

CITY OF MALIBU
PUBLIC WORKS DEPARTMENT



REQUEST FOR QUALIFICATIONS/PROPOSALS FOR
ASSESSMENT ENGINEERING SERVICES
FOR THE
PCH WASTEWATER PROJECT
MARCH 5, 2026

The Technical Qualifications Proposal and Cost Proposal must be submitted electronically:

**“Request for Qualifications/Proposal
ASSESSMENT ENGINEERING SERVICES
TECHNICAL QUALIFICATIONS”;** and

**“Request for Qualifications/Proposal
ASSESSMENT ENGINEERING SERVICES
COST PROPOSAL”**

All qualifications/proposals must be sealed and submitted on or before **4:00 p.m. on April 3, 2026**, to the following:

**Tatiana Holden
Interim Public Works Director
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265**

All questions regarding the Request for Qualifications/Proposals (RFQ/P) must be submitted in writing. Please send all questions regarding this Request for Qualifications/Proposal in writing via email to **Tatiana Holden, Interim Public Works Director**, at tholden@malibucity.org.

REQUEST FOR QUALIFICATIONS/PROPOSALS FOR
ASSESSMENT ENGINEERING SERVICES
FOR THE
PCH WASTEWATER CONNECTION LINE

1. Project Background and Description

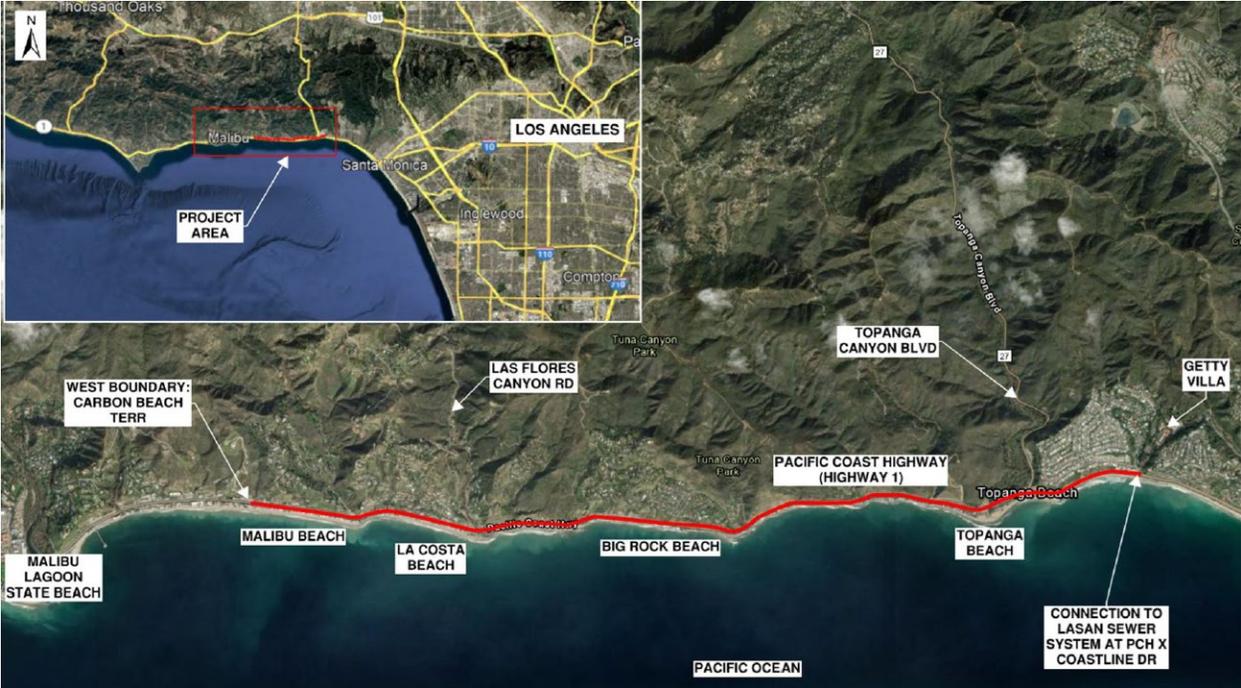
The City of Malibu is currently in the process of designing the Wastewater Collection System on Pacific Coast Highway (PCH) to Los Angeles Sanitation and Environment (LASAN) connection project.

The project includes a new wastewater collection system for the affected by the Palisades Fire 5.5-mile segment of PCH, between the intersections of PCH with Carbon Beach terrace and Getty Villa Drive. The Preliminary Design Report for the project was completed by Woodard & Curran, Inc. in February 2026.

An Assessment District (AD) will be formed to finance the design and construction of the project. The Assessment District will be a 1913 Act Assessment District.

The City is requesting proposals from qualified firms to provide assessment engineering and district administration services to support the formation of an assessment district(s) for the PCH Wastewater Collection System Project.

Figure 1.1 – Project Area Map



The general project information that is encompassed within Figure 1.1 is listed below:

- 464 Parcels
 - 440 Residential (includes 102 condo units)
 - 146 existing
 - 294 rebuilds
 - 10 Commercial
 - 6 existing
 - 4 rebuilds
 - 14 Existing Public Open Space Parcels
- Estimated Total Project Costs: \$125,153,000
 - Engineering/Design/Permitting: \$10,606,000
 - Construction Cost: \$114,547,000

The City intends to investigate two Assessment District Financing Approaches:

1. Bifurcated Formation
 - 1) Form an Assessment District for the design and engineering
 - 2) Form second Assessment District for construction based on final design and cost estimate
2. Single Formation
 - 1) Form an Assessment District for the whole project including design, estimated construction cost and conservative contingency

2. Proposal Submittal Guidelines

The City requires all proposals submitted in response to this RFQ/P to follow a specific format. A cover letter shall guarantee that key personnel, or equally qualified replacements, will be committed to perform the required tasks throughout the duration of the contract.

One electronic copy of the technical qualifications will be required with each proposal having been signed by the company official with the power to bind the company in its proposal.

Technical Qualifications shall be submitted electronically to mpublicworks@malibucity.org, but must be received no later than **4:00 p.m., April 3, 2026**. Proposals may be withdrawn prior to the established date and time. No extensions will be granted.

All Technical Qualifications will become the property of the City of Malibu and will be made available for public inspection after an award is made or rejected.

3. Technical Qualifications/Cost Proposal Format

The Technical Qualifications shall be organized in the following sections to facilitate review by the City. Consultants shall adhere to the page limit stated below. If additional information is needed, it may be included in the Appendix. However, due to time constraints, the City may not be able to review the items in the Appendix as thoroughly as Sections a. through f.

Technical Qualifications shall be limited to a total maximum of fifteen (15) double sided pages or thirty (30) single sided pages, all letter size. This total page limit may be split across the Sections 1 through 3 as deemed appropriate by the consultant. Large format pages, including 11"x17" pages, will be counted as two (2) pages.

Technical Qualifications shall include the following:

a. Cover Letter/Executive Summary

Provide a cover letter/executive summary emphasizing the strong points of the project team, qualifications and experience. The cover letter/executive summary shall include the name, address, telephone number, title and signature of the firm's contact person for this proposal, and state that the submittal is valid for 120 days. The cover letter constitutes certification by consultant, under penalty of perjury, that the consultant complies with nondiscrimination requirements of the State and the Federal Government. The cover letter/executive summary shall also include a statement by the consultant informing the City whether or not they have any exceptions with the City's terms and contract conditions stated in this RFP/Q, including, but not limited to, insurance and the Agreement for Professional Services, and stating that only those exceptions noted in the consultant's proposal will be subject to discussion and negotiation with the City. The cover letter/executive summary shall be signed by a person with the official authority to bind the company. An unsigned proposal or one signed by an individual unauthorized to bind the consultant may be rejected.

b. Experience of Firm(s) and Individuals

Include summary descriptions of the company's (or companies') and individuals' applicable experience, and resumes detailing their experience with the formation of assessment districts of similar facilities. List two contracts completed in the last 10 years with similar facilities and of similar scope of work. Provide references and contact details for these projects.

The Assessment Engineer should have a minimum of ten years of experience in the field of forming assessment districts.

Detailed resumes highlighting experience pertinent to this project should be provided in an Appendix. These resumes will not be counted in the page limit.

c. Team Organization

Provide organization chart of your team. Describe its organization, and the responsibilities and level of commitment of individuals within the team. Identify team's "Key" personnel members. Describe why each team member is proposed for their respective positions or roles on the team.

Identify who will be the Project Manager and/or Assessment Engineer responsible for activities and interaction with City staff. (These positions may be filled by the same person, or may be split across two persons, as proposed by the consultant.)

d. Project Understanding and Approach/Methodology

Prepare a summary description of how the consultant will address the issues described below and to complete the Scope of Work presented below. Consultants are encouraged to suggest modifications to the scope that would, in the opinion of the consultant, optimize the management of construction and commissioning of the project facilities.

The proposal should address the following issues, at a minimum, and others that the proposer believes to be critical to the project construction and delivery:

- a. Understanding of requirements and challenges of the project given its content, timetable, location, and the ability of the proposed team to meet these challenges.
- b. Planned number of staff to be assigned to the project and approach to the daily management activities.
- c. Approach to communications and document management between the design team, consultant, City, client, and other agencies.
- d. Overall approach to the coordination and management of the assessment activities and contract administration.

e. Conflict of Interest

The consultant shall disclose any financial, business or other relationships with the City that may have an impact on the outcome of this contract or any resulting construction project. The consultant shall also list current clients who may have a financial interest in the outcome of this contract.

f. Exceptions

This Section shall discuss any exceptions or requested changes that Proposer has to the City's RFQ/P conditions, requirements and sample contract. If there are no exceptions noted, it is assumed the Proposer will accept all conditions and requirements identified in the attached "Agreement for Professional Services." Items not excepted will not be open to later negotiation.

Cost Proposal

One electronic copy of a cost proposal shall be submitted plainly labeled "Cost Proposal" with the name of the company and the project title. The cost proposal is considered a criteria once the final recommendation has been made, but is not the sole factor in the section process. Upon the completion of the initial evaluations, the cost proposals will be opened, and negotiations will commence. The cost proposal shall contain the following:

- The cost proposal shall be submitted for the consultant services outlined in the scope of work.

- The proposed cost budget should present the names and associated billing rates of the proposed staff for each work task described in the consultant's proposal, as well as other direct costs.
- The total proposed budget should include the consultant's assumptions regarding billing rate increases over the assumed duration of services.

4. Selection Procedure

The following is an outline of the procedure the City will use in the selection process:

- a. A Selection Committee is formed comprising if City personnel and, if the City chooses, other agency personnel.
- b. The Selection Committee reviews and evaluates the proposals submitted by prospective consultants and determines if oral interviews are needed.
- c. If needed, the Selection Committee will determine which of the prospective consultants will be invited to the oral interview process.
- d. The Selection Committee evaluates and ranks the firms based on the oral interview (if needed) and completeness of the proposal and makes a final recommendation.
- e. Negotiations will take place with the primary firm on the final scope of work, contract, and proposal price.

5. Evaluation Criteria

The Selection Committee will evaluate, rate and rank the Technical Qualifications based on the following criteria:

Technical Proposal (Total Points Possible = 60 pts.)

- a. Responsiveness to the terms, conditions, and items of performance. (5 pts.)
- b. Qualifications and experience of firm and individuals, and their proposed team. (20 pts.)
- c. Understanding of the scope and services to be performed and methodology including probable challenges and solutions to those challenges. (20 pts.)
- d. Firm's related experience with this type of work. (15 pts.)

If required, the Selection Committee may elect to evaluate and rank the Presentation Interviews based on the following criteria:

Oral Interview Presentation (if needed) (Total Points Possible = 40 pts.)

- a. Overall quality of presentation and response to questions. (20 pts.)
- b. Understanding scope of work. (10 pts.)
- c. Approach to performing work including communication with City staff and design team, daily management and coordination of the overall project, and consultant's approach to completing the work on time and budget. (10 pts.)

The interview process will take place utilizing Microsoft Teams services at a date/time to be determined.

Cost Proposal

No cost proposals will be reviewed prior to the evaluation of the technical qualifications and presentation interviews. Once final recommendations have been made, negotiations on the final cost proposal will ensue. In the event no agreement can be reached on the price, the City reserves the right to begin negotiations with all eligible proposers.

The City reserves the right to reject any and all proposals.

6. Time Schedule

- | | |
|---|----------------|
| • Solicit for Proposals | March 5, 2026 |
| • Last Day to Submit Questions | March 26, 2026 |
| • Last Day for City to Respond to Questions | March 31, 2026 |
| • Proposal Deadline | April 3, 2026 |
| • Complete Review, Rank Proposal | TBD |
| • Oral Interviews (if needed) | TBD |
| • Negotiate Agreement | TBD |
| • Award of Contract | TBD |

The above dates are approximate and are subject to change at the City's discretion.

7. Inquiries

All questions regarding the Request for Qualifications/Proposals (RFQ/P) must be submitted in writing. Please send all questions regarding this Request for Qualifications/Proposal in writing via email to Tatiana Holden, Interim Public Works Director, at tholden@malibucity.org no later than **4:00 PM, March 26, 2026**.

8. Draft Scope of Work

The consulting firm or firms selected shall provide the required professional services for the formation of the PCH Wastewater Connection Line Assessment District. The work, in general, shall include but not be limited to the following:

Special Tax/Engineering Consulting Services

The "Consultant" shall assist the City of Malibu in the formation and issuance of bonds for an assessment district ("District") to finance the construction of the wastewater treatment facility. The following tasks are included.

1. Boundary Map

The Consultant shall coordinate with Client and District representative(s) to determine the boundaries of the District. Consultant will prepare a District boundary map or assessment diagram, as applicable, using Assessor's Parcel maps or electronic

base map data provided by Client. This task excludes field surveys and base map preparation.

2. Special Tax/Assessment Apportionment Methodology

The Consultant shall review the properties served and conduct a field survey as necessary to develop an equitable special tax/assessment apportionment methodology.

3. Special Tax/Assessment Lien and Financing Analysis

The Consultant shall estimate assessment liens and assessment installments. Consultant shall estimate bond term, issuance costs, capitalized interest, reserve funds as well as annual debt service and administrative expenses. *The Consultant shall cooperatively work with the project's design engineers to obtain costs.*

4. Report Preparation

The Consultant will act as "Engineer of Work" in conformance with the Municipal Improvement Act of 1913 and prepare the Preliminary and Final Engineer's Reports pursuant to the requirements of Section 10204 of the Streets and Highways Code and Proposition 218. The Consultant assumes that a petition pursuant to Section 2804 of the Streets and Highways Code will be submitted and the Majority Protest Act of 1931 will not apply. As required by law, the report shall contain the following:

- Construction plans and specifications describing the general nature, location, and extent of the improvements proposed to be installed or acquired;
- An estimate of the total costs, including construction, land, rights-of-way, easements, and incidental expenses in connection with the improvements;
- The Assessment Diagram;
- The proposed assessment of the total amount of the cost and expenses of the proposed improvements upon all parcels in the district in proportion to the benefits to be received by each parcel;
- The proposed maximum annual assessment to be levied on each parcel in the district to pay costs associated with the administration and collection of assessments, the administration or registration of any associated bonds or reserve or other related funds; and
- A description of the methodology and formula for apportioning the assessment. The apportionment methodology will assess parcels based only on the Special Benefit they receive from the improvements, as required by Proposition 218.

Consultant shall produce the Final Engineer's Report in connection with the confirmation of the assessments by the City Council. This report shall include confirmed costs in place of the estimated costs listed in the Preliminary Engineer's Report and make any revisions requested by the City Council. The Report will be prepared by a Registered Civil Engineer.

5. District Formation

- **Public Notices and Ballot Protest Procedure:** Consultant will print and mail notices and assessment ballots. Consultant will rely upon bond counsel to prepare

the notice and ballot text.

- **Ballot Tabulation:** Consultant will provide a spreadsheet to the City Clerk to tabulate the ballots submitted by property owners to determine whether majority protest exists within the District.
- **Cash Payment Notice:** After confirmation of the assessments by the City Council, Consultant will mail the notice of cash collection and prepare a paid and unpaid list and calculate the new amount to bond after the end of the thirty-day cash collection period.
- **Document Recording:** Consultant will record the Boundary Map, assessment roll and diagram, and Notice of Assessment with the County of Los Angeles Recorder's Office.

6. Issuance of Bonds

As necessary, Consultant will assist in the preparation, review, and comment on bond documents which may include the following:

- Official statement;
- Trust indenture; and
- Continuing disclosure agreement

7. Meetings/Conference Calls

Consultant shall conduct meetings and conference calls as required by the client and be present at all City Council meetings where actions to the formation of the assessment district have been agendized as requested by the client. Consultant shall also provide verbal assistance to the Client as necessary.

DELIVERABLE REQUIREMENTS:

Deliverables shall be accurate and complete and include all necessary documents required for the successful formation of the Assessment District. Deliverables shall include, but are not limited to, the following:

- Boundary Map
- Engineer's Report (Preliminary and Final)
- Assessment Rolls and diagrams
- Notices
- Ballots and tabulation documents
- Assessment Ballots
- Description of methodology and formation for apportioning the assessment
- Cost estimates

CITY OF MALIBU

PUBLIC WORKS DEPARTMENT

REQUEST FOR PROPOSAL TERMS AND CONDITIONS

Contract Requirement - The Consultant to whom the contract is awarded shall execute a written contract with the City within ten (10) calendar days after notice of the award has been sent by mail to the Consultant at the address given in the Proposal. The contract/agreement shall be made in the form adopted by the City and incorporated in these specifications. The Consultant warrants that he/she possesses, or has arranged through subcontracts, all capital and other equipment, labor and materials to carry out and complete the work hereunder in compliance with all Federal, State, County, City and Special District Laws, Ordinances, and Regulations which are applicable. Consultant, in its proposal, shall inform the City of any exceptions it may have with the City's terms and contract conditions stated in this RFQ/P, including, but not limited to, insurance and the Agreement for Professional Services. Only those exceptions noted in the Consultant's proposal will be subject to discussion and negotiation with the City.

Contract Assignment - The Consultant shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City of Malibu.

Non-Discrimination - In the performance of the terms of this contract, the Consultant agrees that it will not engage in, nor permit such subcontractors as it may employ to engage in, discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, or religion of such person(s).

Communications Regarding Request for Qualifications/Proposals (RFQ/P) - If a Consultant is in doubt as to the true meaning or intent of any part of the RFQ/P, he/she may submit to the Public Works Director, or his designee, a written request for an interpretation or a correction thereof. Interpretation or corrections of the RFQ/P shall be made only by addendum duly issued by the Public Works Director, or his designee, and a copy of such addendum will be mailed or delivered to each person receiving an RFQ/P, and such addendum shall be considered a part of, and incorporated in, the RFQ/P. All timely requests for information submitted in writing will receive a written response from the City. Telephone communication with City staff is not encouraged, but will be permitted. However, any such oral communication shall not be binding on the City. The deadline for submitting request for information in regards to the RFQ/P shall be 4:00 p.m. on March 26, 2026. A final response will be made no later than 5:30 p.m. on March 31, 2026.

Modification or Withdrawal of Submittals - Any proposal received prior to the date and time specified for receipt of proposals may be withdrawn or modified by written request of the

Consultant. To be considered, however, the modified proposal must be received by the time and date specified.

Property Rights - Proposals received within the prescribed deadline become the property of the City and all rights to the contents therein become those of the City.

Confidentiality - Prior to award of the contract, all proposals will be designated confidential to the extent permitted by the California Public Records Act. After award of the contract, or if not awarded, after rejection of all proposals, all responses will be regarded as public records and will be subject to review by the public. Any language purported to render confidential all or portions of the proposals will be regarded as non-effective and will be disregarded.

Amendments to Request for Proposal - The City reserves the right to amend the Request for Proposal by addendum prior to the final proposal submittal date.

Payment Terms - The City's payment terms are 30 days from the receipt of an original invoice referencing the City's Purchase Order number and acceptance of the services.

Ownership of Reports and Data - The originals of all studies, reports, logs, exhibits, documents, data and/or other work/material(s) prepared and/or used to comply with any section/condition of these specifications, plus any copies of same required by the agreement to be furnished to the City and County, shall be deemed to be public records which shall be open to inspection by the public and, as such, shall become and remain the sole property of the City.

Contract Term - This contract will cover services per the contract. The cost proposed by Consultant must be valid for the entire period unless otherwise conditioned in the Proposal.

Non-Exclusive Contract - The City reserves the right to contract with other Engineering Professional Service firms during the contract term.

Insurance - The Consultant shall meet the following provisions (Sections 1 through 7) relating to insurance coverages.

1. General Conditions - Without limiting the Consultant's indemnification of the City, Consultant shall provide and maintain at its own expense the insurance listed under Section 7 (Evidence of Coverages) covering its operations, subject to the following conditions:
 - a) The City, its Boards, Officers, Agents, and Employees shall be included as additional insured in all liability insurance policies except for Workers' Compensation and Professional Errors and Omissions. The City shall be named Loss Payee as its interest may appear in all property insurance.
 - b) Such insurance shall be primary with respect to any insurance maintained by City and shall not call on City's insurance.
 - c) With respect to the interests of the City, the Consultant's insurance shall not be cancelled nor reduced in coverage or limits until after thirty (30) days written

notice shall have been sent by certified mail (return receipt requested) to the City of Malibu, Public Works Department, 23825 Stuart Ranch Road, Malibu, California 90265, and shall contain an unequivocal clause stating these terms.

d) A City approved endorsement or copy of insurance policies providing coverage shall be submitted to and approved by the Public Works Department prior to commencement of any work or tenancy.

2. Workers' Compensation - The Consultant shall procure and maintain during the life of the contract, workers' compensation insurance or a valid certificate of consent to self-insure for all its employees engaged on or at the site of the project; and in case any of the work is sublet, the Consultant shall require all subconsultant(s) to similarly provide workers' compensation insurance for all the latter's employees unless such employees are covered by protection afforded by workers' compensation insurance carried by the Consultant.

By submitting a proposal pursuant to these specifications, Consultant hereby certifies that it is aware of the provisions of Section 3700 et seq., of the Labor Code, which require every employer to be insured against liability for Workers' Compensation.

3. Aggregate Limits/Blanket Coverage - If any of the required insurance coverage's contain aggregate limits, or apply to other operations or tenancy of the Consultant outside these specifications, Consultant shall give City prompt, written notice of any incident, occurrence, claim, settlement, or judgment against that insurance which may diminish the protection that such insurance affords the City. Consultant shall further take immediate steps restoring such aggregate limits or shall provide other insurance protection for such aggregate limits.
4. Modification of Coverage - The reserves the right at any time during the term of any contract executed with the Consultant pursuant to these specifications to change the amounts and types of insurance required hereunder by giving the Consultant ninety (90) days written notice. If such change should result in a premium increase in excess of ten (10%) percent to the Consultant, the City agrees to negotiate additional compensation proportional to the increased benefit to the City.
5. Failure to Procure Insurance - The Consultant's failure to procure or maintain the required insurance shall constitute a material breach of contract under which the City may immediately terminate the Agreement or, at its discretion, procure or renew such insurance to protect the City's interests and pay any and all premiums in connection therewith, and recover all monies so paid from the Consultant, or deduct all monies so paid from payment(s) due to the Consultant.
6. Underlying Insurance - The Consultant shall be responsible for requiring indemnification and insurance as it deems appropriate from its employees receiving mileage allowance, consultants, agents, and subconsultant(s), if any, to protect the Consultant's and the City's

interests, and for ensuring that such persons comply with any applicable insurance statutes. The Consultant is encouraged to seek professional advice in this regard.

7. Evidence of Coverages - Evidence of coverages as checked below, having as a minimum the limits shown, must be submitted and approved prior to commencement of work or any tenancy. Amounts shown are Combined Single Limit (CSL). Split limits may be substituted if the total per occurrence equals or exceeds the CSL amount.

<u>Description</u>	<u>Limits</u>
<input checked="" type="checkbox"/> Workers' Compensation	Statutory
(X) Employer's Liability	<u>\$1,000,000</u>
() Waiver of Subrogation	
<input checked="" type="checkbox"/> General Liability	<u>\$1,000,000</u>
(must be written on an occurrence form)	
(X) Premises and Operations	
(X) Contractual Liability	
(X) Independent Consultants	
(X) Products/Completed Operations	
(X) Broad Form Liability Endorsement	
(X) Explosion Hazard	
(X) Collapse/Underground Hazard	
(X) Broad Form Property Damage	<u>\$2,000,000</u>
(X) Personal Injury	<u>\$2,000,000</u>
(X) Bodily Injury	<u>\$2,000,000</u>
<input checked="" type="checkbox"/> Automobile Liability	<u>\$1,000,000</u>
(must be written on an Occurrence Form)	
(X) Owned Automobiles	
(X) Nonowned/Hired Automobiles	
(X) Garage Keeper's Legal Liability	
<input checked="" type="checkbox"/> Professional Liability (Errors and Omissions)	<u>\$1,000,000</u>
(to be in continuous force from date of award until one year after final acceptance of the property)	

Non-commitment of Department - This Request for Proposal does not commit the City to award a contract, to pay any costs incurred in the preparation of a Proposal for this request, or to procure or contract for services. The City reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the Request for Proposal if it is in the best interests of the City to do so.

Public Domain - All products used or developed in the execution of any contract resulting from this Request for Proposal will remain in the public domain at the completion of the contract.

Termination - The City reserves the right to terminate this agreement upon thirty (30) calendar days from written notice to the Consultant.

Processing Requirements - All reports/drawings are required to be submitted directly to and picked up from the City of Malibu, Public Works Department. All reports/drawings will be transmitted directly between the Consultant and the City. The Consultant is required to develop and furnish the City Engineer with a legible written report. If the Consultant fails to submit the required reports/drawings as set forth in this section, the City shall have the right to withhold payment, and/or terminate the agreement. Once the reports/drawings have been completed and/or reviewed, the professional engineering service consultant will be required to return them to the City for further processing and coordination with other Departments and Divisions.

Required Timeframes - The Consultant office hours shall be 8:00 a.m. to 5:00 p.m., Monday through Friday, so that the Consultant will be available to City staff and design professionals.

Conflicts of Interest - Consultant agrees to promptly notify City whenever a client of Consultant has an interest in any project referred to Consultant for professional services. In particular, Consultant shall disclose any financial interest or relationship with any construction company that might submit a bid on the resulting construction project. Such project may be withdrawn by the City with no compensation due, if the Consultant has a conflicting interest.

Inspections – City reserves the right to inspect the work being accomplished by the Consultant at any time.

Assignment of Consultant Personnel - The Consultant shall have City's approval prior to changing the staff or subconsultants assigned to this project.

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of [date] by and between the City of Malibu (hereinafter referred to as the "City"), and _____ (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

RECITALS

A. The City does not have the personnel able and/or available to perform the services required under this Agreement.

B. The City desires to contract out for consulting services for certain projects relating
_____.

C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.

D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

NOW, THEREFORE, the City and the Consultant agree as follows:

1.0 SCOPE OF THE CONSULTANT'S SERVICES. The Consultant agrees to provide the services and perform the tasks set forth in the Scope of Work, attached to and made part of this Agreement, except that, to the extent that any provision in Exhibit A conflicts with this Agreement, the provisions of this Agreement govern. The Scope of Work may be amended from time to time by way of a written directive from the City.

2.0 TERM OF AGREEMENT. This Agreement will become effective on [date], and will remain in effect for a period of ____ years from said date unless otherwise expressly extended and agreed to by both parties or terminated by either party as provided herein.

3.0 CITY AGENT. The City Manager, or his or her designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Consultant understands that the City Manager, or his or her designee, has the authority to provide that approval or authorization.

4.0 COMPENSATION FOR SERVICES. The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work's fee and cost schedule. The cost of services shall not exceed \$ _____ per month, for a total amount not to exceed \$ _____ for the term of the agreement. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or his or her designee.

4.1 The Consultant shall submit to the City, by no later than the 10th day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Consultant all uncontested amounts set forth in the Consultant's bill within 30 days after it is received.

5.0 CONFLICT OF INTEREST. The Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. The Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

5.1 The Consultant represents that no City employee or official has a material financial interest in the Consultant's business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in the Consultant's business by any City employee or official.

5.2 If a portion of the Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

6.0 GENERAL TERMS AND CONDITIONS.

6.1 Termination. Either the City Manager or the Consultant may terminate this Agreement, without cause, by giving the other party ten (10) days written notice of such termination and the effective date thereof.

6.1.1 In the event of such termination, all finished or unfinished documents, reports, photographs, films, charts, data, studies, surveys, drawings, models, maps, or other documentation prepared by or in the possession of the Consultant under this Agreement shall be returned to the City. If the City terminates this Agreement without cause, the Consultant shall prepare and shall be entitled to receive compensation pursuant to a close-out bill for services rendered and fees incurred pursuant to this Agreement through the notice of termination. If the Consultant terminates this Agreement without cause, the Consultant shall be paid only for those services completed in a manner satisfactory to the City.

6.1.2 If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement and any payments due under this Agreement may be withheld to off-set anticipated damages.

6.2 Non-Assignability. The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City.

6.3 Non-Discrimination. The Consultant shall not discriminate as to race, creed, gender, color, national origin, or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

6.4 Insurance. The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement. Consultant further agrees to comply with all provisions in the attached Exhibit C which is incorporated herein.

6.5 Indemnification.
To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless City and any and all of its officials, employees, agents, and volunteers (“Indemnified Parties”) from and against any and all claims, losses, liabilities, damages, costs, and expenses, including attorney’s fees and costs, to the extent they arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of the Consultant.

Consultant’s duty to defend shall consist of reimbursement of defense costs incurred by City in direct proportion to the Consultant’s proportionate percentage of fault.

Consultant’s percentage of fault, for both indemnity and defense, shall be determined, as applicable, by a court of law, jury, or arbitrator. In the event any loss, liability, or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the Consultant’s percentage of fault, and the parties cannot mutually agree on Consultant’s percentage of fault, the parties agree to mediation with a neutral third-party to determine the Consultant’s proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the City.

6.5.1. Duty to defend:

In the event the Indemnified Parties, individually or collectively, are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall defend the Indemnified Parties at Consultant’s cost or at City’s option, to reimburse City for its costs of defense, including reasonable attorney’s fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by Consultant’s negligent acts, errors or omissions. Payment by City is not a condition precedent to enforcement of this provision. In the event of any dispute between Consultant and City, as to whether liability arises from the sole or active negligence or willful misconduct of the City or its officers, employees, or agents, Consultant will be obligated to pay for City’s defense until such time as a final judgment has been entered adjudicating the Indemnified Parties as solely or actively negligent or to have acted with willful misconduct. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney’s fees, expert fees, and costs of litigation.

6.6 Compliance with Applicable Law. The Consultant and the City shall comply with all applicable laws, ordinances, and codes of the federal, state, county, and city governments, including, without limitation, Malibu Municipal Code Chapter 5.36 Minimum Wage.

6.7 Independent Contractor. This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture, or association, as between the City and the

Consultant.

6.7.1. The Consultant shall be an independent contractor and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent contractor and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

6.8 Copyright. No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

6.9 Legal Construction.

(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

6.10 Counterparts. This Agreement may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all parties hereto.

6.11 Final Payment Acceptance Constitutes Release. The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

6.12 Corrections. In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant.

6.13 Files. All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

6.14 Waiver; Remedies Cumulative. Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

6.15 Mitigation of Damages. In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

6.16 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

6.17 Attorneys' Fees. The parties hereto acknowledge and agree that each will bear his/her or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

6.18 Entire Agreement. This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

6.19 Notices. Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

CITY:	Joseph Irwin City Manager City of Malibu 23825 Stuart Ranch Road Malibu, CA 90265-4861 TEL (310) 456-2489 x 226 FAX (310) 456-2760	CONSULTANT:
--------------	--	--------------------

6.20 Warranty of Authorized Signatories and Acceptance of Facsimile or Electronic Signatures. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign. The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract will be considered signed when the signature of a party is delivered physically or by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.

7.0 GENERAL TERMS AND CONDITIONS. (City and Consultant initials required at EITHER 7.1 or 7.2)

7.1 Disclosure Required. By their respective initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is a “consultant” for the purposes of the California Political Reform Act because Consultant’s duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18700.3(a) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the City. Consultant hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City’s Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to consultant commencing services hereunder, the City’s Manager shall prepare and deliver to consultant a memorandum detailing the extent of Consultant’s disclosure obligations in accordance with the City’s Conflict of Interest Code.

City Initials _____

Consultant Initials _____

7.2 Disclosure not Required. By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a “consultant” for the purpose of the California Political Reform Act because Consultant’s duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18700.3(a) and is otherwise not serving in staff capacity in accordance with the City’s Conflict of Interest Code.

City Initials _____

Consultant Initials _____

This Agreement is executed on _____, at Malibu, California, and effective as of [date].

CONSULTANT:

By:

CITY OF MALIBU:

DOUG STEWART, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

TREVOR RUSIN, Interim City Attorney

**EXHIBIT A
SCOPE OF WORK**

**EXHIBIT B
COMPENSATION SCHEDULE**

EXHIBIT C INSURANCE LANGUAGE

Without limiting Consultant's indemnification of City, and prior to commencement of work and/or services under this Agreement, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

General Liability Insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than 1,000,000 combined single limit for each accident.

Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

[Note: May need to delete workers' compensation and employer's liability insurance requirements for certain sole proprietorships, partnerships, or corporations without employees.]

Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance (statutory limits) and Employer's Liability insurance (with limits of at least \$1,000,000).

Consultant shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

[Note: If the required limits for general liability, auto, and employer's liability are \$1 million or less, the following paragraph may be omitted.]

Umbrella or Excess Liability Insurance. [If required to meet higher limits.]. Consultant shall obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
- "Pay on behalf of" wording as opposed to "reimbursement";
- Concurrency of effective dates with primary policies.

Should Consultant obtain and maintain an excess liability policy, such policy shall be excess over

commercial general liability, automobile liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

OTHER PROVISIONS OR REQUIREMENTS

Proof of Insurance. Consultant shall provide certificates of insurance and required endorsements to City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City for the contract period and any additional length of time required thereafter. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of Coverage. Consultant shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Consultant, their agents, representatives, employees, or subconsultants.

Primary/Noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of Contract Provisions (Non Estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver

of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of Cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Consultant's insurers are unwilling to provide such notice, then Consultant shall have the responsibility of notifying the City immediately in the event of Consultant's failure to renew any of the required insurance coverages, or insurer's cancellation or non-renewal.

Additional Insured Status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Prohibition Of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests' provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Consultant (hereinafter collectively "Subcontractor"), provide the same minimum insurance coverage and endorsements required of Consultant under this Agreement. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Consultant's Subcontractor cannot comply with this requirement, which proof must be submitted to the City, Consultant may still be able to utilize the Subcontractor provided Consultant shall be required to ensure that its Subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with Subcontractor's scope of work and services, with limits less than required of the Consultant, but in all other terms consistent with the Consultant's requirements under this Agreement. This provision does not relieve the Consultant of its contractual obligations under the Agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Consultant with the ability to utilize a Subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Consultant under this Agreement given the limited scope of work or services provided by the subcontractor. Consultant agrees that upon request, all agreements with Subcontractors, and others engaged in the project and/or services, will be submitted to City for review.

City's Right to Revise Specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days' advance written notice of such change. If such a change results in substantial additional costs to the Consultant, the City and Consultant may renegotiate the Consultant's compensation.

Self-Insured Retentions. Any self-insured retentions must be declared to and approved by the City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely Notice Of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance. The consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

PRELIMINARY DESIGN REPORT

PREPARED BY: WOODARD AND CURRAN