreement.

5. STANDARD OF CARE:

Provider agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals or service providers, as applicable, in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City.

6. INDEPENDENT PARTIES:

Provider hereby declares that Provider is engaged as an independent business and Provider agrees to perform the services as an independent contractor. The manner and means of conducting the services and tasks are under the control of Provider except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Provider's services. None of the benefits provided by the City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave, are available from the City to Provider, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any compensation due to Provider. Payments of the above items, if required, are the responsibility of Provider.

7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):

Provider assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Provider shall indemnify, defend, and hold the City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Provider.

8. NON-DISCRIMINATION:

Consistent with the City's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider and its employees, contractors, and agents shall not harass or discriminate against any job applicant, City employee, or any other person on the basis of any kind of any statutorily (federal, state or local) protected class, including but not limited to: race, religious creed, color, national origin, ancestry, disability (both mental and

physical) including HIV and AIDS, medical condition (e.g. cancer), genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, pregnancy, political affiliation, military and veteran status or legitimate union activities. Provider agrees that any violation of this provision shall constitute a material breach of this Agreement.

9. HOLD HARMLESS:

a. To the fullest extent permitted by law, Provider shall indemnify, defend (with counsel acceptable to the City) and hold harmless the City, its City Council, boards, commissions, officials, employees, agents and volunteers (“Indemnitees”) from and against any and all loss, damages, liability, obligations, claims, suits, judgments, costs and expenses whatsoever, including reasonable attorney’s fees and costs of litigation (“Claims”), arising from or in any manner connected to Provider’s performance of its obligations under this Agreement or out of the operations conducted by Provider even if the City is found to have been negligent. If the Claims filed against Indemnitees allege negligence, recklessness or willful misconduct on the part of Provider, Provider shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence, recklessness or willful misconduct is not found on the part of Provider. Provider shall not have any obligations to indemnify Indemnitees if the loss or damage is found to have resulted solely from the negligence or the willful misconduct of the City. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

b. As to Claims for professional liability only, Provider’s obligation to defend Indemnitees (as set forth above) is limited as provided in California Civil Code Section 2782.8.

c. Provider’s obligation to indemnify, defend and hold harmless Indemnitees shall expressly survive the expiration or early termination of this Agreement.

10. INSURANCE:

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City’s Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with Sections 10.b. (1) through (4). The Certificate Holder should be The City of Alameda, 2263 Santa Clara, Ave., Alameda, CA 94501. Such certificates, which do not limit Provider’s indemnification, shall also contain substantially the following statement:

“Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days’ advance written notice to the City of Alameda. Attention: Risk Manager.”

Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company licensed to offer insurance business in the State of California with a current A.M. Best’s rating of no less than A:VII or Standard & Poor’s Rating (if rated) of at least BBB unless otherwise acceptable to the City. Provider shall deliver updated insurance certificates to the City at the address described in Section 17.f. prior to the expiration of the existing insurance certificate for the duration of the term of Agreement. Endorsements naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers as additional insured shall be submitted with the insurance certificates.

b. COVERAGE REQUIREMENTS:

Provider shall maintain insurance coverage and limits at least as broad as:

(1) Workers' Compensation:

Statutory coverage as required by the State of California, as well as a Waiver of Subrogation (Rights of Recovery) endorsement.

(2) Liability:

Commercial general liability coverage in the following minimum limits:

| | |
|------------------|-----------------------------------|
| Bodily Injury: | \$1,000,000 each occurrence |
| | \$2,000,000 aggregate - all other |
| Property Damage: | \$1,000,000 each occurrence |
| | \$2,000,000 aggregate |

If submitted, combined single limit policy with per occurrence limits in the amounts of \$2,000,000 and aggregate limits in the amounts of \$4,000,000 will be considered equivalent to the required minimum limits shown above. Provider shall also submit declarations and policy endorsements pages. Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required. The Additional Insured Endorsement shall include primary and non-contributory coverage at least as broad as the CG 2010.

(3) Automotive:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

| | |
|------------------|-----------------------------|
| Bodily injury: | \$1,000,000 each occurrence |
| Property Damage: | \$1,000,000 each occurrence |

or

| | |
|------------------------|-----------------------------|
| Combined Single Limit: | \$2,000,000 each occurrence |
|------------------------|-----------------------------|

Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required.

(4) Professional Liability:

Professional liability insurance which includes coverage appropriate for the professional acts, errors and omissions of Provider's profession and work hereunder, including, but not limited to, technology professional liability errors and omissions if the services being provided are technology-based, in the following minimum limits:

\$2,000,000 each claim

Technology professional liability errors and omissions shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City in the care, custody, or control of Provider. If not covered under Provider's liability policy, such "property" coverage of the City may be endorsed onto Provider's Cyber Liability Policy as covered property as follows: cyber liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City that will be in the care, custody, or control of Provider.

As to commercial general liability and automobile liability insurance, such insurance will provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought. Such insurance is not additional to or contributing with any other insurance carried by or for the benefit of the City.

c. SUBROGATION WAIVER:

Provider hereby agrees to waive rights of subrogation that any insurer of Provider may acquire from Provider by virtue of the payment of any loss. Provider agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Provider, its employees, agents and subcontractors.

d. FAILURE TO SECURE:

If Provider at any time during the term hereof should fail to secure or maintain the foregoing insurance, the City shall be permitted to obtain such insurance in Provider's name or as an agent of Provider and shall be compensated by Provider for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

e. ADDITIONAL INSUREDS:

The City, its City Council, boards, commissions, officials, employees, agents, and volunteers shall be named as additional insured(s) under all insurance coverages, except workers' compensation and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy. Additional Insured coverage under Provider's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured(s).

f. SUFFICIENCY OF INSURANCE:

The insurance limits required by the City are not represented as being sufficient to protect Provider. Provider is advised to consult Provider's insurance broker to determine adequate coverage for Provider. The coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of the coverage carried by or available to Provider; whichever is greater.

g. **EXCESS OR UMBRELLA LIABILITY:**

If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this Agreement, then said policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this Agreement, including but not limited to, the additional insured, SIR, and primary insurance requirements stated therein. No insurance policies maintained by the indemnified parties or Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until all the primary and excess liability policies carried by or available to the Provider are exhausted.

11. CONFLICT OF INTEREST:

Provider warrants that it is not a conflict of interest for Provider to perform the services required by this Agreement. Provider may be required to fill out a conflict of interest form if the services provided under this Agreement require Provider to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. PROHIBITION AGAINST TRANSFERS:

a. Provider shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Provider shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer. The City Manager or their designee may consent or reject such request in their sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the City under this Agreement may be assigned by Provider to a bank, trust company or other financial institution without prior written consent.

b. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock, membership interest, partnership interest, or the equivalent, which shall result in changing the control of Provider, shall be construed as an assignment of this Agreement. Control means fifty percent or more of the voting power of Provider.

13. APPROVAL OF SUB-PROVIDERS:

a. Only those persons and/or businesses whose names and resumés are attached to this Agreement shall be used in the performance of this Agreement. However, if after the start of this Agreement, Provider wishes to use sub-providers, at no additional costs to the City, then Provider shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the City Manager at least five (5) days in advance. The City Manager may consent or reject such requests in their sole and absolute discretion.

b. Each sub-provider shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by Provider.

c. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement. Provider shall include the following language in their agreement

with any sub-provider: “Sub-providers hired by Provider agree to be bound to Provider and the City in the same manner and to the same extent as Provider is bound to the City.”

d. The requirements in this Section 13 shall not apply to persons who are merely providing materials, supplies, data or information that Provider then analyzes and incorporates into its work product.

14. PERMITS AND LICENSES:

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City business license that may be required in connection with the performance of the services and tasks hereunder.

15. REPORTS:

a. Each and every report, draft, work product, map, record and other document produced, prepared or caused to be prepared by Provider pursuant to or in connection with this Agreement shall be the exclusive property of the City.

b. No report, information or other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior approval of the City Manager or their designee.

c. Provider shall, at such time and in such form as City Manager or their designee may require, furnish reports concerning the status of services and tasks required under this Agreement.

16. RECORDS:

a. Provider shall maintain complete and accurate records with respect to the services, tasks, work, documents and data in sufficient detail to permit an evaluation of Provider's performance under the Agreement, as well as maintain books and records related to sales, costs, expenses, receipts and other such information required by the City that relate to the performance of the services and tasks under this Agreement (collectively the “**Records**”).

b. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to the Records to the representatives of the City or its designees during regular business hours upon reasonable prior notice. The City has the right to examine and audit the Records, and to make copies or transcripts therefrom as necessary, and to allow inspection of all proceedings and activities related to this Agreement. Such Records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained by Provider for a period of three (3) years after receipt of final payment.

c. If supplemental examination or audit of the Records is necessary due to concerns raised by the City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Provider shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

17. NOTICES:

a. All notices shall be in writing and delivered: (i) by hand; or (ii) sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service; or (iii) sent by overnight or same day courier service at the party's respective address listed in this Section.

b. Each notice shall be deemed to have been received on the earlier to occur of: (x) actual delivery or the date on which delivery is refused; or (y) three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

c. Either party may, at any time, change its notice address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

d. All notices, demands, requests, or approvals from Provider to the City shall be addressed to the City at:

City of Alameda
City Manager's Office
2263 Santa Clara Ave.
Alameda, CA 94501
ATTENTION: Assistant City Manager
Ph: (510) 747-4714
Em: awooldridge@alamedaca.gov

e. All notices, demands, requests, or approvals from the City to Provider shall be addressed to Provider at:

[Provider Name]
[Department]
[Address]
[City, State, zip]
ATTENTION: [Title]
Ph: (xxx) [xxx-xxxx]

f. All updated insurance certificates from Provider to the City shall be addressed to the City at:

City of Alameda
City Manager's Office
2263 Santa Clara Ave.
Alameda, CA 94501
ATTENTION: Assistant City Manager
Ph: (510) 747-4714
Em: awooldridge@alamedaca.gov

18. SAFETY:

a. Provider will be solely and completely responsible for conditions of all vehicles owned or operated by Provider, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Provider will comply with all

safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

b. Provider will immediately notify the City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. Provider will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Provider's employee(s) involved in the incident; (iii) name and address of Provider's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

19. TERMINATION:

a. In the event Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Provider shall be deemed in default in the performance of this Agreement. If such default is not cured within two (2) business days after receipt by Provider from the City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the City may thereafter immediately terminate the Agreement forthwith by giving to Provider written notice thereof.

b. The foregoing notwithstanding, the City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Provider as provided herein.

c. Upon termination of this Agreement either for cause or for convenience, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination. The obligation of the parties under this Section 19.c. shall survive the expiration or early termination of this Agreement.

20. ATTORNEYS' FEES:

In the event of any litigation, including administrative proceedings, relating to this Agreement, including but not limited to any action or suit by any party, assignee or beneficiary against any other party, beneficiary or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney's fees and costs. No party or litigant shall be entitled to recover any attorneys' fees or costs from any other party or litigant, regardless of which party or litigant might prevail.

21. HEALTH AND SAFETY REQUIREMENTS.

Provider acknowledges that the City shall have the right to impose, at the City's sole discretion, requirements that it deems are necessary to protect the health and safety of the City employees, residents, and visitors. Provider agrees to comply with all such requirements, including, but not limited to, mandatory vaccinations, the use of personal protective equipment (e.g. masks), physical distancing, and health screenings. Provider also agrees to make available to the City, at the City's request, records to demonstrate Provider's compliance with this Section.

22. COMPLIANCE WITH ALL APPLICABLE LAWS:

During the term of this Agreement, Provider shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by Provider, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Provider shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by the City.

23. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

24. WAIVER:

A waiver by the City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

25. INTEGRATED CONTRACT:

Subject to the language of Section 30, the Recitals and exhibits are a material part of this Agreement and are expressly incorporated herein. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both the City and Provider.

26. CAPTIONS:

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

27. COUNTERPARTS:

This Agreement may be executed in any number of counterparts (including by fax, PDF, DocuSign, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

28. SIGNATORY:

By signing this Agreement, signatory warrants and represents that they executed this Agreement in their authorized capacity and that by their signature on this Agreement, they or the entity upon behalf of which they acted, executed this Agreement.

29. CONTROLLING AGREEMENT:

In the event of a conflict between the terms and conditions of this Agreement (as amended, supplemented, restated or otherwise modified from time to time) and any other terms and

conditions wherever contained, including, without limitation, terms and conditions included within exhibits, the terms and conditions of this Agreement shall control and be primary.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have each caused this Agreement to be duly executed on its behalf as of the Effective Date.

COMPANY
a (California corporation, LP, LLC,
GP, sole proprietor/individual)

CITY OF ALAMEDA
a municipal corporation

NAME
TITLE

Jennifer Ott
City Manager

RECOMMENDED FOR APPROVAL

NAME
TITLE

Amy Wooldridge
Assistant City Manager

APPROVED AS TO FORM:
City Attorney

Elizabeth Mackenzie
Chief Assistant City Attorney

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES or PROVIDERS FORM B

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

City of Alameda
Public Works Department
Alameda Point, Building 1
950 West Mall Square, Room 110
Alameda, CA 94501-7558

SAMPLE

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

REF: _____

The City of Alameda, its City Council, boards and commissions, officers & employees are additional insured for work done on their behalf by the named insured.

PRIMARY INSURANCE:

IT IS UNDERSTOOD AND AGREED THAT THIS INSURANCE IS PRIMARY AND ANY OTHER INSURANCE MAINTAINED BY THE ADDITIONAL INSURED SHALL BE EXCESS ONLY AND NOT CONTRIBUTING WITH THIS INSURANCE.

SEVERABILITY OF INTEREST:

IT IS AGREED THAT EXCEPT WITH RESPECT TO THE LIMIT OF INSURANCE, THIS COVERAGE SHALL APPLY AS IF EACH ADDITIONAL INSURED WERE THE ONLY INSURED AND SEPARATELY TO EACH INSURED AGAINST WHOM CLAIM IS MADE OR SUIT IS BROUGHT.

WAIVER OF SUBROGATION:

IT IS UNDERSTOOD AND AGREED THAT THE COMPANY WAIVES THE RIGHT OF SUBROGATION AGAINST THE ABOVE ADDITIONAL INSURED (S), BUT ONLY AS RESPECTS THE JOB OR PREMISES DESCRIBED IN THE CERTIFICATE ATTACHED HERETO.

NOTICE OF CANCELLATION:

IT IS UNDERSTOOD AND AGREED THAT IN THE EVENT OF CANCELLATION OF THE POLICY FOR ANY REASON OTHER THAN NON-PAYMENT OF PREMIUM, 30 DAYS WRITTEN NOTICE WILL BE SENT TO THE CERTIFICATE HOLDER BY MAIL. IN THE EVENT THE POLICY IS CANCELED FOR NON-PAYMENT OF PREMIUM, 10 DAYS WRITTEN NOTICE WILL BE SENT TO THE ABOVE.

POLICY NUMBER:
AUTO

COMMERCIAL

CG 20 48 02

99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provisions of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

| | |
|------------------------|-----------------------------|
| Endorsement Effective: | Countersigned By: |
| Named Insured: | (Authorized Representative) |

SCHEDULE

SAMPLE

Name of Person or Organization:
City of Alameda
Public Works Department
950 West Mall Square, Room 110
Alameda, CA 94501-7558

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

REF: _____
The City of Alameda, its City Council, boards and commissions, officers, employees and volunteers are additional insured for work done on their behalf by the named insured.

NOTICE OF CANCELLATION:
IT IS UNDERSTOOD AND AGREED THAT IN THE EVENT OF CANCELLATION OF THE POLICY FOR ANY REASON OTHER THAN NON-PAYMENT OF PREMIUM, 30 DAYS WRITTEN NOTICE WILL BE

RFP – De-Pave Park Master Plan and 30% Design

SENT TO THE CERTIFICATE HOLDER BY MAIL. IN THE EVENT THE POLICY IS CANCELED FOR NON-PAYMENT OF PREMIUM, 10 DAYS WRITTEN NOTICE WILL BE SENT TO THE ABOVE.

CA 20 48 02 99
1 of 1

Page