

REPORT TO CITY COUNCIL

DATE: AUGUST 10, 2011

TO: MAYOR AND HONORABLE MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: CHRISTY PINUELAS, FINANCE DIRECTOR

SUBJECT: AUTHORIZATION TO SOLICIT REQUEST FOR QUALIFICATIONS
/PROPOSALS FOR COMPREHENSIVE FEE STUDY

The purpose of this report is to seek authorization to request proposals through a Request for Qualifications/Proposals (RFQ/RFP) process for a Comprehensive Fee Study. Staff has prepared a RFQ/RFP package that will be provided to multiple companies within the region, as well as advertised through several other outlets.

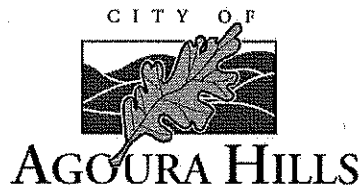
The City's current fee schedule for Planning, Engineering and Building and Safety was adopted in July 2006. The most recent fee schedule for city services was adopted in June 1993. In order to ensure that we are fully recovering our costs, the City must undertake a fee study. These studies are recommended to be completed every five years. The RFQ/RFP process is expected to be complete by the mid-October, with staff bringing back a recommendation for approval of the recommended fees in December 2011.

The 2011/12 budget includes monies to complete the fee study.

RECOMMENDATION

Staff respectfully recommends the City Council authorize staff to seek qualification and cost proposals for the Comprehensive Fee Study.

Attachments: Request for Qualifications/Proposals for Comprehensive Fee Study



CITY OF AGOURA HILLS
REQUEST FOR QUALIFICATIONS/PROPOSALS
FOR
COMPREHENSIVE FEE STUDY

Thank you for your interest in providing a Comprehensive Fee Study Proposal for the City of Agoura Hills.

The Comprehensive Fee Study Proposal must be submitted in an envelope clearly identified and marked:

**“Request for Qualifications/Proposal
City of Agoura Hills
COMPREHENSIVE FEE STUDY PROPOSAL”**

All proposals must be sealed and submitted on or before **2:00 p.m. on Thursday, September 15, 2011**, to the following:

Ms. Kimberly Rodrigues
City Clerk
City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301

Any questions regarding the RFP should be directed to Christy Pinuelas, Director of Finance at (818) 597-7319.

**CITY OF AGOURA HILLS
REQUEST FOR PROPOSALS
COMPREHENSIVE FEE STUDY**

I. INTRODUCTION

❖ General Information

The City of Agoura Hills was incorporated in 1982 and is a residential community with a population of approximately 23,300. Agoura Hills is a General Law City with five City Council members elected at large and operates under a council-manager form of government. Agoura Hills encompasses approximately eight square miles of land on the western edge of Los Angeles County in the foothills of the Santa Monica Mountains. Services provided by the City include administration, community services (parks and recreation), civil engineering, planning and community development, and building inspection. Fire and law enforcement are provided by contracted consultants. Utility services are provided by outside agencies. The City has 32 full-time employees and up to 75 part-time/seasonal employees.

The City is interested in contracting with an experienced professional consulting company to provide the City with comprehensive fee study services. The City is open to proposals from providers that pull together services from different companies, with the integrator acting as the prime and single point of contact with the City. The required services and performance conditions are described in the Scope of Work.

❖ Addenda/Clarifications (Requests for Information) and Inquiries

In the event of any additions, deletions, or charges, the City will notify each firm who has received a copy of the RFP and who has provided proper contact information. All communication shall be communicated in writing. All RFI's must be received no later than 5:00 p.m. on Tuesday, September 13, 2011.

Questions related to this RFP must be directed in writing by email to cpinuelas@ci.agoura-hills.ca.us. Answers to questions will be directed to all interested parties.

Copies of the City's Request for Proposals and the proposed contract as attached in Attachment "A" are to be used by all consultants. The City reserves the right to reject any or all proposals. The City will not be liable for, nor pay any cost incurred by responding firms relating to the preparation of proposals or the making of presentations.

❖ **Submittal Date**

To be considered for selection, an original and five (5) copies of the proposal must be submitted to the City Clerk's Office, 30001 Ladyface Court, Agoura Hills, California 91301, at or before 2:00 p.m., PST on Thursday, September 15, 2011.

❖ **Mailing Instructions**

Please submit an original and five (5) copies of the proposal to:

City of Agoura Hills
Office of the City Clerk
30001 Ladyface Court
Agoura Hills, CA 91301

Proposal should be marked "City of Agoura Hills Comprehensive Fee Study RFP." Facsimile proposals will not be accepted. Proposals are due by two o'clock in the afternoon, PST (2:00 p.m., PST) on Thursday, September 15, 2011. Proposals received after two o'clock in the afternoon, PST (2:00 p.m., PST) on Thursday, 15, 2011, will be disqualified and shall be returned, unopened, to the Proposer. Additionally, please email an electronic copy of your proposal to cpinuelas@ci.agoura-hills.ca.us

❖ **Proposal Response Format**

The RFP respondent shall submit five (5) originals of the proposal with all of the information requested. In order to simplify the proposal evaluation process, the proposals shall be submitted on 8½ by 11 inch paper and organized in the following format:

Cover Letter: Signed by an authorized representative of the firm committing to provide the services in accordance with all Project requirements. Please include the following information:

- Firm/entity name.
- Brief description of the firm/entity.
- Sub-consultants or joint venture identified (if applicable to your proposal).
- Summary of proposed services.

Project Understanding and Approach: Brief executive summary or narrative delineating the general understanding of the Project and the approach the firm believes is most appropriate to complete the required work.

Firm Qualifications: Professional experience and qualifications of the firm and any supporting teams' firm in providing the services specified in this Request for Proposals. Please provide the following information for at least three similar projects.

Staff Members: Identify key staff members and their specific responsibilities and qualifications. Focus should be on relevant experience, years of service with firm.

Fee Proposal: A separate fee proposal must be submitted in a sealed envelope within the proposal package and marked with the additional title, "FEE PROPOSAL." The elements of the fee proposal shall include the following:

- a. A not-to-exceed lump sum for total project cost.
- b. An itemization of monthly, annual and/or maintenance costs.
- c. An estimated fee for customary Reimbursable Expenses to be invoiced separately and not considered as professional services.
- d. Costs for optional tasks and or additional tasks provided by the consultant should be itemized.

The fee proposal will not be used as the sole selection criterion. In negotiating a contract with the successful firm, refinements to fee, scope and schedule will be jointly determined. A sample of the City's standard contract is included in the appendices.

Business Registration: The independent consultant selected must register with the City of Agoura Hills while conducting any work under this contract.

Insurance: Attached to the RFP is a draft copy of the City's Consulting Services Agreement (Agreement) (Attachment A) which contains the insurance requirements. The selected firm will maintain the minimum insurance requirements during the entire time of the engagement. To confirm this requirement, within 15 days from the execution of the Agreement, the selected firm shall furnish the City satisfactory evidence of the insurance requirement and evidence that each carrier is required to give at least 30 days prior written notice of the cancellation agreement. The City shall be named additional insured under the selected firm's policies as noted in the Agreement.

❖ Selection Process

It is anticipated that proposals will be reviewed by the City Manager and members of the Executive staff; the Assistant City Manager, and the Finance Director. Interviews with selected proposers **will** be held. Notifications of acceptance or rejection by the City will be made in writing to all proposers. The City retains the right to reject all proposals and has the sole and absolute discretion to select a firm that in its opinion is best qualified.

❖ Incurred Costs

The City of Agoura Hills is not liable for any costs incurred by a proposer in the preparation and/or presentation of the proposal.

❖ **Equal Opportunity**

The City of Agoura Hills requires all proposers to comply with equal opportunity policies. Agoura Hills' programs, services, employment opportunities, and volunteer positions and contracts are open to all persons without regard to race, religion, color, national origin, sex, age, marital status, handicap, or political affiliation.

❖ **Withdrawal of Proposals**

A Proposer may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of the Proposer.

❖ **Rights of the City of Agoura Hills**

This RFP does not commit the City to enter into a contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract.

The City of Agoura Hills reserves the right to

- ◆ Make the selection based on its sole discretion
- ◆ Reject any and all proposals without prejudice
- ◆ Issue subsequent Requests for Proposal
- ◆ Postpone opening for its own convenience
- ◆ Remedy technical errors in the Request of Proposal process
- ◆ Approve or disapprove the use of particular sub-Consultants
- ◆ Negotiate with any, all, or none of the Proposers
- ◆ Solicit best and final offers from all or some of the Proposers
- ◆ Accept other than the lowest offer
- ◆ Waive informalities and irregularities in the proposal

❖ **BACKGROUND**

The City of Agoura Hills is requesting proposals for a Comprehensive Fee Study (the "Fee Study").

Financial Information - The City has General Fund revenues of \$11.5 million and citywide revenues of \$20.6 million. Charges for services including service charges, licenses and permit fees, are approximately \$1.0 million. The City has a General Fund, Redevelopment Agency, Capital Projects Fund, and Special Revenue Funds (including local, state and federal

Staff Members: Identify key staff members and their specific responsibilities and qualifications. Focus should be on relevant experience, years of service with firm.

Fee Proposal: A separate fee proposal must be submitted in a sealed envelope within the proposal package and marked with the additional title, "FEE PROPOSAL." The elements of the fee proposal shall include the following:

- a. A not-to-exceed lump sum for total project cost.
- b. An itemization of monthly, annual and/or maintenance costs.
- c. An estimated fee for customary Reimbursable Expenses to be invoiced separately and not considered as professional services.
- d. Costs for optional tasks and or additional tasks provided by the consultant should be itemized.

The fee proposal will not be used as the sole selection criterion. In negotiating a contract with the successful firm, refinements to fee, scope and schedule will be jointly determined. A sample of the City's standard contract is included in the appendices.

Business Registration: The independent consultant selected must register with the City of Agoura Hills while conducting any work under this contract.

Insurance: Attached to the RFP is a draft copy of the City's Consulting Services Agreement (Agreement) (Attachment A) which contains the insurance requirements. The selected firm will maintain the minimum insurance requirements during the entire time of the engagement. To confirm this requirement, within 15 days from the execution of the Agreement, the selected firm shall furnish the City satisfactory evidence of the insurance requirement and evidence that each carrier is required to give at least 30 days prior written notice of the cancellation agreement. The City shall be named additional insured under the selected firm's policies as noted in the Agreement.

❖ Selection Process

It is anticipated that proposals will be reviewed by the City Manager and members of the Executive staff; the Assistant City Manager, and the Finance Director. Interviews with selected proposers **will** be held. Notifications of acceptance or rejection by the City will be made in writing to all proposers. The City retains the right to reject all proposals and has the sole and absolute discretion to select a firm that in its opinion is best qualified.

❖ Incurred Costs

The City of Agoura Hills is not liable for any costs incurred by a proposer in the preparation and/or presentation of the proposal.

❖ **Equal Opportunity**

The City of Agoura Hills requires all proposers to comply with equal opportunity policies. Agoura Hills' programs, services, employment opportunities, and volunteer positions and contracts are open to all persons without regard to race, religion, color, national origin, sex, age, marital status, handicap, or political affiliation.

❖ **Withdrawal of Proposals**

A Proposer may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of the Proposer.

❖ **Rights of the City of Agoura Hills**

This RFP does not commit the City to enter into a contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract.

The City of Agoura Hills reserves the right to

- ◆ Make the selection based on its sole discretion
- ◆ Reject any and all proposals without prejudice
- ◆ Issue subsequent Requests for Proposal
- ◆ Postpone opening for its own convenience
- ◆ Remedy technical errors in the Request of Proposal process
- ◆ Approve or disapprove the use of particular sub-Consultants
- ◆ Negotiate with any, all, or none of the Proposers
- ◆ Solicit best and final offers from all or some of the Proposers
- ◆ Accept other than the lowest offer
- ◆ Waive informalities and irregularities in the proposal

❖ **BACKGROUND**

The City of Agoura Hills is requesting proposals for a Comprehensive Fee Study (the "Fee Study").

Financial Information - The City has General Fund revenues of \$11.5 million and citywide revenues of \$20.6 million. Charges for services including service charges, licenses and permit fees, are approximately \$1.0 million. The City has a General Fund, Redevelopment Agency, Capital Projects Fund, and Special Revenue Funds (including local, state and federal

grants). See the City website www.ci.agoura-hills.ca.us for the most recent Comprehensive Annual Financial Report and City Budget.

❖ **OBJECTIVE**

The objective of this RFP is to receive proposals for a Comprehensive Fee Study.

The City of Agoura Hills desires to undertake a comprehensive citywide review and evaluation of user fee/rate charges resulting in a cost-based user fee study.

The Fee Study will calculate the full (100%) cost of providing certain City services, and provide a recommended fee to be charged for each applicable service.

This firm shall recommend cost recovery strategies and identify best practices in establishing user fees. These strategies should take into consideration the complexities and demands of each department and/or program area. The selected firm shall provide thorough analysis, development of fee models and recommendations, including identifying and recommending new fees/revenues.

II. COMPREHENSIVE FEE STUDY - SCOPE OF WORK

Project tasks shall include, but are not necessarily limited to, the following. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

1. Work and meet with City staff to refine the project scope, purpose, uses and goals of the City's User Fee Study to ensure that the study will be accurate, appropriate, and complete to meet the needs of the City. Review project schedule and answer any questions pertaining to the successful development of the Fee Study.
2. Identify the total cost of providing each City service at the appropriate activity level and in a manner that is consistent with all applicable laws, statutes, rules and regulations governing the collection of fees, rates, and charges by public entities, including, but not limited to, Proposition 218.
In order to identify the services to be included and documented in the Fee Study, the consultant shall:
 - a. Identify, document, and classify all current fees and charges levied by the City.
 - b. Analyze potential new user fees and recommend areas to include in the Study
3. Compile data to develop the total costs associated with each fee included in the Study.
4. Identify any factors such as statutory limitations, market conditions or other policy and service considerations, which prevent the implementation of a fee based structure based on recovery of full costs.

5. Compare service costs with existing recovery levels (This includes identifying and reporting on all current fee and rate levels that are lower or higher than total cost recovery). Determine the necessary and appropriate rate of recovery for all fees by type of fee. It should include any service areas where the City is currently charging for services as well as areas where perhaps the City should charge, in light of the City's practices, or the practices of similar or neighboring cities.
6. Recommend potential new fees and charges for services that the City currently provides but does not have any fees and/or charges established.
7. Recommendations should be based on practices of surrounding cities and cities with similar profiles that may charge for similar services, industry best practices, or the consultant's professional opinion.
8. Recommend appropriate fees and charges based on the firm's analysis together with the appropriate subsidy percentage for those fees where full cost recovery may be unrealistic.
9. Prepare a report that identifies each service, its full cost, recommended and current cost recovery levels. The report should also identify the direct cost, the indirect cost, and the overhead cost for each service;
10. Prepare a report that identifies each and every fee. Include at a detail level the present fees, recommended fees, percentage change, cost recovery percentage, revenue impact and fee comparison with other Los Angeles County cities or other California cities that are comparable to the City of Agoura Hills. A survey comparison of rates and fees with similar cities is for information only.
11. Report on other matters that come to the Firm's attention in the course of the evaluation that, in the Firm's professional opinion, the City should consider.
12. Prepare a Draft Comprehensive Fee Study, which will be reviewed and discussed with the City Staff. Comments and concerns should be collected during the draft phase for inclusion in the final version of the Study. Any modifications are to be discussed and incorporated into the Final version of the Study as requested.
13. Prepare a Master User Fee Schedule for the City.
14. Prepare and deliver presentation to the City Council to facilitate their understanding of the Fee Study and its implications for the City and make necessary adjustments if appropriate. This presentation will be at the guidance and discretion of City Management. Document the City Council's comments and concerns for inclusion in the final version of the Fee Study.
15. Prepare a Final Fee Study report (including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in costs) and provide 5 bound copies, one unbound copy, a single searchable PDF file, and one electronic copy in Microsoft Word format to the City of the Fee Study that can be copied and made available to City staff.

16. The computer based/automated model is to provide an MS-Excel file of all fees and rates by type.
17. Provide on-site training to enable staff to update fees on an annual basis.
18. Consult with City staff should it become necessary to defend the City's User Fees and Rates as a result of any legal or other challenge.

III. PROPOSAL FORMAT

The proposal should include the minimum information requested below in the order listed. Additional information, if provided, should be separately identified in the proposal.

1. Cover letter on company's letterhead summarizing the proposal and signed by an individual authorized to execute legal documents on behalf of the proposer including:
 - a. A summary of the qualifications of the firm to perform the services described herein, including, but not necessarily limited to:
 - i. The firm's previous experience in performing similar services for other municipalities.
 - ii. The firm's ability to produce the required product in a timely fashion and the ability to present any necessary reports or studies to elected officials and/or the general public.
2. The proposal shall contain the following:
 - a. Legal name and address of company and b) Legal form of company (partnership, corporation, joint venture, etc.). If joint venture, identify the members of the joint venture and provide all information required under this section for each member.
3. If company is wholly owned subsidiary of a "parent company," identify the "parent company."
4. Description of the Project Team. The names, title and qualifications (resumes) of the proposed project manager and support staff and subcontractors who will be conducting the work on this assignment, including their experience and projects in which they had "hands on" responsibility and length of time with the firm. The selected consultant shall not substitute the project manager without prior approval of the Finance Director of the City of Agoura Hills. The project manager will be expected to be fully involved and conversant in the details of the project on a day-to-day basis.
5. Description of the extent to which City staff support will be required for the project.

6. A detail projected budget for should be provided for the Comprehensive fee study :
 - a. A project schedule with activities, milestones, and deliverables; and
 - b. Projected budget should at a minimum include:
 - i. A detail budget by tasks;
 - ii. Breakdown of staff hours and billing rates;
 - iii. Costs for expenses such as printing, travel and attendance at meetings
 - c. The consultant shall present a specific “not to exceed” fixed fee, including all associated fees as noted above.
7. Proposed services to be sub-consulted, anticipated subcontractors and anticipated cost for these services.
8. A list of references from other municipalities for similar projects including the name of the organization and the primary contact person(s).
9. Samples – Provide sample Plan and Comprehensive Fee Study reports completed for past clients to illustrate final deliverables.

V. AVAILABLE BUDGET/CONTRACT

The City wishes to negotiate a fixed price contract with a “not to exceed” dollar total based on a clearly defined scope of work. It should be noted that the selected consultant(s) shall be required to carry both Worker’s Compensation and General Liability Insurance in the amount to be determined by the Risk Manager as identified below.

Selected prospective consultant shall be required to participate in negotiations with City staff and execute a contract for professional services.

VI. REVISION TO THE RFP

The City reserves the right to revise the RFP prior to the date that proposals are due. Revisions to the RFP shall be faxed and/or e-mailed to all potential proposers. The City reserves the right to extend the date by which the proposals are due.

VII. SPECIAL CONSIDERATIONS

Key Dates for Proposal Evaluation and Selection

Notice of RFP	August 25, 2011
Due date for proposals (2:00 p.m.)	September 15, 2011
Interviews	September 22, 2011

Selected firm notified
City Council approval

October 12, 2011
December 14, 2011

VII. EVALUATION CRITERIA

At a minimum, proposals and Consultant selection will be evaluated based on the following minimum criteria:

A. Scope of Work

- Understanding of project and purpose
- Responsiveness to RFP, including approach and methodology proposed
- Appropriate level of detail in proposal
- Relevance of add/delete to scope of work
- Familiarity with problems associated with project
- Proposed fee relative to the services to be provided

B. Technical Competence

- Technical/specialized qualifications of team
- Experience of key personnel with similar projects
- Depth of technical expertise in firm
- Provisions for technical and quality review
- Familiarity with the City's structure and business

C. Past Performance

- Technical quality of prior projects
- Demonstrated ability to meet schedules
- Cost control
- Performance on City or other agency projects

D. Organization and Schedule

- The firm has no conflict of interest with regard to any other work performed by the firm for the City of Agoura Hills
- Commitment of key personnel
- Financial capability and resources of firm
- Flexibility to changes in scopes and schedules
- Inclusion of affirmative action statement

E. Cost

VIII. OTHER CONSIDERATIONS

❖ Clarifications

The City of Agoura Hills reserves the right to seek clarification of each proposal submitted. The City also reserves the right to require other evidence of technical, managerial, financial, or other abilities prior to selection.

❖ **Interviews**

The City of Agoura Hills may invite one or more proposers to be interviewed September 22, 2011 (time to be determined) at no cost to the City.

❖ **Right to Reject Proposals**

Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposal unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of Agoura Hills and the firm selected.

The City of Agoura Hills reserves the right without prejudice to reject any or all proposals.

EXHIBIT "A"
SCOPE OF SERVICES

**AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE CITY OF AGOURA HILLS
AND _____**

THIS AGREEMENT is made and effective as of _____, between the City of Agoura Hills, a municipal corporation ("City"), and _____ ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM. This Agreement shall commence on _____, and shall remain and continue in effect until tasks described herein are completed, but in no event later than _____, unless sooner terminated pursuant to the provisions of this Agreement.

The City may, at its' option, extend this Agreement for two additional terms of one year upon providing written notice of its intent to so-extend this Agreement to the Consultant not less than thirty (30) days prior to the expiration of the initial Term. If this Agreement is extended beyond the original Term, contract price shall be adjusted at the beginning of each term.

2. SERVICES. Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. PERFORMANCE. Consultant shall at all times faithfully, competently and to the best of his or her ability, experiences, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. PAYMENT. The City agrees to pay Consultant, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B other than the payment rates and schedule of payment are null and void. This amount shall not exceed _____ ("Contract Price") for the initial Term of the Agreement unless additional payment is approved as provided in this Agreement.

The City Manager may approve additional work up to ten percent (10%) of the amount of the Contract Price. Any additional work in excess of this amount shall be approved by the City Council.

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by the City Council and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.

The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portions hereof, by serving upon the consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 4.

6. DEFAULT OF CONSULTANT. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

If the City Manager or his or her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

7. OWNERSHIP OF DOCUMENTS. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and

activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of seven (7) years after receipt of final payment.

Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

8. INDEMNIFICATION. The Consultant agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City.

9. INSURANCE REQUIREMENTS. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

B. Minimum Limits of Insurance. *Consultant shall maintain limits no less than:*

- 1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
- 3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.
- 4) Professional Liability coverage: Two million (\$2,000,000) per claim and in aggregate.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager and. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 1) The City, its officers, officials, employees and volunteers are to be covered as additional insureds in respect to: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.
- 2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- 3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
- 4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in

limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City and Community Center. Self insurance shall not be considered to comply with these insurance requirements.

F. Verification of Coverage. Consultant shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

10. INDEPENDENT CONSULTANT. Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

11. LEGAL RESPONSIBILITIES. The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

12. RELEASE OF INFORMATION

A. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subConsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or

relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub Consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

13. NOTICES. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City:

City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301
Attention: City Manager

To Consultant:

14. ASSIGNMENT: The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

15. LICENSES. At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

16. GOVERNING LAW. The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Agoura Hills. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

17. PROHIBITED INTEREST. No officer, or employee of the City of Agoura Hills shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-Consultants for this project, during his/her tenure or for one year thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Agoura Hills has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's sub-Consultants on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

18. ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

19. AUTHORITY TO EXECUTE THIS AGREEMENT. The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

EXHIBIT B

PAYMENT RATES AND SCHEDULE