

REQUEST FOR PROPOSAL

**CITY-WIDE OPEN SPACE AND
ABATEMENT MAINTENANCE SERVICES**

Proposal Due Date: Friday, September 23, 2022 @ 3:00pm

Contract Administrator: Jolan Longway

2022-osmaintenancebidinfo@pittsburgca.gov

CITY OF PITTSBURG
COMMUNITY DEVELOPMENT DEPARTMENT
65 CIVIC AVENUE
PITTSBURG, CA 94565
(925) 252-4930

**REQUEST FOR PROPOSAL
FOR PROFESSIONAL SERVICES**

for

OPEN SPACE AND ABATEMENT MAINTENANCE SERVICES

1. INTRODUCTION

The City of Pittsburg is seeking proposals from qualified contractors to provide professional OPEN SPACE and ABATEMENT MAINTENANCE SERVICES. The required services and performance conditions are described in the Scope of Services. The resulting contract from this RFP will be for a term of one (1) year.

2. ATTACHMENTS

The attachments below are included with this Request for Proposals (RFP) for your review and submittal (see asterisk):

Attachment A – Scope of Services

Attachment B – Contractor’s Proposal Form*

Attachment B – Contractor’s Statements*

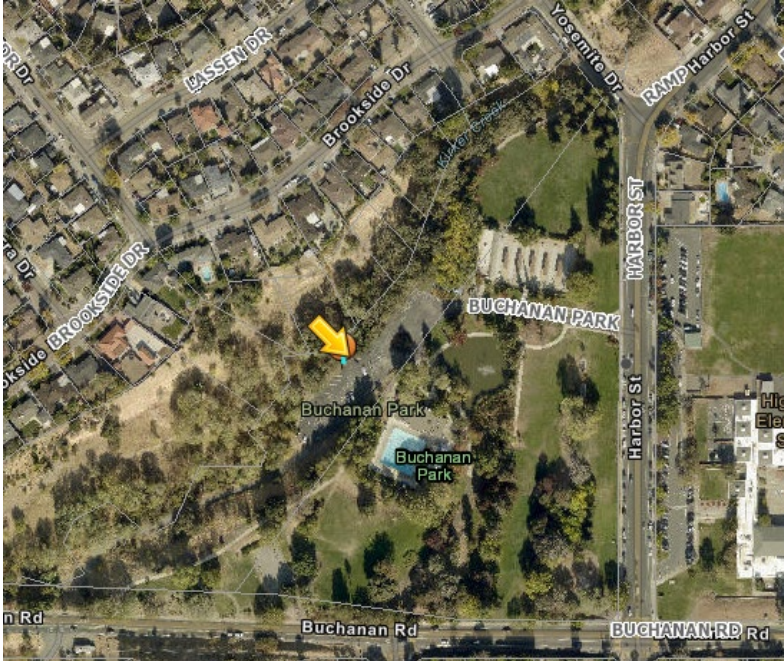
Attachment C – Sample General Services Agreement

*Proposal Information Form to be filled out, signed by the appropriate representative of the company, and returned with submittal.

3. INSTRUCTIONS TO CONTRACTORS

3.1 MANDATORY Pre-Proposal Site Tour

A mandatory pre-proposal site tour will be held on Friday, September 16, 2022, at 9:00a.m. and begin at the Buchanan Park parking lot located at 4040 Harbor Street, Pittsburg, CA. See map below. Please allow 2-3 hours for the site tour.



All prospective Contractors intending to submit proposals shall attend. Firms wishing to submit proposals must attend site tours.

3.2 Examination of Proposal Documents

The submission of a proposal shall be deemed a representation and certification by the Contractor that they:

3.2.1 Have fully read and fully understand the information that was provided by the City to serve as the basis for submission of this proposal.

3.2.2 Have the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.

3.2.3 Represent that all information contained in the proposal is true and correct.

3.2.4 Did not, in any way, collude, conspire to agree directly or indirectly, with any person, firm, corporation, or other Contractor in regard to the amount, terms or conditions of this proposal.

3.2.5 Acknowledge that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Contractor, and Contractor hereby grants the City permission to make these inquiries and to provide any and all related documentation in a timely manner.

No request for modification of the proposal shall be considered after its submission on grounds that Contractor was not fully informed to any fact or condition.

3.3 Addenda / Clarification

Should discrepancies or omissions be found in this RFP or should there be a need to clarify this RFP, questions or comments regarding this RFP must be put in writing and received by the City by way of email no later than 1:00 p.m., Monday September 19, 2022. Correspondence shall be sent to 2022-osmaintenancebidinfo@pittsburgca.gov. Responses from the City will be communicated in writing to all recipients of this RFP. Inquiries received after the date and time stated will not be accepted and will be returned to senders without response. All addenda shall become a part of this RFP and shall be acknowledged on the Contractor's Form.

The City shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the City or its representatives.

3.4 Submission of Proposals

All proposals shall be submitted to:

City of Pittsburg
Public Works Department
Engineering Division
65 Civic Avenue
Pittsburg, CA 94565
Attn: Jolan Longway

RFP Proposals must be delivered no later than 3:00 p.m. on Friday September 23, 2022. All proposals received after that time will be returned to the Contractor unopened.

Proposals shall be made only on the designated form, properly executed, and enclosed in a sealed envelope bearing the name of the Contractor, proposal due date, and RFP title. Proposals shall be in ink or computer generated. Mistakes may be crossed out and corrections inserted adjacent thereto must be initialed in ink by the person signing the Proposal. Proposals are to be verified before submission as they cannot be corrected or altered or signed after Proposals are opened. Proposals shall be signed by an authorized officer or employee of the Contractor.

3.5 Summary of Schedule

- Mandatory Pre-Proposal Site Tour – Friday September 16, 2022 9:00 – 12:00p.m. beginning at Buchanan Park
- Proposal Due Date – September 23, 2022, on or before 3:00p.m.
- Anticipated Selection Date – September 28, 2022

3.6 Evaluation Criteria

Proposals will be evaluated according to each Evaluation Criteria, and scored On a zero to five-point rating. The scores for all the Evaluation Criteria will then be multiplied according to their assigned weight to arrive at a weighted score for each proposal. A submittal with a high weighted total will be deemed of higher quality than a proposal with a lesser-weighted total.

RATING SCALE		
0	Not acceptable	Non-responsive, fails to meet RFP specifications. The approach has no probability of success. For mandatory requirement this score will result in disqualification of submittal.
1	Poor	Below average, falls short of expectations, is substandard to that which is the average or expected norm, has a low probability of success in achieving project objectives per RFP.
2	Fair	Has a reasonable probability of success in achieving project objectives per RFP.
3	Average	Acceptable, achieves all objectives in a reasonable fashion per RFP specification. This will be the baseline score for each item with adjustments based on interpretation of submittal by Evaluation Committee members.
4	Above Average / Good	Very good probability of success, better than that which is average or expected as the norm. Achieves all objectives per RFP requirements and expectations.
5	Excellent / Exceptional	Exceeds expectations, clearly superior to that which is average or expected as the norm. Excellent probability of success and in achieving all objectives and meeting RFP specification.

The proposals will be evaluated and scored based upon the following :

- **Personnel with Related Experience (30 points)**
 1. Staff has related experience and appropriate training/ skills to use equipment required.

- **Equipment (20 points)**
 1. Company has appropriate equipment and number of personnel to complete the task.
 2. Items furnished shall meet requirements of Occupational Safety and Health Act (OSHA), federal, state and local requirements.

- **Safety (20 points)**
 1. Onsite safety (required) Crew members. Personal Protective Equipment.

- **Communication (10 points)**
 1. At least one crew member must be able to communicate with City staff in English, both verbally and in writing.

- **Cost (20 points)**

ATTACHMENT A

SCOPE OF SERVICES

1. GENERAL

1.1 OVERVIEW

The Contractor shall provide cleanup services to remove debris and other deleterious materials from city right of way; including open space, creek channels, creek banks, basins and other areas as directed by City Staff. The services may include vegetative maintenance such as tree trimming. Contractor may also be requested to remove debris from parcels requiring abatement through the City's Code Enforcement Division.

2 CONTRACTOR DUTIES AND RESPONSIBILITIES

2.1 Contractor shall remove debris from sites as assigned by City. Cleanup duties shall include surveying sites, collecting debris, dismantling temporary structures, and removing trash. Contractor to include cost of disposal in bid.

2.2 Contractor shall supply all labor, materials, tools, heavy machinery and equipment, vehicles, protective clothing, protective gear, portable bathroom facilities, and other supplies that may be required to remove debris, litter, and waste. Such equipment, tools and protective gear shall be sufficient for all conditions including jobsites that may be located in heavy foliage, poison oak, steep embankments, next to train tracks, by creeks, and other areas requiring alertness to the environment and pre-planning to prevent injury or illness.

2.3 Contractor shall coordinate with the City on a project-by-project basis to determine the scope for each site cleanup. The scope will establish the project start date, period of work, size / scope of the job, work location, the name and title of the onsite Contractor representative, and the estimated not-to exceed cost of the cleanup as described in Scope of Services Exhibit B - Compensation. Additional specific instructions will be given at the work location.

2.4 Contractor shall visit the work site prior to commencement of each cleanup project. Contractor to coordinate start date of work with City.

2.5 Contractor shall be responsible for the supervision / management of its crew and ensure all necessary safety procedures are followed. This individual will also serve as the City contact for all projects.

2.6 Contractor shall photograph the site before and after cleanup to document the condition of the site and the date of the cleanup. Photographs of the cleanup will be provided to the City electronically after completion of the cleanup.

2.7 Contractor shall follow best practices work procedures to safely manage any hazardous materials that may be found on the jobsite, including urine, feces, oiled personal hygiene items, syringes, and other materials which could pose a health threat.

2.8 Contractor shall implement best management practices (BMPs) to prevent non-stormwater discharges to the city drainage system. BMPs shall include, but are not limited to, good housekeeping practices, material and waste storage control, and vehicle leak and spill control.

2.9 Contractor shall immediately contact City of Pittsburg Police Department in the event that weapons are found at the site.

2.10 Contractor shall trim shrubs and vegetation as required per Public Works Staff's direction, in the work order as a deterrent measure provided that such work is consistent with any permits required to perform cleanups along watercourses, including but not limited to, any permits required by California Regional Water Quality Control Board, the Us Army Corps of Engineers or the California Department of Fish and Wildlife.

2.11 Contractor shall be familiar with the areas and verify with the City designated representative that the jobsite is within the City's jurisdiction. Debris may be located on properties shared by the City of other agencies. The Contractor is expected to be familiar with the area and verify the jobsite is within the City's jurisdiction. In the event that access to the jobsite is restricted, Contractor shall coordinate entry with the City.

2.12 Contractor shall notify the City when the work is complete and provide a report for each site including cubic yards of debris removed.

2.13 In the event that additional debris, not previously identified, is discovered in the general area during the course of the project, Contractor shall notify the City's designated representative to obtain authorization prior to proceeding with any additional work that was not identified in the scope of work.

2.14 City reserves the right to cancel any given project with at least 24-hours' notice of any project cancellation.

2.15 Contractor shall perform the work in a timely and efficient manner and conduct themselves in a courteous and business-like fashion at all times.

2.16 Contractor shall obtain, maintain and comply with all permits required to perform cleanups along watercourses, including but not limited to, any permits required by the California Regional Water Quality Control Board , the US Army Corps of Engineers or the California department of Fish and Wildlife.

2.17 Contractor shall properly handle and dispose of solid waste and hazardous waste in accordance with all applicable laws.

3 CITY RESPONSIBILITIES

3.1 City shall issue a work order and provide a minimum one week notice to the Contractor prior to the start time of a cleanup project.

3.2 City shall post notifications of cleanup event as appropriate and shall provide security for the duration of the cleanup.

3.4 City shall provide a representative to serve as a point of contact in writing, approving , and issuing work orders, and addressing any Contractor issues or questions that may arise during the course of a cleanup.

3.5 City shall provide tote to collect and store any found personal items identified in Scope of Services Exhibit A.

4 SAFETY AND TRAINING

4.1 Safety and appropriate training/licensing are critical requirements for the selected Contractor. At no time is the Contractor expected to interact with the general public or put their employees at risk.

4.2 Contractor shall comply with all safety rules, protocols, and licensing requirements mandated by the State of California.

4.3 Work may be performed in inclement weather. Jobsites can be in heavy foliage, poison oak, steep embankments, next to rain tracks, by creeks and lakes, and other areas requiring alertness to the environment and pre-planning to prevent injury or illness. Contractor shall perform a hazard assessment and provide all training and supplies necessary.

4.4 Contractor shall be OSHA certified to operate any heavy equipment required to complete the cleanup, including trash compactors, bulldozers, graders or other ground moving equipment.

4.5 Contractor shall conform to all applicable occupational safety and health standards, rules, regulation and order established by the State of California. The Contractor shall provide all safety equipment, materials, and will supply training as required. The Contractor shall provide its employees with appropriate safety apparel. This apparel shall include but not be limited to hardhats, safety glasses, vest, gloves, and leather (or adequately puncture resistant) boots.

4.6 Contractor shall be trained in OSHA's Bloodborne Pathogen Standard 1910.1030. This training must be supplemented with precautions regarding West Nile Virus, hanta virus, and histoplasmosis. Employees must have work procedures to be able to safely manage urine, feces, soiled personal hygiene items, syringes, and other materials which could pose a health threat. Wearing Personal Protective Equipment and following other protocols established for this situation must be followed. The Contractor will coordinate disposal of wastes and syringes with the City.

4.7 OSHA's Bloodborne Pathogen Standard is available at <https://www.osha.gov/sites/default/files/2019-03/bloodborne pathogens.pdf> . Contractor shall provide copies of any training records and licenses required by the City.

SCOPE OF SERVICES (*continued*)

EXHIBIT A - Guidelines for Property Identification

Unless an item is trash or poses an immediate threat to public health or safety it should be retained for storage as potential personal property.

Items that are arranged in a manner that suggests ownership (e.g. items that are neatly folded or stacked, stored off the ground, hung or clearly on display or packed in bag or box) should be retained for storage.

If there is any uncertainty whether an item should be thrown away or stored, it should be stored.

Examples of items to take to storage: *the following are examples of items that could be considered personal property and will be stored:*

- ID /Social Security cards
- Medications
- Tax / medical records
- Jewelry
- Eyeglasses

Examples of items that are trash or pose a threat to public health or safety and will not be stored: *the following are examples of conditions that will cause an item (including those listed above) to be immediately disposed of:*

- **Dirty or soiled** : items that smell, are stained with urine, bodily waste, or mud, or are infested with fleas, bed bugs, rats or other vectors
- **Perishable**: open food or personal products that will spoil or rot in storage
- **Contaminated**: items used for hygiene or that present a risk of biohazard (i.e. used toothbrushes, hairbrushes, washcloths, bandages, sponges, and underwear)
- **Hazards or Explosive**: items that could corrode or burn in storage
- **Broken or Disassembled**: items that are broken, damaged, or stripped of parts (i.e. electronics stripped for copper, flat tires, torn up clothes)
- **Weapons**: weapons will be turned over to the City of Pittsburg Police Department
- **Obvious Trash**: food /beverage wrappers, tissue / paper napkins, open household product containers

SCOPE OF SERVICES (continued)
EXHIBIT – B Compensation

General:

Compensation shall be paid to Contractor on a time and material basis as described below. Prior to the commencement of work, Contractor shall provide City with an estimated cost of the cleanup. Any one cleanup event exceeding \$5,000 shall be subject to approval by the City. Contractor shall notify City, with as much advance notice as possible, if it is determined that this estimate will be exceeded. At the conclusion of each cleanup, the City shall pay the Contractor in arrears within 30 days of a properly completed invoice.

The invoice shall itemize the number of employees assigned to the cleanup, the actual hours worked for each employee, and the hourly rate as quoted below, and the extend cost which is the current hourly labor rate times the total hours worked. Actual hours worked shall only include cleanup work and shall not include travel time to the jobsite, or any incidental time that is not directly related to the cleanup. If any supplemental equipment or materials were required for the cleanup, then supporting documentation must be provided with the invoice to document the cost to the Contractor of the supplemental material that was required.

Hourly Labor Rates: shall be inclusive of all wages, including all salaries, overhead costs, general and administrative costs, profit. Overhead costs shall include all hand tools, power tools, consumables, and related items that may be required to perform each cleanup.

Hourly rates shall be firm fixed for the duration of the agreement. Any price adjustments are subject to the approval by the City and must be substantiated by the Contractor to the satisfaction of the City. Refer to the attached equipment schedule for examples of tools and equipment.

Supplemental Equipment: In the event that additional machinery or equipment is required for a cleanup, then the Contractor shall receive pre-approval from the City describing the supplemental equipment required and the cost. City shall reimburse Contractor for any pre-approved supplemental equipment at the Contractor's actual cost of obtaining / using the equipment.

SCOPE OF SERVICES (continued)
Exhibit B – Compensation

Examples of tools and equipment provided by Contractor (and included in Contractor's hourly labor rate):

Clothing supplied by workers	Chain Saw
Boots – high top leather uppers	Heavy Equipment if needed
Long sleeve shirts	Small Skid Steer Tractor
Long pants	Backhoe loader
Maintenance Items	Dump trucks
Identifying shirts or vests	Other vehicles
First Aid Kit	Toilet Provisions
Drinking Water	Personal Accessories
Rakes	Gloves
Shovels	Hard Hats
Pitch forks	Dust Masks
Tarps	Goggles
Plastic Bags	Hand Tools
Garbage Pickers	Garbage Cans
Hammers	Pry-bars
Knives	Weed trimmer
Weed Mower	Portable Bathrooms

ATTACHMENT B

CONTRACTOR'S PROPOSAL FORM

Company Name: _____

Year Established: _____

Contact Name: _____

Contact Phone: _____

Contact Email: _____

Hourly Labor Rates shall be inclusive of all wages, including all salaries, overhead costs, general and administrative costs, profit. Overhead costs shall include all hand tools, power tools, consumables, and related items that may be required to perform each cleanup.

CATEGORY:

HOURLY RATE:

ATTACHMENT C
SAMPLE MAINTENANCE SERVICE AGREEMENT

CREEK MAINTENANCE SERVICE AGREEMENT

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF PITTSBURG AND
[NAME OF CONTRACTOR]
(general services)**

THIS Agreement (“Agreement”) for Creek Maintenance Services is made by and between the City of Pittsburg (“City”) and _____ (“Contractor”) (together referred to as the “Parties”) as of _____, 2022 (the “Effective Date”).

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein.

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on _____ or the date the Contractor completes the services specified in Attachment A, Scope of Services whichever occurs first, unless the term of the Agreement is otherwise terminated or extended, as referenced herein.

1.2 Standard of Performance. Contractor shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Contractor is engaged.

1.3 Assignment of Personnel. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, requests in writing the reassignment of any such persons to ensure Contractor performs services in accordance with the Standard of Performance, Contractor shall, immediately upon receiving City’s request, reassign such persons.

1.4 Time. Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided herein above and to satisfy Contractor’s obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Contractor a sum not to exceed Seventy Thousand Dollars for the duration of this Agreement \$(75,000), as set forth in the Scope of Services Exhibit B, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under this Agreement. This dollar amount is not a guarantee that the City will pay that full amount to the Contractor but is merely a limit of potential City expenditures under this Agreement.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement, as set forth in the Scope of Services Exhibit B, attached hereto and incorporated herein.

Section 4. INSURANCE REQUIREMENTS. Before beginning any services under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of this Agreement. The cost of such insurance shall be included in the Contractor's Proposal or proposal.

4.1 Workers' Compensation. Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Contractor is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Contractor, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence and \$4,000,000 aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition) covering any auto (Code 1), or if Contractor has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.

b. City, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the Contractor, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Contractor.

Coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.

c. For any claims related to this Agreement or the work hereunder, the Contractor's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and non-contributing.

d. The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.

e. Contractor agrees to give at least 30 days prior written notice to City before coverage is canceled or modified as to scope or amount.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Contractor, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 per occurrence or claim covering the Contractor's errors and omissions.

4.4 All Policies Requirements.

4.4.1 Submittal Requirements. Contractor shall submit the following to City prior to beginning services:

- a. Certificate of Liability Insurance in the amounts specified in this Agreement; and
- b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Policies.

4.4.2 Waiver of Subrogation. Contractor hereby agrees to waive subrogation which any insurer or Contractor may require from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

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

4.4.6 Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein,

and Contractor shall ensure that City, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

4.5 Remedies. In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Contractor to stop work under this Agreement and withhold any payment that becomes due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

5.1 General Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City or its directors, officials, officers, employees, agents or volunteers. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor. This Section 5.1 shall survive any expiration or termination of this Agreement.

5.2 PERS Indemnification. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees,

agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONTRACTOR.

6.1 Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent Contractor and shall not be an employee of City.

6.2 Contractor Not an Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Contractor and any subcontractors shall comply with all laws applicable to the performance of the work hereunder. Contractor shall also, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates as determined by the California Department of Industrial Relations.

7.3 Licenses and Permits. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have, and will maintain at their sole cost and expense, all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

7.4 Nondiscrimination and Equal Opportunity. Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, Proposal for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

7.5 Registration and Monitoring. Contractor shall be currently registered with the Department of Industrial Relations and qualified to perform public work consistent with Labor Code section 1725.5, except in limited circumstances as referenced in Labor Code section 1771.1(a). Additionally, Contractor is hereby notified that this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

7.6 Prevailing Wage Rates. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the services described in the Scope of Services are to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the services described in the Scope of Services. In accordance with California Labor Code Section 1773.2, the City has obtained the general prevailing wages in the locality in which the services described in the Scope of Services are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City's General Services Department and shall be made available on request. Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the services described in the Scope of Services. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims made by any worker, governmental agency or other third party with regard thereto.

The Contractor and any subcontractors engaged in performance of the services described in the Scope of Services shall comply with Labor Code Section 1775, which establishes a penalty per day for each worker engaged in the performance of the services described in the Scope of Services that the Contractor or any subcontractor pays less than the specified prevailing wage.

In accordance with Labor Code Section 1776, the Contractor and each subcontractor engaged in performance of the services described in the Scope of Services shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Scope of Services. Such records shall be in kept, maintained and made available in accordance with the requirements of Labor Code Section 1776.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. Upon ten days' prior written notice, City may cancel this Agreement at any time and without cause upon such written notification to Contractor. In the event of termination, Contractor shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Contractor delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or the City in connection with this Agreement.

8.2 Amendments. The parties may amend this Agreement only by a writing signed by the parties hereto.

8.3 Assignment and Subcontracting. City and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the City Manager, or his or her designee. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the City Manager, or his or her designee.

8.4 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor, including but not limited to the provisions of Section 5, shall survive the termination of this Agreement.

8.5 Options upon Breach by Contractor. If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.5.1 Immediately terminate the Agreement;

8.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;

8.5.3 Retain a different Contractor to complete the work described in Exhibit A not finished by Contractor; or

8.5.4 Charge Contractor the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

8.5.5 The remedies mentioned in this Agreement are not exclusive of any other right, power or remedy permitted by law. The City's failure or delay in exercising any remedy shall not constitute a waiver of such remedy or preclude the further exercise of City's rights.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Contractor's Performance. All final versions of reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Contractor hereby agrees to deliver those documents to the City upon termination of the Agreement, and the City may use, reuse or otherwise dispose of the documents without Contractor's permission. It is understood and agreed that the documents and other materials,

including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Contractor agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential drafts and will not be released to third parties by Contractor without prior written approval of City.

9.2 Contractor's Books and Records. Contractor shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles and shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Pursuant to Government Code Section 8546.7, the Agreement may be subject to the examination and audit of the State Auditor for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in Contra Costa County or in the United States District Court for the Northern District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 Conflict of Interest. Contractor may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act,

codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

10.7 Solicitation. Contractor agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.8 Notices. Any notice, demand, request, consent or approval that either party is required to give the other pursuant to this Agreement, shall be in writing and may be given by either (i) personal service, or (ii) certified United States mail, postage prepaid, return receipt requested. Notice shall be effective upon personal delivery or delivery to the addresses specified below, as reflected on the receipt of delivery or return receipt, as applicable.

Contractor : _____

City: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
ATTN: City Manager

10.9 Integration. This Agreement, including the Scope of Services attached hereto and incorporated herein as Attachment A represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent there are any inconsistencies between this Agreement, the Exhibits, and Contractor's proposal, the Agreement shall control. To the extent there are any inconsistencies between the Exhibits and the Contractor's Proposal, the Exhibits shall control.

<u>Attachment A</u>	Scope of Services
<u>Scope of Services Exhibit B</u>	Compensation

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.12 Construction of Agreement. Each party hereto has had an equivalent opportunity to participate in the drafting of the agreement and/or to consult with legal

counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

10.13 No Third-Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any third parties.

The Parties have executed this Agreement as of the Effective Date.

CITY OF PITTSBURG

CONTRACTOR

Garrett Evans, City Manager

[NAME, TITLE]

Attested by:

Alice Evenson, City Clerk

Approved as to Form:

Donna Mooney, City Attorney

SAMPLE