REQUEST FOR PROPOSALS
TOWN OF MORAGA
PUBLIC WORKS DEPARTMENT/ENGINEERING DIVISION

CIVIL ENGINEERING SERVICES
~FOR~
STREET LIGHT MASTER PLAN
(CIP No. 14-103)

1.0 INTRODUCTION

The Town of Moraga, Public Works Department/Engineering Division is seeking civil engineering firms with licensed professional engineers to provide engineering services for the Street Light Master Plan project.

The Town is seeking a firm with relevant experience in civil engineering who can provide these services with an efficient and cost-effective approach. You are invited to submit a proposal to provide these services for this project.

1.1 Project Description:

The general scope of work is to provide the Town with a street light master plan as a proactive approach to determine future needs, costs, priorities associated with street light improvements, and for programming future capital improvement projects.

The Town Council approved a capital improvement project (CIP) for FY 2013/2014 for the street light master plan. Some examples of street light improvements provided in the CIP are: convert remaining Town-owned street lights to energy efficient LED, replace existing street lights as a part of the Livable Moraga Road* project, revisit previous study to acquire street lights from PG&E and update the analysis and decision, review and update the inventory in the existing GIS layer for street lights, identify and replace deteriorated street light poles, evaluate and recommend Maintenance Management System for street lights, evaluate the Town’s street light system and determine if additional street lights are desirable or required, and recommend other street light projects.

*Additional information on the Livable Moraga Road project can be obtained from the following website: http://www.moraga.ca.us/livablemoragaroad.

1.2 Background:

The Town of Moraga Assessment District 1979-1 currently pays for 947 street lights situated within the District Boundary and 18 street lights that are outside of the District Boundary, for a total of 965 street lights (see Attachments A and B - Street Light Maps). There are 4,163 parcels of the 5,881 parcels in Town that are within the District. There are two private subdivisions that have street lights that are publicly maintained and assessed (Moraga Country Club and Sanders Ranch).

The street lights along residential streets typically consist of 5800 lumen (70 watt) High
Pressure Sodium Vapor bulbs located at intersections, at mid-block, and are generally spaced 200 feet apart. Along the arterial and collector streets, the street lights have between 9500 lumen (100 watt) and 22,500 lumen (250 watt) bulbs with varying spacing along the streets.

In FY 2011/2012, 125 street lights were converted to LED (77 PG&E owned and 48 Town owned), as well as all street lights along the arterial and collector streets (53 total), and two street lights were added in front of Campolindo High School. In FY 2012/2013, two solar street lights were installed along Moraga Road (one at Woodford Drive, one at Corliss Drive).

There are currently two rate schedules; Schedule 1 – lights and appurtenances maintained by PG&E, and energy provided by PG&E, Schedule 2 – energy only provided by PG&E. (See Attachment C – Town of Moraga Street Light Detail List from PG&E, 2013)

1.3 Streetlight Regulations:

**Moraga Municipal Code**

Chapter 96-6 of the Subdivision Ordinance addresses street lights and the need for them within subdivisions that will dedicate public right of way. This section of the code along with Town Council Resolution Number 10-84 (see Attachment D – Resolution No. 10-84) provides guidance to the Public Works Department.

96-6.202 General. To promote public health, safety and welfare, especially traffic safety and crime deterrence, the subdivider shall provide street lighting facilities for proposed subdivisions to be located as set forth in Sections 96-6.204 through 96-6.218. The provisions of this chapter shall be applicable only in public streets, or streets intended and designed to become public streets, and to public street lighting facilities.

96-6.206 2 DU or higher density districts. Street lighting facilities shall be provided along all streets wherein the area is zoned 2 DU or in land use districts having a higher density.

96-6.208 Areas zoned for multiple family, business or commercial uses. Street lighting facilities shall be provided along all streets within any portion of a subdivision zoned for multiple family, business or commercial land uses.

96-6.210 Existing public streets. The requirements set forth in Section 96-6.202 through 96-6.208 apply to portions of any existing public street abutting the subdivision.

96-6.216 Intersections. The public works department may require upgrading of existing or proposed lights at intersections where deemed necessary to prevent a hazard to traffic or pedestrians.

**General Plan**

Designated Scenic Corridors are St. Mary's Road, Canyon Road, Moraga Way, Moraga Road, Rheem Boulevard, Camino Pablo, and Bollinger Canyon Road.
CD3.2 Visual Character. Improve the visual character along Scenic Corridors with **lighting**, landscaping and signage.

CD3.5 Landscaping and Amenities. Require appropriate landscaping for both public and private developments located on designated Scenic Corridors, including **pedestrian lighting** and street trees within existing commercial areas.

**Design Guidelines**
Minimize Impact of Development

ID6 The level of lighting should not exceed the needs for security and safety or detract from the aesthetics of the development.

a. Outdoor lighting should be related to the design of the structure.
b. Outdoor light fixtures should be designed and mounted so that the source of light has minimal impact off site.
c. Outdoor lighting should be directed inward toward the property and may require additional screening to avoid spillage onto adjacent residential properties.

ID13.10 Street lighting in hillside and ridgeline areas should be unobtrusive and designed to reflect the natural surroundings.

### 2.0 SCOPE OF SERVICES

#### 2.1 Scope of Work
Provide engineering services for the **Street Light Master Plan** project, including but not limited to the following:

a) Planning, Research and Field Work

   i. Meet with Town staff to discuss the schedule and timing of the work, and confirming the scope of work and deliverables.

   ii. Research available information from the Town (i.e. record drawings, maps, as-built plans, etc. from the Town, County, utility companies and other agencies, if necessary).

   iii. Conduct site visits to various locations of significance or importance to the Town. Obtain GPS data, if necessary, of the various locations of the existing street lights.

   iv. Obtain additional data or information as necessary to further develop your Master Plan.

   v. Create a photometric plan or layout, if necessary, to demonstrate the need or lack of lighting in a particular area or corridor based on the goal to provide street lighting facilities to promote public health, safety and welfare, especially traffic safety and crime deterrence, to prevent a hazard to traffic or pedestrians, or where streets do not meet current industry standards for spacing and luminance. Meet with the Police Chief and Public Works Maintenance Superintendent, if necessary, to discuss problem areas of crime, illegal dumping, or other areas that may need additional safety and security lighting.
vi. Meet with the Planning Director and Public Works Maintenance Superintendent to discuss the balance between aesthetics and low maintenance for proposed street light standards and make recommendations.

vii. Meet with the Administrative Services Director and the Street Light District Assessment consultant to determine eligibility and funding for recommended capital improvement program.

viii. Present alternatives and provide recommendations and analyses of the advantages and/or disadvantages of each, for discussion with the Town before pursuing or further investigating alternative improvement projects those that listed in the Project Description of this RFP.

b) Analysis, Recommendations, and Development of Program for Improvement Projects
   i. Determine what improvements are needed based on your research and analysis for the street light system and develop a program for future capital projects in the Master Plan.
   ii. Prioritize your list of proposed recommendations for improvements and provide justification.
   iii. Develop a project description, associated preliminary cost estimate, and proposed schedule/timeframe for each recommended improvement.
   iv. Provide recommendations for a standard street light pole, model, style, luminaire, electrolier, etc. to be used for arterial streets, collector streets, residential streets, within commercial districts, etc. Provide a standard detail and specifications for your recommended street light. Consideration for same foundation bolt pattern so that knockdowns can be promptly replaced with temporary available street light poles until standardized street light poles are purchased and delivered.

c) Office Data Processing and Preparation of Final Documents
   i. Prepare all drawings using AutoCAD in English units using industry standard borders and sheet format in an engineering scale, as applicable.
   ii. Prepare all word processing and spreadsheet documents using MS Word and MS Excel.
   iii. Submit draft plan for Town staff review and anticipate two rounds of review comments and revisions.
   iv. Provide to Town with final submittal of the Street Light Master Plan, all survey GIS and/or GPS database files, calculations, correspondence, photos, electronic files, and supporting/reference information and material, etc., and any drawings in AutoCAD files (i.e. drawing, x.refs, blocks, fonts, pen styles, etc.) on CD/DVD format.
   v. Provide hard copies (number to be determined) and electronic copies in PDF format, MS Word and MS Excel formats, as applicable.

d) Additional Project Services
   i. Attend additional meetings to present the plan to the Public Works Department, other Town Departments, and Town Council, if necessary, and respond to questions and requests for revisions.
   ii. Coordinate with cities and County, and PG&E, as necessary.
2.2 **Compensation**

The Consultant shall advise the Town in writing of the scope of work to be provided for each assignment and the cost of and estimated time to perform services. The Consultant shall not proceed to perform any such services until the Town and Consultant have established a project cost, a completion schedule, and a period for performance and the Town has given its written authorization to perform.

The cost shall be formatted in a not-to-exceed at cost estimate (number of person hours multiplied by the current billing rates of the Consultant) for each scope of work item to be performed.

2.3 **Ownership of Documents**

Title to all final documents, including but not limited to drawings, specifications, data, reports, summaries, correspondences, photographs, computer software (if purchased on the Town’s behalf), video and audio recordings, software output, and any other materials with respect to work performed shall be provided to Town upon completion of the work. Any information obtained by the Consultant as a result of performing the services shall become the property of the Town and shall not be released to others without prior written consent from the Town.

3.0 **PROPOSAL REQUIREMENTS**

The proposal submission may not exceed fifteen (15) single-sided standard sized (8½” x 11”) pages, unless otherwise noted elsewhere in this RFP. Minimum font size of 12 required. The page limit does not apply to schedule of costs and fees (appendix), one-page table of contents, any folder, or cover. Each page must be numbered. Costs for preparing and submitting a response to this RFP are entirely the responsibility of the Consultant.

3.1 **Cover Letter**

**Summary** – Provide a brief summary of the firm’s proposal contents, emphasizing qualifications and capabilities of the Consultant and any subconsultants, if appropriate. The summary should indicate an understanding of engineering services required for performance.

**Signature and Contact Information** – The cover letter shall be signed by the Consultant’s Project Manager and an official authorized to negotiate and contractually bind the firm with the Town regarding the requested services (see Attachment E – Sample Consultant Services Agreement). The Project Manager shall be the main contact with the Town for technical and contractual issues, and shall be responsible for the direction of day-to-day progress. Please provide the telephone number, e-mail address, and office location of the Project Manager.

3.2 **Conflict of Interest**

The Consultant shall disclose and list any financial, business, or other relationships with the Town that may have an impact on the outcome of the project required for performance. A potential conflict of interest includes, but is not limited to, work related to contracts with
other Town departments, other municipalities, local land developers, current clients, and other parties who may have a financial interest in the outcome of the project.

See the Conflict of Interest section on the attached sample agreement (Attachment E) for more information. At the Town’s discretion, a potential conflict of interest may be waived or factored into final award decisions and/or a modified scope of work.

3.3 Qualifications and Experience
Summarize the qualifications and relevant experience for the consultant firm and any subconsultants. The following items shall be included:

Summary – Provide a summary of the firm’s recent and related experience and expertise. The proposed relationships among all key personnel and support staff that are expected to provide engineering services should be identified. Provide information on the firm’s experience related to the project’s scope of work, firm’s current work load, facilities, resources, and experience that clearly demonstrate its ability to successfully be the firm for this project. Indicate your understanding of the issues and challenges unique to this project and offer insight into how your firm will meet these situations.

Reference Projects – Provide three (3) reference projects similar to the scope of work for the Town’s Street Light Master Plan. Provide client name, contact person, current phone number and e-mail address. Should the Town not reach a contact person with the contact information provided, then the reference will not be considered in the proposal evaluation. Select one (1) of these reference projects to elaborate on the various assignments that were issued to your firm and include 1) Assignment descriptions and locations, 2) Description of services provided, 3) Budget and schedule performance, and 4) Key personnel assigned to specific work tasks and subconsultants involved. The highlighted reference project shall demonstrate working knowledge and experience regarding the preparation of a Street Light Master Plan similar to the one desired by the Town.

Resumes – Provide resumes, as an appendix, for key personnel focusing on relevant experience and the assigned function of each key person. Provide information related to the project’s scope of work. Similar information is required for each subconsultant utilized, if any.

3.4 Schedule, Costs and Fees
Provide a schedule and cost proposal for this project. Propose a schedule with time frames and tasks as it fits your team’s proposal to achieve a completed project.

The firm shall provide a brief justification for the level of effort proposed with the cost matrix and the project approach. The cost matrix shall be broken down by project task and the number of person-hours per task including staff title and hourly rate. The schedule of costs and fees shall include current fee schedules, personnel wage rate sheets and other costs. The firm shall provide specific hourly rates for each class of employee, specialist, and/or subconsultant. Such specific rates of compensation are to include an hourly breakdown, direct salary costs, salary additives, indirect costs, and fixed-fee or profit. Other direct costs should be set forth as independent cost items. The schedule of costs and fees shall include
a separate itemization of any additional costs, such as mileage, printing, postage, and other reimbursable expenses unless enveloped as part of the billing rate. The cost matrix may be submitted in a sealed envelope with your proposal, at your option.

### Sample Cost Matrix

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<th></th>
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</tbody>
</table>

### 4.0 SELECTION PROCESS

#### 4.1 Proposal Evaluation

Proposals are to be reviewed by an evaluation committee using a rating matrix to determine the ranking of proposals. Proposals will be rated on the following:

- Basis of understanding of the scope of work and project approach (25%),
- Qualification and experience of the project team (25%),
- Experience in similar types of projects (25%),
- Proposed project schedule and allocation of resources (10%),
- Value of product within a budget of $35,000 (15%).

The evaluation committee will recommend which firm will be selected for a presentation and interview, if deemed necessary by the committee.

#### 4.2 Consultant Selection

All firms are hereby notified that the selection of the Consultant for this contract and any agreements for services resulting from the Request for Proposals is dependent on the approval by the Town Council.

### 5.0 SUBMITTAL OF PROPOSAL
5.1 **Submittal**
Please submit one (1) original and three (3) copies of your proposal **no later than 3:00 p.m., Wednesday, April 16, 2014**, to:

Laurie Sucgang, Senior Civil Engineer  
Public Works Department/Engineering Division  
329 Rheem Boulevard  
Moraga, CA 94556

Proposals received by the due date will be ranked by a selection committee. **Late submittals will not be accepted.**

5.2 **Questions**
Please submit any questions regarding this RFP, insurance requirements, and professional services contract agreement in writing to lsucgang@moraga.ca.us **no later than 12:00 p.m., Monday, March 31, 2014**. Answers to all questions will be posted on the Town’s website on Wednesday, April 2, 2014. Please note that questions will **only** be accepted via e-mail and responses will be compiled and posted on the Town’s website. It is your responsibility to obtain the answers from the Town’s website and the Town shall not be responsible for transmitting the answers to any holders of the RFP.

5.3 **Proposal Information**
- The Town reserves the right to reject any and all proposals submitted.
- All responses to the RFP become the property of the Town.
- The RFP does not commit the Town to award a contract or to pay any cost incurred in the preparation of the proposal.
- The Town reserves the sole right to evaluate each proposal and to accept or reject any or all proposals received as a result of the RFP process.
- The Town reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects of the RFP and/or RFP process, to obtain further information from any and all consultant teams and to waive any defects as to form or content of the RFP or any responses by any consultant teams.
- Once a final award is made, all RFP responses, except financial and proprietary information, become a matter of public record and shall be regarded by the Town as public records. The Town shall not in any way be liable or responsible for the disclosure of any such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act.
- Award of a contract does not guarantee that a Consultant or its subconsultants will actually receive any work.

6.0 **SCHEDULE OF EVENTS**

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<tr>
<td>Request For Proposal Released</td>
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</tr>
<tr>
<td>Written Questions Deadline</td>
<td>March 31, 2014</td>
</tr>
<tr>
<td>Answers Posted on Website</td>
<td>April 2, 2014</td>
</tr>
<tr>
<td>Receipt of Proposal Deadline</td>
<td>April 16, 2014</td>
</tr>
</tbody>
</table>
7.0 ATTACHMENTS

Due to file size, the following attachments are available for download from the Town’s website: [http://www.moraga.ca.us/dept/publicworks/about](http://www.moraga.ca.us/dept/publicworks/about). It is the consultant’s responsibility to obtain all attachments prior to submittal of a proposal and the Town shall not be responsible for transmitting the attachments to any holders of the RFP.

- Attachment A – Assessment District 1979-1 Street Light Map
- Attachment B – Street Lighting Maps
- Attachment C – Town of Moraga Street Light Detail List, 2013
- Attachment D – Town Council Resolution No. 10-84

The following attachment is provided with the RFP:
- Attachment E – Sample Agreement
CONSULTANT SERVICES AGREEMENT

Project: ______________________________________________________________

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

Recitals

   WHEREAS, Town desires to obtain contract planning services in connection with the _________________________________; and

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

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

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

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

2. Time of Performance. The services of Consultant are to commence no sooner than November 1, 2011 and, subject to Town Council approval, be completed not later than December 31, 2011. Consultant shall perform its services in accordance with the schedule in Exhibit B. Any changes to these dates in either Section 2 or Exhibit B must be approved in writing by ____________ or its representatives.

3. Compensation and Method of Payment.

   A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit “C”. However, in no event shall the amount Town pays Consultant exceed ________________________ Dollars ($________). Payment by Town under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the Town at the time of payment.
B. **Timing of Payment.** Billing for said services shall be made monthly. Town shall review Consultant’s billing statement and pay Consultant for services rendered within 45 days of receipt of a complete billing statement that meets all requirements of this Agreement.

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

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

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

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

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

5. **Duties of Town.** Town shall provide all information requested by Consultant that is reasonably necessary to performing the Scope of Work. Town retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement.
6. **Ownership of Documents.** Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in the Town, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the Town. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to the Town without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of Town during the term of this Agreement, unless required by law.

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

8. **Conflict of Interest.**

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

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

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

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

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

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

11. **Indemnity.** Consultant will hold harmless, defend and indemnify Town, its officers, agents, volunteers and employees from and against any and all claims, demands, costs or liability including attorney fees arising out of or in any way connected with the performance of this Agreement, caused in whole or in part by any act or omission of the Consultant, any of its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent caused by the active negligence, sole negligence, or willful misconduct of Town. Consultant’s duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

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

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

14. **Compliance with Laws.**

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

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

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

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

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

16. Insurance.

A. Minimum Scope of Insurance.

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

(2) Consultant agrees to have and maintain for the duration of this Agreement an Automobile Liability insurance policy insuring it and its staff to an amount not less than $1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Contractor shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Contractor’s operations under this Agreement, whether such operations be by Contractor or by its employees or subcontractors. The amount of this insurance shall not be less than $1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

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

(a) “The Town of Moraga, its employees, officers, agents and volunteers are hereby added as additional insureds, but only as respects work done by, for , or on behalf of the named insured.”
(b) “This policy shall be considered primary insurance as respects any other valid and collectible insurance the Town may possess, including any self-insured retention the Town may have, and any other insurance the Town does possess shall be considered excess insurance only and shall not contribute with it.”

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

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

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

(7) Consultant’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30 days’ prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file with the Town Manager at all times during the term of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

If to Consultant: __________________________
______________________________
______________________________

25. **Consultant’s Books and Records.**

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

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

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

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

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

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

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

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

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

A. Exhibit A: Scope of Work
B. Exhibit B: Schedule
C. Exhibit C: Compensation
D. Exhibit D: Other Consultants, Specialists or Experts Employed by Consultant
31. **Execution.** This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

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

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

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

TOWN OF MORAGA

By: ______________________________

Jill Keimach, Town Manager

CONSULTANT

By: ______________________________

Title: ______________________________

APPROVED AS TO FORM:

By: ______________________________

Michelle Marchetta Kenyon, Town Attorney

FUNDING:

By: ______________________________

Stephanie Hom, Administrative Services Director
EXHIBIT A

Scope of Work
[to be inserted]
EXHIBIT B

Schedule of Performance

[to be inserted]
EXHIBIT C

Compensation

[to be inserted]
EXHIBIT D

Other Consultants, Specialists or Experts Employed by Consultant

[To be Inserted]