

City of Piedmont  
COUNCIL AGENDA REPORT

---

DATE: February 16, 2021

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Consideration of the Issuance of a Request for Proposals for Project Management/Owners Representative Services for the Design and Construction of the Piedmont Community Pool

---

RECOMMENDATION

Authorize staff to issue a Request for Proposals (RFP) for Project Management/Owners Representative services for the design and construction of the Piedmont Community Pool.

BACKGROUND

With passage of Measure UU, efforts have been focused on becoming familiar with all of the steps necessary for issuance of bonds and with structuring an internal team to ensure that the Piedmont Community Pool Project is successful and meets community expectations. The internal team, whose individual roles will ebb and flow depending on the particular phase of the project or the nature of issues that may arise, will be led by me as the City Administrator and will be composed initially of Recreation Director Chelle Putzer, Director of Public Works Daniel Gonzales, Finance Director Mike Szczech, Director of Planning and Building Kevin Jackson, City Engineer John Wanger, and Special Assistant Paul Benoit.

Given that the internal team has a host of work issues and competing priorities within their areas of responsibility, a first and critical step is engaging the services of a Project Manager/Owner's Representative (PM/OR). The individual or firm filling this position will necessarily be well versed in key fundamentals of architectural design, engineering, construction and construction field management, economic evaluations, project scheduling, budget development, and time/budget management. Acknowledging the high level of community interest and engagement, excellent communication and facilitation skills will also be required.

The PM/OR, unlike internal team members, will be dedicated to oversight of the Community Pool Project, from design development through construction, and will focus efforts on keeping the Project on schedule and on-budget. In addition to day to day management, the position will have a prime responsibility for ensuring at all regulatory requirements are fully met, and that issues relative to constructability and cost are identified and addressed in the earliest stages of project design development. This level of oversight and management will help limit or avoid future issues of project delays, cost overruns and change orders.

The timeline for the RFP, while aggressive, is reasonable. It would begin with the issuance of the RFP on February 17<sup>th</sup>, proposals due on March 19<sup>th</sup>, and probable Council consideration of the contract on April 5<sup>th</sup>.

The attached Request for Proposals was developed by Paul Benoit, John Wanger, and myself, with input from Chelle Putzer and Daniel Gonzales. The document was also reviewed by the City Attorney.

ATTACHMENT

- A) Request for Proposals for Project Management/Owners Representative Services for the Design and Construction of the Piedmont Community Pool



**CITY OF PIEDMONT  
120 VISTA AVENUE  
PIEDMONT, CA 94611**

**REQUEST FOR PROPOSALS**

**PROJECT MANAGER/OWNER'S REPRESENTATIVE  
FOR DESIGN AND CONSTRUCTION OF THE  
PIEDMONT COMMUNITY POOL**

**Proposals are due prior to 2:00 p.m., March 19, 2021  
Pre-Proposal Conference 2:00 p.m., March 1, 2021**

**February 17, 2021**

## **CITY OF PIEDMONT REQUEST FOR PROPOSALS**

### **PURPOSE OF THE REQUEST FOR PROPOSAL**

The City of Piedmont intends to retain a qualified and committed professional firm or individual (Consultant) to provide Project Management/Owner's Representative services (Services) to the City of Piedmont, for the management, coordination, facilitation, oversight and monitoring of all phases of the Piedmont Community Pool Project, including Program and Pre-Design, Design, Construction and Project Closeout (Project). At the point of construction the City intends to engage the services of a separate Construction Manager under a separate agreement. Individuals or firms submitting a response to this RFP are required to state their understanding of the Project and experience with the full range of project and construction services for similar facilities, as well as their experience and expertise managing projects for the public sector.

### **BACKGROUND**

The existing Piedmont aquatics facility opened in 1964 and was operated by the private, not-for-profit Piedmont Swim Club until 2011. At that time, the City assumed responsibility for the operation of the facility and renamed it the Piedmont Community Pool. It has long been recognized that the size and configuration of the facility is inadequate to meet the aquatic needs of the community. Recreation swim, lap swim, learn-to-swim, therapeutic swim, and competitive swim/water polo have all been vying for limited and suboptimal space for decades. The Piedmont City Council and community have launched many efforts over the years to chart a course to a new community pool center including, but not limited to:

- Piedmont Community Recreation Center (PCRC) 2002
- Recreation and Aquatics Cooperative (RAC) 2002-2005
- Sports Management Group Aquatic Study 2006
- Civic Center Master Plan 2006-2007

These efforts and studies all drew similar conclusions regarding the inadequacy of the present facility and potential for a new, more appropriate facility. However, for various reasons, no actions were taken to renovate or replace this community resource. Instead, the focus has been on yearly maintenance and repairs to keep the present facility safe and operational.

In 2015 the City launched a new study to further analyze possibilities for a facility that would meet community needs. That work, led by Harley-Ellis-Devereaux (HED), involving robust community involvement, culminated with adoption of the Aquatics Master Plan Conceptual Design in November, 2016. Following adoption, the City commissioned additional analyses, including an Operational Analysis of the proposed concept, completed by Counsilman-Hunsaker; an in-depth analysis of the current facility's condition and life-expectancy, completed by Aquatic Commercial Consulting; and community opinion polling, completed by Fairbank, Maslin,

Maullin, Metz & Associates. These documents, along with others related to the pool project are available on the [Piedmont Community Pool Project page of the City's web site](#).

The results of these combined analyses led the City Council to place a General Obligation Bond Measure, in the par amount of up to \$19.5 million, on the November 2020 ballot, for the purpose of replacing the Piedmont Community Pool and to make related improvements to adjacent areas, including, for example, showers, restrooms, locker rooms, multi-purpose rooms and civic open-space. The Measure (Measure UU) passed by the required two-thirds margin and the City now desires to move expeditiously to assemble a team to ensure that every aspect of this high-profile project is managed professionally, with thoughtful and thorough attention to all essential details, and to ensure delivery of a Project that meets and exceeds community expectations. The Consultant to be selected pursuant to this RFP will be a key member of the team.

## **PROJECT DESCRIPTION**

The existing Piedmont Community Pool and related infrastructure will be demolished and a new aquatics facility will encompass the site as well as adjacent City-owned land. The Project site is approximately 1.17 acres and is generally bound by the Recreation Building to the west, Magnolia Avenue to the south, Bonita Avenue to the east and the Main City Tennis Courts (Corey Reich Tennis Center) to the north. The schematic conceptual design described and pictured below and adopted as part of the 2016 Master Plan is the starting point for refinement.

The Community Pool Conceptual Master Plan was designed to serve competitive swim and water polo, instruction, water fitness, and recreational users of all ages. The plan features two bodies of water; a deep water Competitive Pool and a shallow Leisure or Recreation Pool. The competitive pool includes a “stretch 25” competition pool that includes a 4 foot movable bulkhead and two 1-meter diving boards. This 9,600 square foot (30 meter x 25 yard) pool will serve a variety of programs including competitive swim and water polo (practices as well as dual meets and matches), lap swim, aquatics camps, clinics and instruction, and recreational swimming/diving. The movable bulkhead allows for the pool to be divided so that concurrent programs can take place at the same time.

In addition to the competitive pool, the conceptual design includes a 3,900 square foot, zero-depth entry Leisure Pool that may feature an activity structure, spray features and small waterslides. Within the Leisure Pool there will be a 25 yard, 2 lane instructional area for swim lessons and lap swim. Together, the two pools as conceived will provide the Piedmont community with 13,500 square feet of water.

The Conceptual Master Plan also includes a 7,700 square foot, 2-story Bathhouse at the eastern end of the property. The Bathhouse ground floor will have a main entry and reception area, changing /restrooms, concessions and a 1,200 square foot mechanical room. The second floor will provide a restroom for the adjacent tennis courts, 2 multi-purpose rooms, office space and an observation deck overlooking the two pools and views of the bay.



## TENTATIVE SCHEDULE FOR SELECTION PROCESS

The tentative schedule for Project Manager/Owner's Representative selection is as follows:

Release RFP:	February 17, 2021
Pre-Proposal Conference:	March 1, 2021
Requests for clarification for this RFP:	March 8, 2021
Proposals Due:	March 19, 2021
Interviews with Top-Rated Firms:	Week of March 29th
Contract Award Date:	April 5, 2021

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

## SCOPE OF SERVICES

The City intends to retain the services of a Project Manager/Owner's Representative to help shepherd this Project through the program and pre-design, design and construction stages. One of the first duties of the Project Manager will be to assist the City in soliciting proposals for design services based on the adopted Master Plan. Once the design consultant is hired, the Project Manager will assist in the oversight of the design team, as well as assist the City with public outreach. As this Project is funded through General Obligation bonds supported by the community, communication with the community throughout the Project is essential. Similarly, working with City staff to provide updates to the City Council will also be very important.

As the Project progresses, the Project Manager will be expected to coordinate with the various City Staff and Departments (e.g. Recreation, Planning and Building, Public Works, Finance, City Administrator's office, etc.) involved with this Project. It is anticipated that the Project Manager will be integrally involved in reviewing work products from the design consultant, coordinating reviews with the various Departments, assisting in reviewing the constructability of various options, assisting with value engineering of the design, and generally working to ensure that the design meets the City's and Community's needs. Once construction documents have been completed, the Project Manager will work cooperatively with the Public Works/City Engineering Departments to bid the Project in accordance with the applicable City Codes and the Public Contract Code. During the bidding process, the Project Manager will coordinate with City Departments and the design team to ensure that any clarifications or addendums are processed in a timely manner. Once bids are received, the Project Manager will assist the Public Works/City Engineering Department in evaluating the bids and recommending award of contract.

Prior to bidding the Project, the Project Manager will also work with City staff to identify a construction management/inspection consultant for oversight of the day to day construction. If proposals are requested, the Project Manager will assist the City in generating an RFP and distributing the RFP to qualified consultants. The Project Manager will assist in reviewing and evaluating any proposal received in response to the RFP and will assist in determining the recommended consultant to retain for this work.

During construction, the Project Manager is expected to act as the Owner's Representative with respect to oversight of the Project, coordinating with the construction management and inspection firm to keep up on the progress, assisting with the resolution of any issues, keeping the public informed and providing regular updates at City Council meetings. Upon completion of construction, the Project Manager will participate in the final walkthrough of the Project, review of the punch list and generally be involved with the Project closeout.

As communication is essential on this Project, the Project Manager will be expected to assist the City in overseeing community outreach for the entirety of the Project. It is anticipated that there will be a series of public meetings to review the progress of the design and to solicit public feedback. The Project Manager will assist in communicating public comments to the design team and ensure that there is a balance maintained between the work of the design team, community desires and budget limitations. Considerable skill in working on high-profile public projects, involving extensive civic engagement is essential. The selected individual or firm must exhibit

proven, well-developed communication skills - both verbal and written, as well as the ability to manage and negotiate between competing interests. If needed, the Project Manager may consider including a facilitation and public outreach sub consultant on their team.

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

### **1. General**

Act as the City's representative during the Program and Pre-Design Phase, Design Phase, Construction Phase and Project Closeout Phase of the Piedmont Community Pool Project

### **2. Program and Pre-Design Phase**

- . Assist the City in clearly defining the scope of the Project (refinement of the conceptual master plan that has already been developed);
- . Assist in communicating with City management, Council, staff, community, and news media to enhance understanding and develop ongoing support for the Project;
- . Assist in soliciting (assist in developing a Request for Proposals) and retaining a qualified design team for the Project. This will include participating in a pre-proposal meeting with interested design firms, review of all proposals received, coordinating the circulation of the proposals to a review team and collection of all ranking information, assist in developing a short list of consultants (no more than 3) for interviews, schedule and participate in the interviews, coordinate the ranking results from the interview panel, and assist in negotiating with the selected consultant team.
- . Develop project management plan, clearly defining roles, key tasks, project schedule and project management tools to be used;
- . Develop and maintain a master schedule and report deviations to the City and resolve schedule issues;
- . Establish Project controls and procedures;
- . Assist with developing and maintaining a realistic Project budget that includes all construction and non-construction costs including permit fees, site preparation, utilities, design services, construction costs, inspection services, equipment costs, furniture and fixtures and project contingency. Update the Project budget regularly, and deliver Project status reports, no less than monthly; and
- . Assist with public outreach and meetings.

### **3. Design Phase**

- . Manage work of the design team;
- . Collaboratively work with City staff to review design documents for completeness and for conformance with the City's objectives;
- . Work with the design team to ensure that the design stays within budget, that the process stays on schedule, and to assist in ensuring constructability of the design;
- . Work with City staff and the design team to make suggestions or identify changes that could improve the design, constructability, or reduce costs;



- Assist in leading and participating in public engagement meetings, workshops and City Council meetings and in ensuring that relevant comments and concerns are appropriately addressed by the design team;
- Assist with value engineering studies and, if necessary, coordinate getting an independent estimate to ensure the Project will stay within the budget;
- Coordinate with all relevant regulatory agencies and assist with obtaining all required permits, building permits, and all required approvals;
- Review/recommend payment requests from the design team. If necessary, assist in negotiating any changes to the scope of work and fee as the Project progresses;
- Work with City staff to perform quality control of all design team deliverables (including those of subconsultants), such as plans, drawings and specifications, to ensure quality, completeness, and appropriateness. Note that the Project Manager will be expected to collect all comments from the various City Departments in the review of the comprehensive construction documents and to transmit them to the design team; and
- Conduct, in conjunction with the City and design team, pre-construction orientation conference(s) for the benefit of the contractors interested in bidding the Project.

#### **4. Construction Phase**

- Work with the City's selected Construction Manager and inspection team to oversee the Project during construction. Work in this phase of the Project may include, but not be limited to:
  - i. Work in conjunction with the Construction Manager to monitor the construction schedule and budget and bring any issues to the City Administrator or other City Departments involved;
  - ii. Attend Project meetings as necessary;
  - iii. Prepare monthly reports for updates to the City Administrator, the City Council and the community;
  - iv. Work in conjunction with the Construction Manager to monitor work completed verses budgets and note any issues; and
  - v. Coordinate regular communication to the City staff, the City Council and the community.
- Change Management
  - i. Assist the Construction Manager and City staff with identification of appropriate changes in scope; and
  - ii. Assist with validating impact of changes.

#### **5. Project Closeout**

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

## PRE-SUBMITTAL ACTIVITIES

All requests for clarification for this RFP should be directed to Sara Lillevand, City Administrator, via email at [communitypoolproject@piedmont.ca.gov](mailto:communitypoolproject@piedmont.ca.gov)

Requests for clarification must be received, in writing, by 2:00 p.m., Monday, March 8, 2021. Clarification responses will be provided to all consultants that have expressed interest in this RFP. The City cannot respond to verbal questions submitted by telephone or in person.

The City reserves the right to revise the RFP prior to the indicated due date. City may consider extending the due date for the RFP for any reason, including significant revisions to the “Scope of Services.” Material changes, if any, to the scope of services or proposal procedures will only be transmitted by written addendum and posted to the City web site. Addendums and answers to submitted questions will be available via the City of Piedmont’s web site under “Notice” for the RFP announcement.

A Pre-Proposal Conference will be held via ZOOM at 2:00 p.m. Monday, March 1. **Attendance at the conference is mandatory.** Invitations will be emailed in advance of the conference.

## PROPOSAL SUBMISSION INFORMATION

Due to COVID-19 requirements, proposals can be submitted either electronically or in hard copy. Proposals are to be submitted to the City Clerk’s Office, Attention Mr. John Tulloch, by 2:00 PM on Friday, March 19. Electronic submissions should be sent to [communitypoolproject@piedmont.ca.gov](mailto:communitypoolproject@piedmont.ca.gov). Hard copy submissions should be addressed to City Clerk’s Office; 120 Vista Avenue; Piedmont, California 94611 and should be clearly marked on the outside of the envelope as a submission for the Piedmont Community Pool Project Management RFP. All submissions become the property of the City of Piedmont.

A technical proposal outlining the understanding of the Project, the proposed scope, related specific experience of the Project Manager/Owner’s Representative and references will be submitted by the due date. The proposal should contain an estimate of hours for personnel in each of the tasks. Additionally, the Project Manager/Owner’s Representative should include a Schedule of Hourly Rates. If hard copies are submitted, proposals must be complete, sealed and marked “City of Piedmont Aquatic Center - Project Management/ Owner’s Representative Services - Technical Proposal” and include the proposer’s name, address, and telephone number must be clearly marked on the outside of the envelope. If submitted electronically, they should be submitted in a file containing this same name.

Any incomplete proposal or proposal not received by the specific date and time may be rejected and may not receive further consideration by the City. Postmarks will not be accepted.

## PROPOSAL REQUIREMENTS

If submitting hard copies, please submit one (1) signed original, four (4) copies, and one (1) USB Flash Drive copy of the Proposal. If submitting electronically, please provide all files in PDF format.

The Proposal shall be concise, well organized and demonstrate an understanding of the Scope of Services and shall be accompanied by a Transmittal Letter. The Proposal shall be limited to thirty (30) one-sided pages (8 1/2 inches X 11 inches), inclusive of the Table of Contents, Company Profile, Project Team, the Work Plan Approach, Work Schedule, Exceptions to the contract language and litigation information. All other materials including Resumes, Related Project Experience and References can be included in appendices to the proposal and will not be counted as part of the 30 page limit.

The proposal must include, at a minimum, the following elements in the listed order:

### **A. Transmittal Letter**

The proposer must submit one original transmittal letter of no more than two (2) pages signed by an official authorized to solicit business and enter into contracts for the proposing firm.

### **B. Table of Contents**

### **C. Company Profile**

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

### **D. Related Project Experience and References**

Proposer must submit information substantiating its experience in successfully completing comparable projects for other municipalities/clients within the past ten years, that are comparable in quality and scope to that specified within this RFP. List references for the similar projects including the project name, project description, and contact information of the agency's primary contact person, and the date of completion. Indicate your firm's specific responsibilities and total project cost for each of the projects.

### **E. Project Team**

Describe the proposed team organization and the qualifications and experience of the firm and the proposed staff to be assigned to this Project. Describe the qualifications and experience of any proposed sub-consultants and identify the tasks or sub-tasks to be assigned to them. Firms, sub-consultants and proposed staff must demonstrate experience with similar projects. Firms will include a list of similar projects that each of the project team members has worked on. Staff proposed to be in charge of the Project must demonstrate significant experience with similar Projects. **Note that the City will require a dedicated Project team. The City will include language in the agreement that will require, absent death, incapacity or employment termination, the Project team presented to the City will remain assigned to the Project. The**

**City's Contract for Services provides for liquidated damages for key personnel departures other than for death, incapacity or employment termination.**

**F. Work Plan and Approach**

Describe your firm's understanding of the Scope of Services to be performed. Describe the method for management of overall project costs, schedule, quality assurance/quality control, and other issues critical to this Project. Describe how your firm engages the community on projects. Describe your firm's approach to communication with City team members and consultants. Describe the tools your firm uses to effectively develop and manage Project budgets and schedules.

**G. Work Schedule**

Include a proposed work schedule including all of the required tasks within the desired timeline to accomplish the initial task of identification of the design team.as well as a high level proposed timeline for the entire Project

**H. Estimate of Hours**

Provide an estimate of personnel hours for each of the tasks listed in the Scope of Work. Additionally, provide a copy of the firm's Schedule of Hourly Rates with the proposal. It is clearly understood that what is shown are budgetary hours and it may be subject to change based on design and construction schedules. Please list all assumptions used in determining the overall estimated hours.

**I. Exceptions**

Identify any exceptions you are proposing with respect to the City's Contract. If there are none, include a statement to that effect with the proposal.

**J. Litigation**

List any lawsuit or litigation and the result of that action resulting from any job undertaken by the firm or by its sub-consultants which is still pending or has occurred on projects within the last five years.

**K. Proposal Authorization Form**

Include a completed and executed Proposal Authorization Form attached as Exhibit B.

**CONTRACT REQUIREMENTS**

All services will be provided in accordance with the City's contract attached as Exhibit A to this request for proposals.

**INSURANCE REQUIREMENTS**

The insurance requirements are set forth in the City's contract attached as Exhibit A.

## **RIGHT OF REFUSAL**

The City reserves the right to reject any and all proposals without cause. Proposals will be evaluated in their entirety. The City reserves the right to negotiate specific requirements and costs using the selected proposal as a basis.

## **CONSULTANT SELECTION PROCESS**

1. A Consultant Selection Committee will be established for the purposes of evaluating and selecting a Consultant. Each member of the Committee will evaluate each submitted Proposal.
2. The Committee will select a short-list of firms qualified for this Project to participate in an oral interview.
3. Based on qualifications provided in Proposals and oral interviews, the Committee will rank the Consultants. The top-ranked firm will be the Selected Firm.
4. The City reserves the right to make the final Consultant selection based solely upon evaluation of the Proposals, without short-listing firms or conducting oral interviews, should it find it to be in its interest to do so.
5. The Committee, or a representative, will enter into negotiations with the Selected Firm. The negotiations will cover: "Scope of Work," contract schedule, contract terms and conditions, technical specifications, and fees. If the Committee is unable to reach an acceptable agreement with the Selected Firm, the negotiations will be terminated and negotiations with another firm will be initiated.
6. After negotiating a proposed agreement that is fair and reasonable, the Committee may recommend to the City Council the approval of the agreement. Final authority to approve the agreement rests with the City Council.

## **EVALUATION CRITERIA**

Consultants will be evaluated on the following criteria:

- |  |                          |
|--|--------------------------|
| <p>A. <u>Project Understanding and Approach:</u></p> <ol style="list-style-type: none"> <li>1. Comprehension of the Scope of Services</li> <li>2. Awareness of the City's need</li> <li>3. Familiarity with the Project</li> <li>4. Overall interest in the Project</li> </ol>   | <p>Maximum 30 Points</p> |
| <p>B. <u>Experience:</u></p> <ol style="list-style-type: none"> <li>1. Experience of the Consultant's proposed Project Manager</li> <li>2. Experience of project team in delivering similar public projects</li> <li>3. Relevant technical experience of each team member</li> <li>4. Relevant projects completed</li> <li>5. City's prior experience with the Consultant</li> </ol> | <p>Maximum 40 Points</p> |

- C. Capabilities: Maximum 30 Points
1. Capability of developing innovative or advanced techniques
  2. Demonstration that consultant has adequately staffed the Project and that individuals proposed have adequate time to dedicate to the Project.

## **CONDITIONS GOVERNING THIS RFP**

### **A. Confidentiality**

The City has made a determination in accordance with Government Code Section 6255 that all proposals submitted in response to this RFP will not be made public by the City until after the City has executed and adopted by resolution the Contract for Services with the selected proposer. In the event a proposer wishes to claim portions of its proposal exempt from disclosure under the Public Records Act, it is incumbent upon the proposer to clearly identify those portions with the word “confidential” printed on the lower right-hand corner of the page, along with a written justification as to why such information should be exempt from disclosure. However, the City will make a decision based upon applicable laws.

The City will notify a proposer of any materials or information that the City does not believe are entitled to exemption from the Public Records Act, and the proposer shall have five business days from such notice to:

- Withdraw its proposal;
- Withdraw such information from its proposal;
- Withdraw such information and replace it with substituted information for which the proposer does not claim an exemption; or
- Provide written notice that it does not object to public disclosure of such information.

Proprietary or confidential data must be readily separable from the proposal in order to facilitate eventual public inspection of the nonconfidential portion of the proposal. Confidential data is normally restricted to confidential financial information. The cost of Services shall not be designated as proprietary or confidential information.

### **B. Applicable Laws/Miscellaneous**

Proposers are required to sign and submit the Proposal Authorization Form, stating their agreement to comply with the following terms and conditions of this RFP:

- a. The selected Proposer, its employees, agents, contractors, and subcontractors shall maintain professional licenses required by the laws of the State of California at all times while performing Services for the Project.

- b. The selected Proposer shall comply with the laws of the State of California requiring employers to insure against liability for Worker's Compensation while performing Services for this Project.
- c. All Proposer Services shall comply with all statutes, ordinances, regulations, codes, and requirements of all governmental entities, including federal, state, and municipal entities, relating to the Project.
- d. This RFP and any resultant Contract for Services shall be governed by the laws of the State of California. Jurisdiction and venue of litigation arising from the Contract shall be in the County of Alameda, State of California.
- e. All data and information provided by the City or referred to in this RFP is furnished for the convenience of interested parties in preparing a Proposal. The Proposer shall defend, indemnify and hold harmless the City from any and all liability, claims, or expenses whatsoever, incurred by, or on behalf of, the Proposer's response to this RFP. The City expressly disclaims any and all liability for representation or warranties, express or implied, contained in the RFP or any other written or oral communication transmitted or made available to interested parties, including any errors of omission.

## **EXHIBIT A**

### **CITY OF PIEDMONT CONTRACT FOR SERVICES (including insurance requirements)**



## **CONTRACT**

This Contract made \_\_\_\_\_ (“**Effective Date**”), between the CITY OF PIEDMONT, California, a municipal corporation, 120 Vista Avenue, Piedmont, California 94611, (“**City**”) and \_\_\_\_\_, a [insert legal entity status here], (“**Independent Contractor**”).

### **Recitals**

- A. City is a municipal corporation which needs certain services in connection with its Community Pool Project (the “**Project**”) as more specifically set forth hereafter.
- B. Independent Contractor agrees to provide these services to the City under the terms and conditions set forth in this Contract (“**Contract**”).

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

### **1. Services.**

Independent Contractor shall provide the project management, owner’s representative and (if any) other services as set forth in Exhibit A attached hereto and incorporated herein.

### **2. Compensation.**

- a. City will pay the Independent Contractor for properly performed services based on the fee schedule attached as Exhibit B. Except as City may approve in its sole discretion, City will only reimburse costs identified on Exhibit B, and without premium or markup. Exhibit B shall remain fixed throughout the term of the Contract. Notwithstanding the foregoing, if City and Independent Contractor agree to any fixed or maximum fees for any period or services, those shall control.
- b. Independent Contractor will provide City with monthly statements of fees earned and permitted reimbursable costs incurred for services provided during the month. Each statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, a reasonable itemization of all costs, and receipts or other backup the City may reasonably request for all individual cost items in excess of \$\_\_\_\_\_.
- c. City shall issue payment of approved amounts within **[30]** days of receiving each statement.

### **3. Term.**

This Contract shall begin on the Effective Date. Unless otherwise terminated as provided in this Contract, this Contract shall terminate \_\_\_\_\_ from the Effective Date.

**4. Limitation on Independent Contractor's Authority.**

Independent Contractor shall have only the specific authority reflected in the Contract. Notwithstanding any provision of the Contract, including Exhibit A, unless specifically authorized in a writing signed by the City's \_\_\_\_\_, Independent Contractor is not authorized to obligate the City to incur any cost or expense, or to modify any other Project party's scope of work or services.

**5. Independent Contractor Project Manager and Key Personnel.**

- a. Independent Contractor has designated \_\_\_\_\_ as its Project Manager to act as Independent Contractor's Representative in all matters relating to the Contract. For the \_\_\_\_\_ phase(s), the Project Manager shall be resident at the Project Site and shall be devoted solely to the Project. Independent Contractor's Project Manager shall be the single point of contact for all Project communications between City and Independent Contractor.
- b. Independent Contractor's Proposal lists the key personnel identified on Exhibit C. Independent Contractor intends to provide to the Project to perform its services under the Contract, and their anticipated start times, anticipated duration of commitment to work on the Project, and for each duration percentage of commitment to work on the Project (together, "**Key Personnel**"). Independent Contractor represents that such staff have the necessary licenses, experience and qualifications to satisfactorily perform the requirements of the Contract and that at all times Independent Contractor shall maintain such staff or similar staff having all necessary licenses, certifications, experience and skills necessary to perform all obligations of the Contract.
- c. Independent Contractor may not change the identity of its Project Manager or any other Key Personnel without prior City written approval, which approval shall not be unreasonably withheld, provided such replacement has similar or greater experience and qualifications.
- d. Independent Contractor acknowledges that the quality and qualifications of the Key Personnel were important factors in City's selection of Independent Contractor for the Project. Independent Contractor and City agree that the personal services of the Key Personnel is a material term of the Contract, and substitution or removal or change in role or level of effort, of such Key Personnel would result in damages to the City, the measure of which would be impractical or extremely difficult to fix, and in lieu of which City and Independent Contractor have agreed to liquidated damages as described below:
  - (1) For any substitution of any Key Personnel individual before the end of the individual's Project commitment period provided in Exhibit C, City may assess once and Independent Contractor shall accept liquidated damages in the amount of [~~six~~ (6)] times the gross monthly salary for the substituted Key Personnel.

- e. Liquidated damages for substitution of Key Personnel shall be deducted from the next applicable statement or, if insufficient, shall be paid by Independent Contractor.
- f. No liquidated damages shall under be due under this Section 5 for any substitution required due to death, incapacity or employment termination of a Key Personnel.

**6. Office Space, Supplies, Equipment, Etc.**

Unless otherwise provided in this Contract, Independent Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, computers and telephone service as is necessary for Independent Contractor to provide the services under this Contract. Independent Contractor - not City - has the sole responsibility for payment of the costs and expenses incurred by Independent Contractor in providing and maintaining such items.

**7. Contractual Relationship.**

The parties intend that an independent contractor-employer relationship will be created by this Contract. City is interested only in the results to be achieved, and the conduct and control of the work will lie solely with Independent Contractor. Independent Contractor is not to be considered an agent or employee of City for any purpose, and neither Independent Contractor nor any employees of Independent Contractor are entitled to any of the benefits that City provides for City's employees. It is understood that City does not agree to use Independent Contractor exclusively. It is further understood that Independent Contractor is free to contract for similar services to be performed for other cities, persons or entities during the term of the Contract. Independent Contractor shall be fully responsible for all income, social security or other taxes or deductions, including but not limited to worker's compensation and unemployment deductions, relating to the services it performs for City.

**8. Indemnity and Hold Harmless.**

- a. To the fullest extent permitted by law, Independent Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless City and its officers, elected officials, employees, agents, and volunteers (collectively "**Indemnitees**") from and against any and all liability, claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Independent Contractor or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, reasonable court costs and attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation) ("**Liability**"), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Contract by Independent Contractor or by any individual or entity for whom Independent Contractor is legally liable, including but not limited to, officers, agents, employees, subcontractors or consultants of Independent Contractor.

- b. For design professionals (as that term is defined by Civil Code § 2782.8) acting within the scope of their professional capacity, to the fullest extent permitted by law, Independent Contractor shall, at its own expense, indemnify, protect, defend (by counsel reasonably satisfactory to the City) and hold harmless any Indemnitees from and against any and all Liability, whether actual, alleged or threatened, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Independent Contractor, or as may be provided by statute in Civil Code § 2782.8, as may be amended from time to time.
- c. Neither termination of this Contract nor completion of the services shall release Independent Contractor from its obligations under this Section 8, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion, and this section shall survive the termination of the Contract.

## 9. **Insurance.**

- a. The following minimum levels of insurance coverage shall be provided during the term of this Contract. Prior to the execution of the Contract, Independent Contractor shall provide proof of insurance required. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- b. Independent Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Independent Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- c. Coverage shall be at least as broad as:
  - (1) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.
  - (2) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Independent Contractor has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

- (3) Workers' Compensation: as required by the State of California, with Statutory Limits.
  - (4) Professional Liability (Errors & Omissions): As appropriate to Independent Contractor's services, and not less than \$2,000,000 per occurrence.
- d. The insurance policies are to contain, or be endorsed to contain, the following provisions:
  - (1) The City of Piedmont, its Council Members, directors, officers, agents and employees shall be named as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Independent Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Independent Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
  - (2) For any claims related to this Contract, Independent Contractor's insurance coverage shall be primary insurance coverage (at least as broad as ISO CG 20 01 04 13) with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Independent Contractor's insurance and shall not contribute with it.
- e. Independent Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Independent Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Independent Contractor agrees to obtain any endorsement 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.
- f. Independent Contractor shall require the insurer to provide City with 30-day prior notice of termination or material change in coverage and ten (10) days prior notice of cancellation for non-payment.

**10. Assignability/Subcontracting.**

Independent Contractor shall not assign, delegate, subcontract, or transfer any interest in this Contract nor the performance of any Independent Contractor's obligations hereunder, without the prior written consent of the City. Nevertheless, Independent Contractor will remain fully liable and responsible for all services under this Contract.

**11. Miscellaneous.**

As used in this Contract, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

**12. Notices.**

Any notices to be sent pursuant to this Contract shall be given in writing, in person (by hand or by courier), via prepaid U.S. certified or registered mail, return receipt requested, or by recognized overnight (or better) courier that maintains delivery records, addressed to City at 120 Vista Avenue, Piedmont, California 94611, and to Independent Contractor at \_\_\_\_\_, or at such other address as each party shall give the other in writing from time to time. Notices shall be deemed received at the time of delivery if on a business day (and if not on a business day or after 5:00 pm local time on a business day, on the next business day) or when delivery is refused.

**13. Governing Law.**

This Contract shall be governed by the laws of the State of California, including its statutes of limitation but excluding its conflict of law principles. Jurisdiction and venue of litigation arising from this Contract shall be in the County of Alameda, State of California.

**14. Modification.**

Any modification of this Contract will be effective only if it is in writing signed by all parties to this Contract.

**15. Time is of the Essence.**

Time is of the essence in the performance of this Contract.

**16. Termination.**

The following provisions shall govern termination under this Contract:

- a. Either party may terminate this Contract for cause as follows:
  - (1) The party electing to terminate shall give the other party written notice of termination at least five (5) days prior to the termination date, setting forth very specifically the grounds for termination, the specific provisions of the Contract that has been violated, and a full statement of the facts surrounding the violations(s).
  - (2) If the terminated party so elects, the parties shall meet promptly and make good faith efforts to resolve the violation(s) in a mutually agreeable way.
  - (3) If any such violation cannot be resolved by the parties at such meeting, or at any mutually agreed extension(s) of such meeting, the termination shall proceed.

- (4) If the violation(s) have not been resolved, the terminating party may proceed with termination, and with retaining other person(s) or entities to provide services, if the terminating party is the City.
- b. The City may terminate the Contract at any time without cause upon at least sixty (60) days prior written notice to the Independent Contractor. In the event of any such termination by City, Independent Contractor shall be paid for services actually performed through the date of termination, and Independent Contractor's work shall be immediately discontinued as of that date, except that City may elect, at City's option, to have Independent Contractor complete one or more projects or specific activities which are then in progress, in which case Independent Contractor shall be paid for such services until completion.

**17. Equal Opportunity.**

Independent Contractor shall insure that its policies and practices provide equal opportunity to all applicants and employees without regard to race, color, creed, gender, age, religion, national origin, sexual preference, gender identity, marital status, disability, Acquired Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) and in addition, Independent Contractor must comply with the Americans with Disabilities Act.

**18. Compliance with Laws.**

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

**19. Conflicts.**

Independent Contractor represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Contract. Without limitation, Independent Contractor represents to and agrees with City that Independent Contractor has no present, and will have no future conflict of interest between providing the services contemplated under this Contract to City and any interest Independent Contractor may presently have, or will have in the future, with respect to any other person or entity which has any interest adverse or potentially adverse to City, as determined in City's reasonable judgment.

**20. Entire Agreement**

This Contract constitutes the entire agreement of the parties with respect to the matters set forth herein. Any amendments, modifications, or changes to this Contract shall be in writing and signed by both parties. In the event of a conflict between the terms set forth in this

Contract and the terms set forth in any exhibit to this Contract, the terms of this Contract shall govern over the terms of any exhibit.

**21. Ownership of Documents.**

All plans, studies, documents and other writings, including working notes and internal documents, prepared by and for Independent Contractor, its officers, employees and agents and subcontractors in the course of implementing this Contract, shall become the property of City upon payment to Independent Contractor for such work, and City shall have the sole right to use such materials in its discretion without further compensation to Independent Contractor or to any other party. Independent Contractor shall, at Independent Contractor's expense, provide such reports, plans, studies, documents and other writings to City upon written request. All documents prepared by Independent Contractor are confidential and shall be maintained to preserve their confidential nature. Release of any such documents to third parties shall only be made by the City, or upon written consent of City.

**22. Licenses.**

Independent Contractor represents and warrants that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Independent Contractor to practice its profession. Independent Contractor represents and warrants to City that Independent Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract, any licenses, permits, insurance and approvals which are legally required of Independent Contractor to practice its profession.

**23. Waiver.**

Waiver of a breach or default under this Contract shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Contract.

**24. No Third Party Beneficiaries.**

Nothing in this Contract shall operate to confer rights or benefits on persons or entities who are not parties to this Contract.

**25. Severability.**

If any portion of this Contract or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or local statute, ordinance or regulation the remaining provisions of this Contract or the application thereof shall not be invalidated thereby and shall remain in full force and effect to greatest extent permitted by law.

**26. Construction.**

Headings or captions to the provisions of this Contract are solely for the convenience of the parties, are not part of this Contract, and shall not be used to interpret or determine the



validity of this Contract. Any ambiguity in this Contract shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract at Piedmont, California, the day and year first above written.

**CITY OF PIEDMONT:**

**[INDEPENDENT CONTRACTOR]:**

By: \_\_\_\_\_  
[Mayor or City Administrator]

By: \_\_\_\_\_  
[Title]

Attest:

\_\_\_\_\_  
John O. Tulloch, City Clerk

Approved as to form and legality:

\_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

**Exhibit B****PROPOSAL AUTHORIZATION**

NAME OF PROPOSER\_\_\_\_\_

1. The above-named Proposer is a proposer to the Request for Proposals of the City of Piedmont for the Project Manager/Owner's Representative for Design and Construction of the City of Piedmont Community Pool Project and possesses the legal authority to submit this Proposal.
2. The undersigned is authorized to conduct all negotiations for and legally bind the respondent in all matters relating to this proposal submittal.
3. The undersigned has reviewed, understands, is able to comply with and agrees to be bound by the General Conditions Governing this RFP.
4. The undersigned grants the City a right to the City to conduct reference checks and reasonable investigation of all information provided by Proposer.
5. The undersigned certifies that this Proposal is irrevocable for 120 days after the due date.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_