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# REQUEST FOR PROPOSALS

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6th Cycle Housing Element (2023-2031) and Safety Element Update

**Issue Date:** April 26, 2021

**Deadline for Submission:** May 26, 2021

**Contact:** Drummond Buckley, Planning Director

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(925) 956-9305

The City of Orinda seeks proposals from qualified consultants or consultant teams to complete a housing element and safety element update (hereafter referred to as “housing element update”) and related rezoning as required under State law, in a manner consistent with the Regional Housing Needs Allocation 6 (RHNA 6) planning period (2023-2031) requirements.

## Introduction

The City of Orinda is located in the southwestern portion of Contra Costa County, approximately 15 miles east of San Francisco. Orinda is bordered by the City of Lafayette to the east and the Town of Moraga to the south. The city is a semi-rural, family-oriented community encompassing 12.8 square miles with a population of 19,009 according to the 2020 California Department of Finance Estimate.

Orinda is characterized by large, single family residential lots on rolling hillsides, and is nearly built-out with an annual growth rate of about 1.0%. There are a total of 7,167 housing units with 90% owner-occupied and 9.9% renter-occupied. The housing stock includes the following breakdown: 92.8% single family detached homes, 2.5% single family attached homes, 0.2% small multifamily (2-4 units), and 4.5% large multifamily (5+ units). Vacant units make up 4.5% of the overall housing stock in Orinda.

Downtown Orinda is located at the geographic center of the city. Downtown is split by State Route 24 and BART, with the “Theatre District” on the southeast side of the freeway and the “Village District” on the northwest side. The city’s multi-family units are located downtown and comprise of two low-income senior housing projects (Monteverde Senior Apartments and Orinda Senior Village) and a condominium complex (73 Brookwood Road) near the Theatre District.

The City of Orinda operates on the City Council-City Manager system of local government with five elected council members serving four-year terms with a rotating mayor.

## Background

The City of Orinda expects a RHNA of approximately 1,359, compared to 227 in RHNA 5, representing a 499% increase from the last planning cycle. To ensure an adequate inventory of viable sites, we anticipate the element update will necessitate rezoning in target areas. The projected housing unit allocation for the City of Orinda based on income level is:

Very Low Income	372 units
Low Income	215 units
Moderate Income	215 units
Above Moderate Income	557 units
<b>TOTAL</b>	<b>1,359 units</b>

The City of Orinda's 5<sup>th</sup> cycle housing element was certified by the California Department of Housing and Community Development (HCD) on May 13, 2015 and is available at this [link](#). We have also completed the 2020 Annual Progress Report which can be found at this [link](#).

While a number of important housing issues will need to be considered and addressed through the updating process, the most significant work efforts is expected to be meeting the City of Orinda's RHNA numbers in the site inventory. To achieve that, we anticipate analyzing the following:

- Increased densities as part of the Downtown Precise Plan (discussed below)
- Existing church sites (approximately 7 sites)
- Sites owned by government/non-profit entities
- Sites smaller than one-half acres or larger than 10 acres
- Underutilized sites

The selected consultant(s) will partner with city staff to explore, analyze and implement these approaches in addition to supporting community engagement, working with our elected and appointed officials to present recommendations and get feedback, and coordinating with HCD to help ensure ultimate certification of the updated element.

Through the City of Orinda's engagement in a countywide collaborative and ABAG's Regional Housing Technical Assistance Program, we anticipate a reduction in costs for some core update tasks, as detailed below. The collaborative is supported by an approximately half time technical assistance provided, which is expected to start in 2021 and will produce draft material for some sections of the housing element that are similar throughout the county, as noted below. Respondents should be prepared to use and/or adapt this material as appropriate, and factor that into their proposal.

### **Downtown Precise Plan**

The City began the Downtown Precise Plan (DPP) in January 2020 and the project is still underway. The goal of the DPP is to spur revitalization in downtown Orinda. The DPP Project Area encompasses the entire downtown area, excluding the BART station and parking lot. Since incorporation in 1987, there has been no new residential or commercial development downtown other than the Monteverde Senior Apartments project. The DPP is being managed in-house by Planning staff with specific tasks provided by consultants.

The completed DPP will comprise of a series of components including existing conditions, goals and objectives, objective design standards, economic feasibility analysis, an analysis of San Pablo creek restoration, and a discussion of the PG&E transmission lines that traverse through downtown. Consultants have been brought onboard for CEQA, objective design standards, economic analysis, and creek restoration analysis. A large component of the DPP will include zoning amendments such as increases in residential density, increases in maximum building height, and an increase in the permitted number of stories. Due to the proposed increases in

residential density, it is expected that a significant portion of the RHNA units will be located downtown. It is also possible that the proposed residential densities would be adjusted based on analysis performed for the Housing Element Update.

It is anticipated that work on the DPP and Housing Element update will occur concurrently and the two projects will be adopted within the same timeframe. Therefore, coordination with staff will be important to ensure that the two projects remain aligned in terms of schedule, inputs and outcomes.

## Scope of Services

The City of Orinda is seeking professional consulting services to update the City's adopted housing element in a manner consistent with current State law, ensuring certification of the final element by HCD by January 2023.

CEQA: Please note that the scope of services DOES NOT INCLUDE the preparation of documents for California Environmental Quality Act (CEQA) review and submittal. The preparation of all CEQA documents will be undertaken by Rincon Consultants. Rincon Consultants is the CEQA consultant for the DPP Programmatic EIR and they will be retained to provide environmental review for the Housing Element update. While the DPP has been underway since January 2020, a project description and Notice of Preparation for the DPP has not been issued. Through a contract amendment, Rincon Consultants will be expanding their scope from the DPP Project Area to the entire City for one comprehensive CEQA analysis of both the DPP and Housing Element update.

Proposals must address the following tasks, providing a description and timeline of how they would be accomplished. Additional or optional tasks may be included and creative approaches are welcome. The final scope of work will be subject to refinement and mutual agreement following the project's launch and further discussion.

### **1. Project Kick-Off Meeting**

Consultant will schedule a kick-off meeting with City staff to establish and understand the City's objectives, identify project goals, and discuss project expectations regarding coordination, reporting, timeline and deliverables.

### **2. Project Management and Coordination**

This task covers communication and coordination between the consultant and City staff, including meetings, phone calls, emails, and other communications to ensure timely delivery and adoption of the City's updated housing element. Proposals should identify the number of meetings anticipated and expectations for City staff. Consultant will coordinate with City staff to prepare presentation materials to the City's elected and appointed officials as necessary. Strategies or practices to ensure clear and timely communication and effective project coordination should be described. Strategies for ensuring coordination with HCD over the course of the project should also be addressed, as needed.

### **3. Community Outreach and Engagement**

Develop a program that effectively reaches, educates and engages the community throughout the Housing Element update. This should include strategies to ensure broad inclusion, particularly of hard to reach groups and special needs populations, with special attention given to communicating information so it is accessible and easy to understand. Outreach is expected to begin early in the process and continue throughout for feedback on important topics such as draft ideas, site options and the draft Housing Element. Please discuss options for virtual as well as in-person meetings, depending on changing safety considerations. It is likely that most of the meetings in 2021 will be virtual due to COVID. After that, it is likely that the City will transition to a hybrid model, possibly allowing consultants to participate in public meetings virtually.

Public engagement should include a minimum of 10 public meetings (6 workshops, 2 hearings with the Planning Commission and 2 hearings with the City Council). However, due to the significant amount of public interest the RHNA process and this project is expected to generate, in addition to the minimum community outreach required by Housing Element Law, the consultant should establish a parallel task with a budget of up to 5 to 10 more public or community engagement meetings that have not yet been identified. Such meetings may include surveys, workshops and other alternative engagement activities.

*Please note: There may be some opportunities to coordinate with other jurisdictions for joint outreach through the ABAG/REAP supported Housing Technical Assistance Program/County Collaborative. Assume the Collaborative will provide a jurisdiction specific newsletter and general housing element documents (e.g. what is a housing element).*

### **4. Housing and Special Housing Needs**

*ABAG's Regional Housing Technical Assistance Program has provided jurisdiction-specific graphs and write-ups for all required data, including population, demographic, housing, market conditions and regional comparisons. A link to Orinda's Housing Needs Data Packet can be found under Attachments & Links.*

### **5. Housing Constraints**

Identify potential and actual governmental and nongovernmental constraints for the preservation, protection or production of housing across income levels within the city. *ABAG's Regional Housing Technical Assistance Program is expected to provide all cross-jurisdictional comparisons necessary for this task (e.g., comparison of fees and processing time). It will also provide write-ups of typical countywide non-governmental constraints, including community opposition to housing, cost of construction, limited availability of land and other topics.*

### **6. Existing Housing Element**

Review the current Housing Element and identify Orinda's success in accomplishing/implementing the identified goals, policies and programs; and provide explanations and updates where goals, policies or programs are in progress, have been

abandoned or have not proven effective. *Please note, a draft of this review has been written for the Annual Progress Report.*

## **7. Sites Inventory**

Prepare the sites inventory of the Housing Element, demonstrating how the City of Orinda will satisfy its RHNA in each income category. This includes identifying safe assumptions, evaluating sites and analyzing potential policy strategies to increase site capacity, demonstrating development viability (per State law) and inputting the information into HCD's electronic form for submittal with the updated element. We anticipate that this will be the most significant area of work for the update process, and will need to start early in order to ensure adequate time for consideration of potential areas for rezoning or other changes to development standards needed to achieve the RHNA.

*ABAG's Regional Housing Technical Assistance Program has provided a site selection tool for use during this Housing Element Update. Please specify whether you plan on using it, and if so, how.*

## **8. Goals, Policies, Programs and Quantified Objectives**

Identify goals, policies, programs and quantified objectives to include in the Housing Element to ensure compliance with State law and effective response to the housing needs, constraints and key priorities identified through the update process. This task includes ensuring responsiveness to priorities articulated through the community engagement process as well as ensuring internal consistency with other elements of the General Plan. This task will include identification of other General Plan policy updates or revisions needed to ensure consistency.

## **9. Rezoning**

Based on the sites analyses, work with jurisdiction staff to identify potential areas for rezoning, if necessary. This must include consideration of the State requirement for maintaining an adequate housing sites inventory throughout the eight-year planning period. It is expected that rezoning associated with the DPP will occur concurrently with any rezoning for the Housing Element Update.

## **10. Safety Element**

Pursuant to Government Code Section 65302(g)(3), the City of Orinda must update the Safety Element (currently titled under Environmental Resources) as part of the Housing Element update. Portions of the City are in a designated Very High Fire Hazard Severity Zone (VHFHSZ). On February 20, 2018, the City Council adopted an updated Local Hazard Mitigation Plan. A link to the adopted Local Hazard Mitigation Plan can be found under Attachments & Links. A comprehensive update to the Safety Element has not been completed since the City adopted its General Plan in 1987. The Safety Element update is expected to generate significant public interest due to the VHRHSZ designation and related fire risks. The consultant should budget a minimum of 3 public meetings or workshops that will focus on the Safety Element update.

The update will include safety considerations in the planning and decision-making process by establishing policies related to future development that will minimize the risk of personal injury, loss of life, property damage, and environmental damage associated with natural and man-made hazards. The Safety Element policies are interrelated with mandated topics in the Land Use, Circulation, and Conservation and Open Space Elements and will inform the update of Land Use Maps to minimize future development in hazardous areas. The Safety Element will address the City's natural hazards and human activities that may pose a threat to public safety within the following topic areas: Wildfires, Geological and Seismic Hazards, Flooding, Hazardous Materials, Law Enforcement, and Evacuation. The Safety Element will provide policy direction to supports laws and regulations related to safety hazards as well as policies that support the guiding principles established for the Housing Element and General Plan.

### **11. Draft Housing Element and Public Hearings**

Prepare and submit an administrative draft Housing Element for city staff review. Staff will provide a comprehensive set of desired changes. Once edits are complete, prepare a draft Housing Element that is made available to the public and presented to both the Planning Commission and City Council at public hearings. Based on Commission and Council input, prepare a HCD review draft and submit to HCD for the mandated review.

### **12. Final Draft Hearings, Final Adoption and Certification**

The consultant will work closely with HCD and city staff to respond to any comments, and produce a final draft housing element for adoption. Present to the Planning Commission and City Council at public hearings. Prepare the final Housing Element, including any changes from the public hearings, and submit to HCD for final certification as well as the water/sewer district and the California Office of Planning and Research.

## **Project Deliverables**

- **Outreach and Engagement.** Prepare project outreach materials as they relate to the comprehensive outreach plan. This may include web materials, presentations, surveys, handouts, and other engagement materials.
- **Meeting Attendance.** Attend at least ten (10) virtual or in-person public hearings with the Planning Commission, City Council, and/or public outreach meetings as determined by staff. For the Safety Element update, attend at least three (3) additional public hearings. This is an initiate estimate which may be adjusted. As note in the Scope of Services, it is expected that all meetings in 2021 will be virtual.
- **Progress Reports.** Provide progress reports and memos at various project stages to staff, as necessary to communicate updates and/or technical information.
- **Schedule.** Develop a milestone schedule for the preparation of tasks outlined in the Scope of Services. The schedule shall include reviews/edits by staff prior to public review, community outreach, and review by the Planning Commission and City Council. The schedule should be maintained and refined throughout the course of the project.

- **Housing Element Update.** Prepare the Housing Element in accordance with the Scope of Services listed above. The Housing Element should be presented in administrative draft, redline draft, screencheck, and final version for review by the Planning Commission and City Council. Each draft should be provided electronically in both Microsoft Word format and a searchable PDF format. The final version should be provided electronically and an optional printed version for the Planning Commission and City Council prior to adoption.

## Project Timeframe

The City has identified a target of December 2022 for completion of the project, including adoption of the Housing Element update and EIR. The City would like to have a preliminary list of draft housing inventory sites within 3-4 months of project initiation to begin CEQA analysis. The consultant team should maintain coordination with City staff and Rincon Consultants to ensure the DPP and Housing Element update remain aligned where feasible in terms of schedule, inputs and outcomes, however final adoption of the Housing Element is required by January 2023.

## Required Proposal Contents

Consultants interested in responding to this request for proposal should prepare their proposal with the following sequence and format with *tabbed* sections. The technical proposal **must not exceed 30 pages** (8.5" x 11" single-sided, minimum 11-point font). Resumes are not counted as part of this page length.

### Cover Letter

Please describe your interest in the project and the commitment of your staff, including backup personnel, to the subject project. Include a written statement that illustrates an understanding of the contract form, conflicts of interest provisions, timeline, and insurance. The individual authorized to negotiate the final contract must sign the letter.

### Project Overview & Understanding

Please explain your understanding of the project and the Consultant Services described in this RFP. Identify other activities that you propose to implement in support of the required tasks.

### Detailed Work Plan & Schedule

Please include a full description of the work elements, proposed methodology that will be used for scheduling, coordination, management of overall project costs, quality control, and key or potential issues/risks you may deem critical to the project. The work description should demonstrate a clear understanding of the work required to meet the project objectives. This means providing a detailed work plan to implement all tasks included in the scope of work and any recommended additions to the list of tasks. Anticipated deliverables and assumptions used to develop the work tasks as well as assistance expected from City staff should be identified.

Additionally, please include a detailed schedule containing specific milestones and dates of completion which will be used to set schedules.

### **Project Manager and Team Qualifications**

Please describe the qualifications and recent experience of the firm and each team member, including sub-consultants, expected to be assigned to this project. Explain in detail how the team members will be assigned to specific tasks and list the major projects that the project manager is currently involved in with a percentage of the time available applied to each project. The description should include previous experience with similar projects. To better understand the proposed staff's role(s), please include an organization chart of the project team. Lastly, please provide at least three references (name, agency, title, address and telephone number) for recent, similar or related work experience.

### **Resumes**

Please include resumes of the key project team members who will be working on this project. Include qualifications, experience and education (*no more than 2 pages in length each*). A history of similar projects performed by each team member should accompany the respective resume.

### **Proprietary Information**

The proposal must include a statement that nothing contained in the submitted proposal will be proprietary. All proposals shall become the property of the City once submitted.

### **Acknowledgement of City Consultant Agreement & Certificate of Insurance Requirements**

Please provide acknowledgement regarding the acceptability of the City's standard consultant agreement conditions, including providing a Certificate of Insurance compliant with the City's requirements in the attached sample agreement. Note that the first-ranked qualified firm will need to provide proof that it and each of its subconsultants will meet the City's insurance requirements. This acknowledgement may be included as part of the Cover Letter.

### **Acknowledgement that Key Personnel Cannot be Substituted Without Permission**

If one or more of the consultant team's key personnel, for whatever reason, becomes (or is expected to become) unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the City and shall, subject to the concurrence of the City, promptly replace the personnel with personnel approved by the City. The consultant team shall include this acknowledgement as part of the proposal.

### **Cost Proposal**

Please provide in a mailed, sealed envelope, the cost proposal and a fee schedule that includes a detailed cost breakdown of all elements and tasks imperative to accomplish the Consultant

Services of this RFP. Each envelope should be marked with the name of the project: **6<sup>th</sup> Cycle Housing Element Update**.

## Selection Process

Proposals will be evaluated by a selection committee to determine each firm’s demonstrated competence and qualifications to perform the requested services. Selection of the prospective consultant will be based on the following evaluation criteria:

Recent experience in performing similar studies or projects.	30%
Consultant’s understanding of the project, as demonstrated by the work plan and approach.	20%
Qualifications of the project team, including sub-consultants, being assigned to the project.	20%
Feedback from references given regarding past performing including quality of work and delivery of work within schedule and budget.	20%
Proposed project schedule.	10%
Ability to meet City contract and insurance requirements (Pass/Fail).	P/F

## Submittal Requirements

One (1) digital copy (i.e., pdf) and five (5) hard copies of the proposal must be submitted by **3:00 pm on Wednesday, May 26, 2021**. Digital copies shall be emailed to Winnie Mui at [wmui@cityoforinda.org](mailto:wmui@cityoforinda.org). Hard copies shall be mailed or hand-delivered to the address below. All proposals shall be placed in a clearly marked envelope, titled **6<sup>th</sup> Cycle Housing Element Update**. Consultants who wish to hand-deliver their proposal must contact Winnie Mui to schedule a drop-off date and time because City Hall offices are currently closed to the public. No late submittals will be accepted.

City of Orinda  
 Attn: Planning Department - Winnie Mui  
 22 Orinda Way  
 Orinda, CA 94563

## Proposed Timeline

Key project dates are outline below. Please note, these are anticipated dates that are subject to change until a contract is executed.

RFP Advertisement	April 26, 2021
Deadline to Submit Proposal Questions	May 12, 2021
Proposal Deadline	May 26, 2021 – 3:00 pm
Evaluation of Proposals	May 27, 2021 to June 9, 2021
Interviews	Week of June 14, 2021
Contract Award by City Council	July 6, 2021

Initiate Work	Mid July 2021
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The target date for project completion is no later than December 31, 2022.

## General Terms & Conditions

### Limitations

This RFP does not commit the City to award a contract or to pay any costs incurred in the preparation of a technical proposal in response to this RFP.

### Rejection of Technical Proposals

The City reserves the right to reject any or all technical proposals.

### Award

The successful firm will be required to participate in negotiations as to pricing, technical, or other revisions to its proposal.

### Scope Modifications

The City reserves the right to request changes to the staffing and/or scope of services contained in any of the technical proposals and to enter into negotiations with any of the firm(s) regarding their submittal.

### Consultant Agreement

A sample consultant agreement (including specific conditions) is included in the enclosure. Prospective consultants are expected to meet the City's contract and insurance requirements or otherwise be subject to rejection by the City.

### Non-Discrimination

Consultants and sub-consultants shall not discriminate on the basis of race, color, national origin, sex, or physical disability in the performance of City contracts.

## Attachments & Links

1. City of Orinda Services Contract
2. [5th Cycle Housing Element](#)
3. [2020 Annual Progress Report](#)
4. [Housing Needs Data Packet \(ABAG\)](#)
5. [Environmental Resources Chapter \(Safety Element\)](#)
6. [Local Hazard Mitigation Plan](#)
7. [DPP Development Feasibility Memo](#)

# **PROFESSIONAL SERVICES CONTRACT**

## **CITY OF ORINDA**

<Firm> (“Provider”) and the City of Orinda (“City”), a municipal corporation, agree as follows. City and Provider are sometimes individually referred to herein as “Party” and collectively as “Parties.”

### **1. PURPOSE OF CONTRACT**

- a. City requires certain special services for the purpose of <insert description of services>.
- b. Provider is qualified to provide these services and is willing to provide them according to all of the terms of this agreement, including all insurance requirements set forth herein.

### **2. DUTIES OF PROVIDER**

- a. Provider agrees to perform services described in Exhibit A, which is attached to this agreement and incorporated by this reference. Provider agrees to perform these services diligently in accordance with the standards of its profession and subject to City’s review. Provider promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform the services described in this agreement.
- b. The parties may, from time to time, agree in writing that Provider, for additional compensation, shall perform additional services.
- c. Provider shall assign only competent personnel to perform services pursuant to this agreement. Provider shall notify City in writing of any changes in Provider’s staff assigned. City may, in its sole discretion, determine that a person assigned to perform services is not performing in accordance with the standards required herein. If the City makes such a determination, Provider shall replace such person immediately.

### **3. TIME OF PERFORMANCE**

- a. This agreement shall not be effective and no payments shall be made to Provider until:
  - i. City has received satisfactory evidence that Provider has met all of the insurance requirements, and
  - ii. All required signatures have been obtained.

- iii. The effective date of this agreement shall be the date on which the last signature is affixed or on receipt of satisfactory evidence of insurance, whichever is later.
- b. The services of Provider shall begin no sooner than the effective date and shall continue until all work is approved by City. All work shall be completed no later than <insert date>.

#### **4. COMPENSATION**

- a. City agrees to pay Provider at the rates described in Exhibit A, not to exceed a maximum contract price of <insert price> for all services described in Exhibit A and performed under this agreement, unless amended in writing pursuant to section 4(c).
- b. Provider shall bill City on a monthly basis for work done in the preceding month. The billings shall contain, as a minimum, total hours worked on the project by position, hourly rates, total amount due for the period and a contract payment status summary showing total billed to date compared to total authorized contract amount. In addition, Provider shall describe work that was completed during the monthly billing period both in qualitative terms (e.g., listing project activities) and in quantitative terms (e.g., scope of work completion percentage). City, at its sole discretion, shall evaluate the billing and determine whether or not the amount billed is commensurate with the state of completion of the work. If City determines that the amount billed exceeds the status of completion of either an individual task or the entire project, then City may reduce the amount of the progress payment accordingly.
- c. The parties shall agree in writing to any changes in compensation due to changes in Provider's services prior to performance of those changed services. City shall contact Provider with any dispute about the amount billed within 5 days of receipt of Provider's invoice, so that corrective action can be take in a timely manner."
- d. To the extent that Provider's insurance documentation is not in compliance with the requirements of this agreement and the City Attorney is required to intervene to explain and obtain the proper documentation from Provider's insurer, the cost of the City Attorney's services will be deducted from the contract price to which Provider would otherwise be entitled under the terms of this agreement.

#### **5. PROVIDER STATUS**

Provider is an independent contractor and is solely responsible for its acts and omissions. Provider is not City's agent, employee or representative for any purpose. Provider has no power to incur any debt, obligation, or liability on behalf of City. Provider shall direct and control its personnel and shall pay all wages, salaries, and other amounts due such personnel in connection with this agreement and as required by law. Provider is responsible for all reports and obligations respecting such personnel. Provider shall pay

of all taxes, fees, contributions or charges applicable to the conduct of Provider's business, and shall provide City with proof of compliance upon request.

## **6. CONFLICT OF INTEREST**

Provider understands that its professional responsibility is solely to City. Provider warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this agreement. Provider shall not employ a person having such an interest in the performance of this agreement.

Provider and its agents or employees working under this agreement shall submit statements of economic interest under the Political Reform Act (Government Code section 81000 et seq.) if requested to do so by City.

## **7. WORK PRODUCT, INTELLECTUAL PROPERTY AND RECORDS.**

All documents furnished to Provider by City and all reports or work product (including electronically stored documents) prepared by Provider under this agreement are City's property and shall be given to City at the completion of Provider's services without restriction or limitation on use or dissemination by City. Provider grants City a royalty-free, exclusive and irrevocable license to reproduce, publish and use all original computer programs, writing, sound recordings, pictorial reproductions, diagrams, charts, computations, drawings and other works of similar nature produced in the course of the performance of this agreement. Provider shall not publish any such material without the prior written consent of City.

Provider represents and warrants that it has the legal right to utilize all intellectual property it will utilize in the performance of this agreement. Provider further represents that it shall ensure City has the legal right to utilize all intellectual property involved in and/or resulting from Provider's performance of this agreement.

In the performance of this agreement, Provider may be given access to confidential City information. Provider shall hold any such information in confidence.

Provider shall maintain and make available to City accurate books and accounting records relating to its work under this agreement. Provider will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this agreement, whether funded in whole or in part under this agreement. Provider shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this agreement or until after final audit has been resolved, whichever is later.

## **8. ASSIGNMENT; SUBCONTRACTS**

Provider's services are considered unique and personal. Provider shall not assign or transfer its interest or obligation under this agreement without City's prior written consent. Provider shall not subcontract its duties under this agreement without City's prior written

consent. Any attempt to do so shall be null and void, and any assignees, subcontractors or transferees shall acquire no right or interest by reason of such attempted assignment, subcontracting or transfer.

## **9. LICENSES AND COMPLIANCE WITH LAWS**

Provider represents and warrants to City that it has all licenses, permits, qualifications, insurance, and approvals legally required for Provider to practice its profession and/or provide services under this agreement. Provider shall, at its sole cost and expense, keep in effect such licenses, permits, qualifications, insurance, and approvals at all times during the term of this agreement. Provider shall keep itself fully informed of and in compliance with all applicable laws affecting its performance under this agreement.

## **10. INSURANCE TYPES AND LIMITS**

Provider shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with its performance under this agreement. Coverage shall be at least as broad as:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with a limit of no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Provider has no owned autos, Code 8 (hired) and 9 (nonowned), with a limit of no less than \$1,000,000 per accident for bodily injury and property damage.
- c. Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. Workers’ Compensation insurance will not be required if Provider furnishes to City a written verification that it has no employees.
- d. Professional Liability (Errors and Omissions) Insurance appropriate to the Provider’s profession, with a limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Provider maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

## **11. ADDITIONAL INSURANCE REQUIREMENTS.**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- a. Additional Insured Status: City, its officers, officials, employees, and volunteers are to be covered as insureds on the Auto Liability policy and on the Commercial General Liability policy.
- b. Primary Coverage: For any claims related to this agreement, Provider's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of the Provider's insurance and shall not contribute with it.
- c. Notice of Cancellation. Provider shall not cancel, assign, or change any policy of insurance required by this agreement or engage in any act or omission that will cause its insurer to cancel any insurance policy required by this agreement except after providing 30 days prior written notice to the City. If an insurance policy required by this agreement is unilaterally cancelled or changed by the insurer, the Provider shall immediately provide written notice to the City and obtain substitute insurance meeting the requirements of this agreement. Nothing in this subsection relieves Provider of its obligation to at all times maintain all insurance required by this agreement.
- d. Waiver of Subrogation: Provider hereby grants to City a waiver of any right to subrogation which any insurer of Provider may acquire against City by virtue of the payment of any loss under such insurance. Provider agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer.
- e. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by City. City may require Provider to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- f. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.
- g. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:
  - i. The retroactive date must be shown and must be before the effective date of this agreement or the beginning of work, whichever is earlier.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the of work.
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date/beginning of work. Provider must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
- h. Subcontractors: Provider shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

- i. Special Risks or Circumstances: City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**12. VERIFICATION OF INSURANCE**

Provider shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required herein. Such evidence of insurance shall be attached hereto as Exhibit B and considered an integral part of this agreement, which shall not become effective until satisfactory evidence of insurance has been received by City. All evidence of insurance must be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Provider obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**13. INDEMNIFICATION**

To the fullest extent allowed by law, Provider shall defend, indemnify and hold harmless City and its officers, employees, agents and volunteers from and against any and all liability, claims, suits, losses, injuries, damage, demands, expenses and costs (including, without limitation, attorney fees and expert fees) arising out of, pertaining to or relating to the negligence, recklessness, or willful misconduct of Provider in the performance of this agreement. Provider shall not be obligated to indemnify City against liability arising from the sole negligence or willful misconduct by City. The provisions of this section survive termination of this agreement.

**14. EQUAL EMPLOYMENT OPPORTUNITY**

Provider is an equal opportunity employer and agrees to comply with applicable regulations governing equal employment opportunity. In the performance of this agreement, Provider shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.

**15. NOTICES**

Any notice to be given under this agreement shall be in writing and addressed to the parties as follows:

<b>City</b> City Manager David Biggs <a href="mailto:cityclerk@cityoforinda.org">cityclerk@cityoforinda.org</a> City of Orinda 22 Orinda Way Orinda, CA 94563	<b>Provider</b> <Name> <Email> <Firm> <Address> <City, State, Zip>
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## **16. LITIGATION**

If either party brings an action to enforce this agreement, the prevailing party is entitled to reasonable attorney fees and costs (including, but not limited to, expert witness fees and discovery costs).

## **17. WAIVERS**

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

## **18. MODIFICATION**

No waiver, modification or termination of this agreement is valid unless made in writing.

## **19. SEVERABILITY**

If any provision of this agreement is held invalid by a court of competent jurisdiction, the remainder of this agreement shall remain in effect to the greatest extent permitted by law.

## **20. TERMINATION**

- a. Termination Without Cause: At any time and without cause, either party may terminate this agreement by giving 10 days written notice. In the event of such termination without cause, City shall pay Provider for services rendered to date and Provider shall deliver to City any work product, whether complete or incomplete.
- b. Termination For Cause: In the event of Provider's substantial failure to meet its obligations under this agreement, City may elect to give Provider 10 days written notice and an opportunity to cure. If Provider has not cured the defects in its performance within 10 days, City may terminate the agreement for cause. City shall then pay Provider for services satisfactorily rendered to date and Provider shall deliver to City any work product, whether complete or incomplete.
- c. Suspension: City may, at any time, temporarily suspend Provider's performance, in whole or in part, by giving a written notice of suspension to Provider. If City gives such notice, Provider shall immediately suspend its activities under this agreement as specified.

## **21. ENTIRE AGREEMENT**

This agreement, together with its attachments, sets forth the entire understanding between the Parties and supersedes any oral or written understanding they may have had prior to the execution of this agreement. No other contract, statement, or promise relating to the subject matter of this agreement shall be valid or binding.

**22. GOVERNING LAW AND VENUE**

The formation, interpretation, and performance of this agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this agreement shall be in Contra Costa County.

**23. AUTHORITY TO ENTER AGREEMENT**

Provider has all requisite power and authority to conduct its business and to execute, deliver, and perform the agreement. Each Party warrants that the individuals who have signed this agreement have the legal power, right, and authority to make this agreement and bind each respective Party.

**24. SUCCESSORS AND ASSIGNS**

This agreement shall be binding on the successors and assigns of the Parties.

**25. HEADINGS AND CONSTRUCTION**

Headings appearing herein are descriptive only and for convenience in reference to this agreement. References to Provider include its agents, servants, and employees. References to City include its officers, employees, agents, and volunteers.

**City of Orinda**

**<Firm>**

\_\_\_\_\_  
City Manager                      Date

\_\_\_\_\_  
Date

*Attest*

\_\_\_\_\_  
Printed Title

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Printed Name

*Approved as to form*

\_\_\_\_\_  
City Attorney

**ATTACHMENTS:**

Exhibit A – Proposal Documents: Scope of Services, Hourly Rates and Payment Schedule

Exhibit B – Evidence of Insurance: Certificates, Endorsements and Policy Language

**EXHIBIT A – PROPOSAL DOCUMENTS: SCOPE OF SERVICES, HOURLY RATES, AND PAYMENT SCHEDULE**

**EXHIBIT B – EVIDENCE OF INSURANCE: CERTIFICATES,  
ENDORSEMENTS, AND POLICY LANGUAGE**

(pages attached)