



TOWN OF MORAGA
REQUEST FOR PROPOSAL
FOR
FINANCIAL AUDITING SERVICES
FEBRUARY 13, 2012

TOWN OF MORAGA
REQUEST FOR PROPOSAL
FINANCIAL AUDITING SERVICES

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INTRODUCTION

General Information

The Town of Moraga is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal year ending June 30, 2012 through fiscal year ending June 30, 2014, with the option of auditing its financial statements for each of the two subsequent fiscal years.

A tentative schedule of the proposal and selection process is outlined in Attachment I. Please note that these are tentative dates and are subject to change.

To be considered, five (5) copies of the proposal must be sealed and submitted before 4:00 PM, Monday, March 12, 2012 to the following address:

Town of Moraga
Administrative Services Department
2100 Donald Drive
Moraga, CA 94556

NOTE: Please mark outside of envelope:

AUDIT PROPOSAL
March 12, 2012

Additional information may be obtained by contacting Stephanie Hom, Administrative Services Director, Town of Moraga, 2100 Donald Drive, Moraga, CA, (925) 888-7032, shom@moraga.ca.us.

NATURE OF SERVICES REQUIRED

Scope of Work

The Town of Moraga desires the selected auditor to:

1. Audit, prepare and express an opinion on the fair presentation of its basic financial statements in conformity with generally accepted accounting principles.
2. Prepare appropriations limit worksheets and test compliance with Proposition 111, Article XIII.B – Review of Appropriation Limit Calculations.
3. Perform a Single Audit testing one program for compliance with the Single Audit Act of 1984 in the years when the threshold has been exceeded.
4. Audit, prepare and express an opinion on the fair presentation of its Transportation Development Act Program financial statements in conformity with generally accepted accounting principles.
5. In addition, the Town of Moraga may desire the selected auditor to prepare an annual Comprehensive Annual Financial Report (CAFR) and/or prepare the State Controller's Report. The cost of each of these additional individual services should be bid out separately from the remaining audit services for purposes of submitting a pricing proposal (e.g., detail the additional cost for independent auditor's report, additional cost for CAFR preparation, and additional cost for State Controller's Report preparation).

Reports to be Issued

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue the following:

1. Independent Auditor's Report for the Town of Moraga
Ten (10) bound copies, one (1) *.pdf file
2. Management Letter
3. Independent Auditor's Report On Applying Agreed Upon Procedures related to the Appropriations Limit Calculation
Ten (10) unbound copies, one (1) *.pdf file
4. Single Audit Report (when required)
Two (2) bound copies, one (1) *.pdf file

5. Independent Auditor's Report for Transportation Development Act (TDA) Program (when required) for the Town of Moraga
Two (2) bound copies, one (1) *.pdf file

These audits are to be performed in accordance with all applicable and generally accepted government auditing standards including the standards set forth for financial audits by the Governmental Accounting Standards Board (GASB); in the U.S. Government Accountability Office (GAO), Government Auditing Standards; U.S. Office of Management and Budget (OMB) Circular A-133, Audits of State, Local Governments, and Non-Profit Organizations; and the applicable laws, rules and regulations of the Transportation Development Act (TDA). Additionally, the reports should meet the standards established by the Government Finance Officers Association (GFOA) for the GFOA Certificate of Achievement and California Society of Municipal Finance Officers Association's Award for Outstanding Financial Reporting (CSMFO).

In the required report on internal controls, the auditor shall communicate any reportable conditions found during the audit. Reportable conditions that are also material weaknesses shall be identified in the report. Non-reportable conditions discovered by the auditors shall be reported in a separate letter to management, which shall be referenced in the report on internal controls.

The auditors shall be required to make an immediate written report of all irregularities and illegal acts, or indications of illegal acts of which they become aware to the Town Council and Town Manager.

Delivery of Reports

The auditor shall complete all fieldwork and prepare and deliver to the Town's Administrative Services Director a draft copy of all reports listed above under "Reports to be Issued" in early November and deliver copies of the final reports to same no later than the last week of November.

Other Considerations

The Town's books will be closed and ready for audit by October 15. The Town staff will prepare supporting schedules and account reconciliations as requested by the auditors.

The Town implemented GASB 34 effective with their June 30, 2004 financial statements. The Town chose to use the depreciation method of accounting for these assets.

The Town of Moraga has determined that the U.S. Department of Transportation will function as the cognizant agency in accordance with the provisions of the Single Audit Act of 1984 and U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of State and Local Governments and Non-Profit Organizations*.

The schedule of Federal Financial Assistance and related auditor's report, as well as the related reports on the internal control structure and compliance are not to be included in the comprehensive annual financial report, but are to be issued separately.

All working papers and reports must be retained, at the auditor's expense, for a minimum of seven (7) years, unless the firm is notified in writing by the Town's Administrative Services Director of the need to extend the retention period. The auditor will be required to make working papers available upon request to the appropriate parties. In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

Throughout the year, the auditor will provide financial advice and counsel on matters that would affect the annual report.

DESCRIPTION OF THE GOVERNMENT

Background Information

The Town is a general law town incorporated in November 1974. The Town of Moraga serves an area of approximately 9.5 square miles with a population of 16,016. The Town operates under the Council/Manager form of government. Five Council members are elected at large for staggered four-year terms to govern the Town. The Mayor and Vice Mayor are elected by the Council from their own ranks and serve one-year terms. The Town Council is responsible for adopting Town ordinances, resolutions, and the annual budget, appointing commissions and committees, and hiring the Town Manager. The Town Manager is responsible for implementing the Council's policies, ordinances and directives, overseeing the day-to-day operations of the Town, and appointing the Directors of the Town's departments.

Town departments and areas of responsibility are described below:

General Government- Town Council, Town Manager, Town Clerk, and legal services

Administrative Services- finance, human resources, risk management and information systems

Parks and Recreation- recreation programs, parks programs, and park and facility rentals

Planning- planning, zoning, economic development and transportation planning

Police- patrol, investigations, and traffic and parking enforcement

Public Works- engineering, park and open space maintenance, storm drain maintenance, street maintenance and facility maintenance

The Town of Moraga's fiscal year begins on July 1 and ends June 30. The Town's FY 2011-12 Adopted Operating Budget is \$6.56 million. The Town's FY 2011-12 Adopted Capital Improvement Program Budget is \$1.5 million.

The Town receives various grants from programs, which may impose specific audit requirements, including the Transportation Development Act (TDA). More detailed financial information on the Town government, including budget documents and financial audit statements can be found on our website, www.moraga.ca.us, under the Administrative Services Department, Document and Resources (<http://www.moraga.ca.us/dept/adminsvc/docs>).

Attachment II provides supplemental information about Town's financial operations that may be relevant in preparing your proposal. Attachment III identifies the Town Mayor and Council members, as well as Town's executive staff.

Computer System

The Town uses Springbrook software to manage and maintain its financial functions. The system was implemented in the 1999-2000 fiscal year.

Basis of Accounting and Fund Structure

The Town of Moraga currently maintains approximately 24 funds including the General Fund, Special Revenue funds, Capital Project funds, and Agency funds. The accounting basis used by the Town for its funds conforms to generally accepted accounting principles. Accordingly, the governmental and fiduciary fund types use the modified accrual basis of accounting and the entity-wide statements use the accrual basis of accounting.

Budget Procedures

The Town Council adopts a one-year Operating and Capital Improvement Program Budget annually. The Town Manager is authorized to transfer budgeted amounts from one program, activity, or object to another within the same fund. All budget augmentations must be approved by the Town Council at a public meeting.

ASSISTANCE TO BE PROVIDED TO THE AUDITOR AND REPORT PREPARATION

Administrative Services Department

The Administrative Services department staff and responsible management personnel will be available during the audit to assist the auditor by providing information, documentation, and explanations. Stephanie Hom, Administrative Services Director, will be responsible for acting as the liaison between the audit firm and the Town staff. Consideration must be given to the on-going tasks of the finance department.

Work Area, Telephone, Photocopying, and Fax Machine

The Town will provide the auditor with a reasonable workspace, access to telephone lines, photocopying facilities and a fax machine.

Report Preparation

The Town staff is currently responsible for compiling information for the financial statements, notes, Management’s Discussion and Analysis, and supplemental information, and electronically providing this information to the auditor. The auditor is responsible for preparing the cash flow statements, the final check of the number presentation and printing the final reports.

The Town is open to discussions regarding the division of these activities in order to produce the most cost-effective product for both the Town and the auditor.

REQUEST FOR PROPOSAL FORMAT

To achieve a uniform review process and obtain the maximum degree of comparability, it is required that proposals be organized in the manner specified.

A. TECHNICAL PROPOSAL

Note. NO DOLLAR AMOUNTS SHOULD BE INCLUDED IN THE TECHNICAL PROPOSAL

1. Title Page - Show the Request for Proposal subject, the name of the proposer's firm, local address, telephone number, contact person and date of the proposal.
2. Table of Contents - Clearly identify the material by section and page number.
3. Letter of Transmittal - Limit to one or two pages.
 - a. Briefly state the proposer's understanding of the work to be done and make a positive commitment to perform the work within the defined time period.
 - b. Provide the names of the persons who will be authorized to make representations for the proposer, their titles, addresses and telephone numbers.
4. Profile of the Proposer

- a. State whether the firm is local, national or international.
- b. The firm should provide an affirmative statement that it is independent of the Town of Moraga as defined by generally accepted auditing standards.
- c. The firm should also list and describe the firm's professional relationships involving the Town of Moraga for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed audit. In addition, the firm shall give the Town of Moraga written notice of any such professional relationships entered into during the period of this agreement.
- d. An affirmative statement must be included indicating that the firm and all assigned key professional staff are properly licensed to practice in the State of California.
- e. The size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work is to be done, and the number of partners, managers, supervisors, seniors and other professional staff employed at the office should be addressed.
- f. Describe the range of activities performed by the local office, such as audit, accounting, tax service, management or information system services.
- g. Describe the local office's computer capability including the numbers and classifications of personnel skilled in computer sciences, especially personal computers. Discuss the possibility of sharing reporting data with the Town using Microsoft Excel and Microsoft Word and other related software.
- h. The firm is also required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements.

- i. The firm shall also provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years.
 - j. The firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations, including any lawsuits filed by public, private or non-profit organizations.
- 5. Summary of Proposer's Qualifications (in addition to minimum qualifications).
 - a. Identify the partners, managers and supervisors who will work on the audit, including staff if other than those assigned to the local office. Include resumes for each supervisory person to be assigned to the audit. (The resumes may be included in an appendix.)
 - b. The Town may wish to have the audit firm rotate partners, managers and or supervisors assigned to the Town's audit if the annual contract with the audit firm is extended beyond three years. Describe the firm's ability to accommodate this request.
 - c. Describe recent local office auditing experience similar to the type of audit requested. Include the names and telephone numbers of specific references and the agency each represents.
 - d. Describe any experience your staff has performing audits of financial statements prepared in conformance with GASB 34.
 - e. Describe the professional activities of your firm or of key staff members that support your commitment to governmental accounting.
- 6. Scope Section
 - a. Clearly describe the scope of the required services to be provided. Please list the services, data and information to be furnished by the Town, as well as the firm, and include the projected man-hours

required of the Town to familiarize the firm with the Town's financial system.

- b. If it should become necessary for the Town of Moraga to require the auditor to render any additional services to either supplement the services requested in this request for proposals or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between the Town of Moraga and the firm. Any such additional work between the Town of Moraga and the firm shall be performed at the same rates set forth in the schedule of fees and expenses.
- c. The auditors shall familiarize themselves with and comply with the provisions of any and all federal and state and county orders; statutes; ordinances; charter; bond covenants; administrative code or other rules and regulations that may pertain to the work required in the engagement.
- d. The proposal should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems and any special assistance that will be requested from the Town of Moraga.

B. COST PROPOSAL

1. The first page of the sealed dollar cost bid should include the following information: (a) name of firm; and (b) certification that the person signing the proposal is authorized to represent the firm, empowered to submit the bid, and authorized to sign a contract with the Town.
2. Total All-Inclusive Maximum Price – In a sealed dollar cost bid, list the fee by year for each of the services described in the Nature of Services Required section. The cost should contain all direct and indirect costs including all out-of-pocket expenses. The total all-inclusive maximum price should be presented for each of the years (FY11/12, FY12/13, FY13/14, FY14/15, FY15/16).

3. Rates by Partner, Supervisory and Staff - The cost proposal should include detailed information regarding the estimated number of hours to be dedicated to the Town's engagement, delineated by staffing level and billing rate and including all additional expenses to support the total all-inclusive maximum price.
4. Billing rates listed in these schedules will be used if any additional work is requested outside the scope of this proposal.
5. Manner of Payment - Progress payments will be made on the basis of actual audit work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's proposal. Payment will be made based upon actual costs not to exceed the maximum outlined in the proposal.
6. Proposal fees must be valid for a period of 60 days after the proposal due date.

EVALUATION OF PROPOSALS

Members of the Audit and Finance Committee, in addition to the Administrative Services Director, will evaluate proposals to ascertain which proposer best meets the needs of the Town. Although the factors to be considered in selecting an audit firm are not given specific weights, the following are some of the major factors on which the decision will be based:

1. The audit firm is independent and licensed to practice in California.
2. The firm's size and structure.
3. The firm has no conflict of interest with regard to any other work performed by the firm for the Town of Moraga.
4. The proposal's responsiveness in clearly stating the understanding of the work to be performed.
5. The audit firm's personnel have demonstrated professional skills, credentials, and professional activities of the staff to be assigned to the audit.
6. The firm's related technical experience and references on comparable government engagements.

7. Audit fee.

Once the top candidates have been selected based upon this process, oral interviews will be scheduled to assist in making the final selection. It is anticipated that oral interviews will be scheduled for the week of March 26, 2012.

ADDITIONAL INFORMATION

1. There is no expressed or implied obligation for the Town of Moraga to reimburse responding firms for any expenses incurred in the preparation of proposals in response to this request.
2. The submission of a proposal shall be prima facie evidence that the proposer has full knowledge of the scope, nature, quantity and quality of work to be performed; the detailed requirements of the specifications; and the conditions under which the work is to be performed.
3. The proposer shall furnish the Town such additional information as the Town may reasonably require.
4. The Town will not be liable for any costs not included in the proposal.
5. The Town reserves the right to conduct personal interviews of any or all proposers prior to selection. The Town will not be liable for any costs incurred by the proposer in connection with such interview (i.e., travel, accommodations, etc.).
6. The Town reserves the right to conduct pre-contract negotiations with any, or all, potential proposers in the interest of securing the optimum service at minimum cost.
7. The Town reserves the right to reject any and all proposals and the right, in its sole discretion, to accept the proposal it considers most favorable to the Town.
8. The selected firm may be required to obtain relevant business-related permits if the business is located in the Town of Moraga prior to commencing the project.

ATTACHMENT I

TENTATIVE SCHEDULE OF PROPOSAL AND SELECTION PROCESS

February 13, 2012	Request for Proposal issued and made available to vendors
March 12, 2012, 4:00 PM	Proposals Due to Town of Moraga, Administrative Services Department
March 26, 2012	Interviews with invited vendors
April 25, 2012	Town Council award of contract

These are tentative dates and are subject to change.

ATTACHMENT II**SUPPLEMENTAL INFORMATION****ADMINISTRATIVE SERVICES DEPARTMENT STAFFING**

The Director of Administrative Services manages the finance activities of the Town under the Administrative Services Department. The department is staffed by an Administrative Services Technician and an Accountant. The Director has been with the Town for under one year. The Administrative Services Technician and Accountant have been in their positions for the past two to three years.

FINANCIAL TRANSACTIONS

All financial records for the Town are centrally located in the Administrative Services Department. Annually, there are approximately 1,900 receipt transactions and approximately 2,400 disbursements.

All disbursements of cash are made either through accounts payable or payroll. A majority of the cash receipts are collected at the Finance Department. However, some receipts are collected at the Town's police station, as well as at the Planning, Recreation and Public Works Departments.

BANK ACCOUNT

The Town's primary operations account is a General Checking account through which all monies are transferred and collected. The Town's General Checking Account is with Mechanics Bank.

The Town also maintains cash with fiscal agents. Several such accounts are held with US Bank and the Local Area Investment Fund (LAIF), managed by the State Controller's Office.

PENSION PLANS

The Town participates in the State of California Public Employees' Retirement System (CalPERS). The plan is an agent multiple-employer defined benefit retirement plan that acts as a common investment and administrative agent for various state and local governmental agencies within the State of California. The plan provides retirement, disability and death benefits based on an employee's years of service, age and final compensation.

ATTACHMENT III
MUNICIPAL OFFICERS

ELECTED OFFICIALS

Michael Metcalf	Mayor
Howard Harpham	Vice Mayor
Ken Chew	Council Member
Karen Mendonca	Council Member
Dave Trotter	Council Member

TOWN MANAGER

Jill Keimach

TOWN ATTORNEY

Michelle Kenyon

DEPARTMENT DIRECTORS

Shawna Brekke-Read	Director of Planning
Jay Ingram	Director of Parks and Recreation
Stephanie Hom	Director of Administrative Services
Marty McInturf	Town Clerk
Bob Priebe	Police Chief
(vacant)	Director of Public Works

ATTACHMENT IV

SAMPLE PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

Project: _____

THIS AGREEMENT is entered into as of the ____ day of _____, 2012 by and between the TOWN OF MORAGA, herein called the "Town", and _____, herein called the "Consultant".

Recitals

WHEREAS, Town desires to obtain (Description of Services) services in connection with (Description of Project/Assignment); and

WHEREAS, Consultant hereby warrants to the Town that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, Town desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the Town through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A".

2. Time of Performance. The services of Consultant are to commence no sooner than _____ and, subject to Town Council approval, be completed no later than _____. Any changes to these dates in either Section 2 must be approved in writing by the Town Manager.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "B". However, in no event shall the amount Town pays Consultant exceed _____ Dollars (\$____). Payment by Town under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the Town at the time of payment.

B. Timing of Payment. Billing for said services shall be made not more than once every 30 days and at the conclusion of the work and submittal of the records and any appropriate report. Town shall review Professional Consultant's

statement and pay Professional Consultant for services rendered within 45 days of receipt of a complete billing statement that meets all requirements of this Agreement.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 3(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at Town's request if litigation is brought against Town in connection with Consultant's report. Unless the action is brought by Consultant or is based upon Consultant's negligence, Town will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by Town and not part of the litigation brought by Town against Consultant.

4. Amendment to Scope of Work. Town shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Failure of the Consultant to secure Town's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum merit, etc. for work done without the appropriate Town authorization.

5. Duties of Town. Town shall provide all information requested by Consultant that is reasonably necessary to performing the Scope of Work. Town retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement.

6. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in the Town, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or

agency without the expressed written consent of the Town. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to the Town without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of Town during the term of this Agreement, unless required by law.

7. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the Town.

8. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of Town or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Town. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the Town in the performance of this Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation or counsel independent of the control and direction of the Town or of any Town official, other than normal contract monitoring; and

(2) possesses no authority with respect to any Town decision beyond the rendition of information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

9. Interest of Members and Employees of Town. No member of the Town and no other officer, employee or agent of the Town who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects its personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

10. Liability of Members and Employees of Town. No member of the Town and no other officer, employee or agent of the Town shall be personally liable to Consultant or otherwise in the event of any default or breach of the Town, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

11. Indemnity. Consultant hereby agrees to hold harmless, defend and indemnify the Town and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the Town. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

12. Consultant Not an Agent of Town. Consultant, its officers, employees and agents shall not have any power to bind or commit the Town to any decision.

13. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of Town; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to Town's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

14. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to Town that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to Town that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Prevailing Wage. Consultant and Consultant's sub-consultants, shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of

Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the Town's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. Town Not Responsible. The Town is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

15. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by Town, or as required by law.

16. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Consultant agrees to have and maintain for the duration of this Agreement an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$2,000,000 (Two Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(c) Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Town for all work performed by the Contractor, its employees, agents and subcontractors.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The Town of Moraga, its employees, officers, agents and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the Town may possess, including any self-insured retention the Town may have, and any other insurance the Town does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to the Town all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with the Town on or before commencement of performance of this Agreement. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.

(8) Consultant's 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.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such

insurance shall be kept on file with the Town Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. At the Town's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

17. Assignment Prohibited. Neither the Town nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

18. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the Town upon 5 days' written notice to Consultant. Consultant may terminate this Agreement upon 30 days' written notice to Town.

B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, Town may terminate this Agreement immediately upon written notice.

C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the Town, become its sole property and shall, at Consultant's expense, be delivered to the Town or to any party it may so designate.

D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.

19. Suspension. The Town shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension. In the event that Consultant's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant's reasonable control, Consultant's compensation shall be subject to renegotiation.

20. Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between Town and Consultant shall supersede any previous agreements, whether verbal or written, concerning the same subject matter. This Agreement may be amended or extended from time to time by written agreement of the parties hereto.

21. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

22. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

23. Time of the Essence. Time is of the essence of this Agreement.

24. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to Town: Administrative Services Director
Town of Moraga
329 Rheem Boulevard
Moraga, CA 94556

If to Consultant: _____

25. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to Town for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant.

B. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the Town Attorney, Town Auditor, Town Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to Town for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Town may, by written request by any of the above-named officers, require that custody of the records be given to Town and that the records and documents be maintained in the Town Manager's office. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

26. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

27. Town Not Obligated to Third Parties. Town shall not be obligated or liable for payment hereunder to any party other than the Consultant.

28. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

29. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

30. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Work
- B. Exhibit B: Compensation

31. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

32. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the Town.

33. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Contra Costa, California.

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

TOWN OF MORAGA

CONSULTANT

By: _____

By: _____

Jill Keimach, Town Manager

Title: _____

APPROVED AS TO FORM:

By: _____

Michelle Marchetta Kenyon,
Town Attorney

FUNDING:

By: _____

Stephanie Hom,
Administrative Services Director

SAMPLE

EXHIBIT A
Scope of Work
[to be inserted]

SAMPLE

EXHIBIT B

Compensation

[to be inserted]

SAMPLE