



**CITY OF LIVERMORE
REQUEST FOR PROPOSALS
FOR THE PREPARATION OF DEVELOPMENT CODE
AMENDMENTS TO SATISFY THE REQUIREMENTS
OF NEW STATE HOUSING LAWS, INCLUDING NEW
RESIDENTIAL OBJECTIVE DESIGN STANDARDS**

Date Issued:

10/28/22

Deadline for Submissions:

11/28/22

Due by 12:00 a.m.

Contacts:

Jake Potter, Associate Planner, City of Livermore; and
Turhan Sonmez, Associate Planner, City of Livermore

Planning Division
Community Development Department
1052 South Livermore Avenue
Livermore, California 94550

(925) 960-4548 or japotter@livermoreca.gov
(925) 960-4450 or tsonmez@livermoreca.gov

REQUEST FOR PROPOSALS

The City of Livermore Community Development Department (the Department) is issuing this Request for Proposals (RFP) to retain the services of a consultant firm, or firms working in partnership, to provide State-compliant updates to the Livermore Development Code to satisfy the requirements of Senate Bill 35, the Housing Accountability Act (including new objective

design standards), Senate Bill 9, State ADU Law, State Density Bonus Law, and other state housing laws. This document includes background information, outlines the proposed scope of work for the project, and details the submission requirements in response to this RFP.

1. PROJECT BACKGROUND INFORMATION

Livermore's Zoning Ordinance, known locally as the Development Code, was last comprehensively updated in 2010. Since that time, the State of California has enacted several bills aimed at addressing the state's Housing Crisis, including with respect to accessory dwelling units, single family zoning district standards, and affordable housing. The City has not yet incorporated the new laws into its Development Code and relies on a series of legal memos, handouts, and interpretations to implement these bills. The Development Code does include an out-of-date Accessory Dwelling Unit ordinance and Density Bonus ordinance, as of the publication of this Request for Proposals. Some of the new laws also specifically address the application of objective design standards. The City currently relies on a combination of objective and subjective residential design standards and guidelines, contained primarily within various Specific Plans and the residential chapter of the 2004 City of Livermore Design Standards and Guidelines, to regulate the design of housing projects in Livermore.

The Department is currently in the process of comprehensively updating its General Plan, Climate Action Plan, and Local Hazard Mitigation Plan. The completion of the General Plan comprehensive update is not expected before 2024, but the City's updated Housing Element, Climate Action Plan, and Local Hazard Mitigation Plan are anticipated to be available in time for consideration, as they relate to this project. The updated Housing Element, Climate Action Plan, and Local Hazard Mitigation Plan may include measures pertaining to site planning and building design that overlap with project goals.

2. SCOPE OF WORK AND SERVICES REQUESTED

The Department is interested in conducting a comprehensive Development Code update that would incorporate new state housing law into the Development Code. The Department is also interested in supplementing existing design criteria with objective design standards for both exclusively residential and mixed-use development proposals. The new objective standards shall be applicable to all SB 35/SB 330 applications reviewed by the City.

The City expects this project to produce:

- 1) Comprehensive Code Updates to bring the Livermore Development Code into full compliance with state housing law. It is expected these updates will replace the existing out-of-date Accessory Dwelling Unit and Density Bonus ordinances and will replace the legal memos used to interpret other state housing laws; and
- 2) Objective Design Standards to ensure full compliance with Senate Bills 35 and 330. It is expected these new objective design standards will supplement the City's existing objective and subjective residential design criteria in existence prior to January 1, 2020. It is also expected that the consultant will explore SB 9 and ADU objective standards. City staff anticipates these objective standards will be incorporated directly into the Development Code.

Requested Services

The Department is requesting a statement of qualifications and proposal (Proposal) from consulting firms for modifying the City's Development Code to satisfy the requirements of the following state housing laws:

- Senate Bill 35 (Government Code Section 65913.4);
- The Housing Accountability Act (as amended in 2019 by SB 330)
 - Including new objective design standards for residential and mixed-use development applications pursuant to Senate Bills 35 and 330;
- Senate Bill 9 (Government Code Sections 66452.6, 65852.21, and 66411.7);
 - Including objective SB 9 unit standards that reflect Livermore's built environment, to the extent allowed by State law.
- State ADU Law (including AB 345, AB 3182, AB 68, AB 881, SB 13, AB 587, AB 670, AB 671, AB 2221, and SB 897);
 - Including objective ADU standards that reflect Livermore's built environment, to the extent allowed by State law.
- State Density Bonus Law (government Code Sections 65915 – 65918);
- Assembly Bill 2097 (Government Code Sections 65585 and 65863.2);
- Assembly Bill 2011 (Government Code Sections 65400 and 65585 and Government Code Chapter 4.1 (commencing with Section 65912.100) of Division 1 of Title 7);
- Senate Bill 6 (Government Code Sections 65913.4 and 65852.24)

The new code updates shall be State-compliant and reflect the existing policies, goals, priorities, and character of the City. The new objective design standards shall be State-compliant for a variety of housing and architectural types, and shall reflect the existing policies, goals, priorities, and character of the City. The code updates shall follow the current Development Code format and structure. Code text shall be delivered in Microsoft Word document format and shall be designed to facilitate future amendments as state law changes in the future.

The Department welcomes individual firm submissions or multi-firm team submissions.

Project Components

The Department envisions that the project will include the following components. Please note, however, that the Department welcomes modifications to this approach as the consultant deems appropriate:

Project Initiation

- *Kick-off Meeting.* Meet with City staff, in- person or via video conferencing, to establish a mutual understanding of the key issues, discuss expectations, and lay out project milestones, meeting times, and deliverables.

Data Gathering/Document Research and Review

- *Local Document Review.* Conduct a technical review and analysis of the City's existing policy documents, design guidelines, development standards and regulations, and permit procedures, including the City's General Plan, Development Code (which includes the

existing ADU and Density Bonus ordinances), City housing legal memos, handouts, and interpretations, 2004 City of Livermore Design Standards and Guidelines, various specific plans, and updated Housing Element, Climate Action Plan, and Hazard Mitigation Plan (if available).

- *State Document Review.* Conduct a technical review and analysis of the State of California's new housing laws, including SB 35, SB330, SB9, ADU law (AB 345, AB 3182, AB 68, AB 881, SB 13, AB 587, AB 670, and AB 671), and Density Bonus Law (government Code Sections 65915 – 65918). This review should summarize the requirements of each law and convey the areas where Livermore has discretion (e.g. SB 9 unit height limit).

Draft Standards and Review

Through the process of amending the City's Development Code, there will be three draft documents produced, as follows:

- *Initial Administrative Draft.* Prepare comprehensive modifications to the existing Development Code, using track-changes to indicate new and omitted text, and illustrations, if applicable.
 - Given that the code amendments will implement a range of state laws, modifications to various parts of the Development Code will likely be required. Staff anticipates changes to Chapters 2 (General to All), 4 (General to Zones), 6 (Specific to Uses), 9 (Permits and Approvals), 10 (Subdivisions), and 11 (Definitions). In addition, staff would like the consultant to explore creating a new Housing Chapter in the Development Code that would include all the City's existing ordinances pertaining to housing (e.g. ADUs) and all state laws pertaining to housing (e.g. SB 35).
 - The objective design standards shall provide for a wide variety of residential and mixed-use building types, and architectural styles appropriate in Livermore (typologies based on building type and/or architectural style may be explored), be consistent with the City's General Plan, and address topics such as site planning, building massing, building frontages, entrances, exterior materials, landscaping, utilitarian/mechanical elements of building design, and be complementary to (not replace) those standards contained in the existing 2004 Design Standards and Guidelines document.
- *Final Administrative Draft.* Review staff comments on the Initial Administrative Draft and prepare the Final Administrative Draft.
- *Public Hearing Draft.* Based on comments received on the Final Administrative Draft, prepare Public Hearing Draft for consideration through the formal review and adoption process.

Public Outreach

The Department's outreach philosophy regularly includes public involvement prior to public hearings and formal adoption. Normally, City staff's goal is to both inform the public and receive feedback on proposed projects and policies. However, the Department understands that cities have less discretion when implementing state housing statutes. For this reason, City staff expects this project's public outreach strategy to only to inform the public and decision-makers of state housing law and the project's progress. The Department expects the following outreach activities, which can be conducted by staff, the applicant, or both:

- *Digital Outreach:* Prepare a targeted, all-digital (e.g. City website, City social media pages, etc.) outreach strategy that informs the public of state law and the project's progress.
- *Internal Outreach:* Conduct a robust internal outreach strategy to ensure all the City's departments and decision-makers are appropriately informed of state law and the project's progress. This may include City Manager's weekly updates, City Council critical project updates, Planning Commission and City Council briefings, inter-departmental coordination meetings, and the formation of a Technical Advisory Group consisting of City staff.
- *Design Advisory Group:* The project may include a Design Advisory Group consisting of external, professional, and local architects, designers, developers, etc. who will provide guidance on the proposed Objective Design Standards and Development Code amendments.

Public Review and Adoption

- *Public Hearings.* Prepare all required visual aids, printed material, and make formal public presentations at up to two Planning Commission hearings and two City Council hearings to support adoption of the Development Code Amendments.

3. PROPOSED SELECTION SCHEDULE

The following proposed schedule is subject to change:

RFP Issued: 10/28/22

PROPOSALS DUE TO THE CITY: 11/28/22 by 12:00am

Consultants Selected and Notified for Interviews: 12/9/22

Interviews Conducted: 12/14/22 – 12/21/22

Consultant Selected: 1/13/23

City Council Award of Contract: 2/27/23

4. SUBMISSION REQUIREMENTS FOR PROPOSAL

Section 1. Cover Letter

Section 2. General Qualifications

Please provide a summary of the qualifications, general information about the firm, location of office(s), years in business, and areas of expertise. Please also provide a description of projects that involved a similar scope of services as those requested.

Section 3. Key Staff

Please identify the project manager, primary contact, and staff who will work on this project and include their qualifications.

Section 4. Draft Scope of Work

Please provide a draft scope of work addressing the items described in the Draft Scope of Work Summary outline contained in this RFP. Please describe the firm's understanding of the project, any suggested revisions to the Draft Scope of Work summary, a detailed work approach, and methodology. As necessary, expand or modify the scope of work outline to

accomplish the overall objective of the project and provide suggestions which might enhance the results or usefulness of the project. Please also include a schedule of work.

Section 5. Cost Proposal

The cost proposal must include all labor costs, overhead costs, subconsultant costs, and an itemized list for direct expenses. Costs must also be shown in a matrix format, by task grouping, and show hours per staff member, base labor rates, and overhead.

Please note, project invoicing must include summaries of work performed during the billing period, a breakdown of all costs during the billing period, and percent of funds expended in each cost line item.

Section 6. Agreement for Professional Services

Consultant **must** provide a statement that the Agreement for Professional Services has been read, that the individual or firm will meet the prerequisite insurance requirements, and the individual or firm, if selected, agrees to enter into such Agreement.

5. SUBMITTAL OF PROPOSALS

All proposals must be received by the Department via email no later than 12:00 a.m. on 11/28/22. Proposals are to be addressed to Jake Potter, Associate Planner, at japotter@livermoreca.gov; and Turhan Sonmez, Associate Planner, at tsonmez@livermoreca.gov

6. EVALUATION AND SELECTION

Evaluation Criteria. The City's decision will be based on the evaluation of several factors including, but not limited to, the following:

1. Thoroughness and comprehension in addressing the scope of work
2. Experience and demonstrated competence on similar projects
3. Cost effectiveness
4. Understanding of the City of Livermore
5. Proposed schedule

Interviews/Discussions. The Department may request the finalists to make an oral presentation as part of the selection process. Presentations are to be conducted by the Consultant's proposed Project Manager for this contract. Regardless of whether a presentation is requested, the Department may conduct discussions with a finalist for the purpose of clarification to assure full understanding of, and conformance to, the RFP.

Submittal Documents. The top consultant shall, within **twenty calendar days** from the date of the Notice of Intent to Award, provide the Department with the following documents:

1. two executed originals of the Professional Services Agreement provided by the Department project manager, which include scope of work, pricing, and budget;
2. insurance and endorsements acceptable to the City of Livermore;
3. proof of purchase of a City business license; and
4. any other certificates required by the RFP. Agreements for professional services expected to exceed \$100,000 a year must be presented to the City Council of the City of Livermore for approval.

Inquiries. Inquiries concerning this RFP should be directed by email only to Jake Potter, Associate Planner at japotter@livermoreca.gov; and Turhan Sonmez, Associate Planner at tsonmez@livermoreca.gov.

7. GENERAL CONDITIONS

Failure to Return. In the event the top consultant fails to return the documents to the Department in a timely manner, the City reserves the right to negotiate with another finalist or reject all proposals.

City Property. All submitted Proposals shall become the property of the City upon submission. All data, documents, and other projects used or developed during the project will remain the property of the City or in the public domain upon completion of the project.

Reservation and Commitment. This RFP does not commit the Department to select a consultant, to pay any costs incurred in the preparation of a Proposal for this request, or to produce or contract for services. The Department reserves the right to accept or reject any or all Proposals received as a result of this request, or to modify or cancel in part or in its entirety the RFP if the Department determines it is in the best interest of the Department to do so. The Department also reserves the right to negotiate with the selected firm to revise the work program and the costs of services, if necessary, to more closely match Department needs.

Additional Information. Based on the information received, through the submissions process, the Department reserves the right to request additional information during the selection process. The Department further reserves the right to select all or part of a consultant team or teams to assemble the consulting team best suited for the project and Department's goals.

Waiver. By submitting a response to this RFP, each consultant expressly waives any and all rights that it may have to object to, protest or seek legal remedies whatsoever regarding any aspect of this request, the Department selection of the top consultant, the Department rejection of any or all responses, and any subsequent agreement that might be entered into as a result of this request.

Confidentiality. The Department recognizes that the proposals may include proprietary or confidential information. The Department will take every reasonable precaution in protecting such information provided that it is clearly identified as proprietary or confidential on the page on which it appears. However, the Department is subject to the California Public Records Act and must disclose records as required by the Act. Proposals and pricing information submitted as a part of this RFP will not be returned. The Department reserves the right to reject any and all proposals.

Addendum. The Department reserves the right to amend the RFP by Addendum.

8. REFERENCE MATERIAL

The following documents and data are readily available for reference on the City's website (<https://www.livermoreca.gov>) and are required to inform the project:

- City of Livermore General Plan
- City of Livermore Development Code, including:
 - ADU Ordinance
 - Density Bonus Ordinance
- City of Livermore State Housing Law legal memos, handouts, and interpretations
- City of Livermore Design Standards and Guidelines
- City of Livermore Climate Action Plan
- City of Livermore Local Hazard Mitigation Plan
- City of Livermore Specific Plans, including:
 - Downtown Specific Plan
 - Isabel Neighborhood Specific Plan
 - South Livermore Valley Specific Plan

ATTACHMENT A

-Sample Agreement for Professional Services

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20__ , by and between the City of Livermore (“City”), a municipal corporation, and (“Consultant”),{a/an} {list consultant's state of registration here} {identify type of entity here} eg: a California corporation, a sole proprietorship, etc.

RECITALS

City requires professional services to _____ .

Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges City has relied upon these warranties to retain Consultant.

AGREEMENT

NOW, THEREFORE, City and Consultant hereby agree that the aforementioned recitals are true and correct and further agree as follows:

1. **Retention as Consultant.** City hereby retains Consultant, and Consultant hereby accepts such engagement, to perform the services described in Section 3 below subject to the terms and conditions in this Agreement.
2. **Relationship of Parties – Independent Contractors.** The relationship of the parties shall be that of independent contractors. Consultant and its employees are not City officers or employees. Consultant is responsible for the supervision and management of its employees, including any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the delivery of the services contemplated by this Agreement.
3. **Description of Services.** Consultant shall provide the following professional services as more particularly set forth in Exhibit "A" (collectively “the Services”):
4. **Consultant’s Responsibilities.** Consultant shall:
 - (a) Diligently perform the Services in a manner commensurate with industry, professional, and community standards;
 - (b) Provide the resources necessary to complete the Services in a timely manner;
 - (c) Obtain a business license from the City of Livermore, and keep it in effect for the term of this Agreement;

ATTACHMENT A

(d) Obtain and keep in effect all necessary licenses, permits, qualifications, insurance, and approvals legally and professionally required for Consultant to practice its profession and to provide the Services;

(e) Comply with all laws in effect that are related to Consultant and the Services;

(f) Coordinate the Services with _____ (“Project Manager”), or such other person designated as the Project Manager by City;

(g) Be available to the Project Manager, and other parties referred to Consultant by the Project Manager, to answer questions or inquiries related to the Services;

(h) Only invoice City for the Services rendered. Consultant’s invoice shall be in writing and describe the Services performed for the payment requested. Consultant shall not submit an invoice to City more frequently than once a calendar month;

(i) Keep and maintain invoices and records related to the Services in an organized manner. At a minimum, the records must be kept for at least 3 years from the date of final payment to Consultant and must include time sheets, work progress reports, and other documentation to adequately explain all the Services invoiced for payment. Consultant shall make the invoices and records immediately available to City upon delivery of a written request to examine, audit, or copy them at City’s place of business during normal business hours. Consultant shall give City 30 calendar-days’ written notice prior to destroying the invoices and records and allow City an opportunity to take possession. If City wants them, Consultant and City shall coordinate their delivery to City in the most efficient manner possible;

(j) Prepare and submit a written report to the Project Manager, within 3 business-days of the Project Manager’s written request, that identifies the Services completed and in progress, the charges incurred to date, and the anticipated cost to complete the remaining Services;

(k) Consultant shall correct, at its own expense, all errors in the Services. Should Consultant fail to make such correction in a timely manner, City may make the correction and charge the cost thereof to Consultant;

(l) If applicable, Consultant shall ensure that all work for compensation is provided in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker’s compensation and prevailing wages. If applicable, Consultant shall comply with all prevailing wage laws, such as sections 1773, 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with this Agreement is deemed to have occurred by any court or administrative authority, Consultant shall forfeit to the City, as a penalty, the sum of fifty dollars (\$50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement; and,

(m) Consultant's services provided pursuant to this Agreement shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

5. Compensation and Payment.

(a) The total compensation payable by City to Consultant for the Services **SHALL NOT EXCEED** the sum of \$ _____ ("not-to-exceed amount"). City shall compensate Consultant for the Services rendered at the hourly rates, task amounts or travel expenses set forth in Exhibit "A" up to the not-to-exceed amount. Except as provided in the body of this Agreement, the hourly rates, task amounts or travel expenses are intended to be Consultant's only compensation for the Services and is inclusive of all costs of labor, licensing, permitting, overhead and administrative costs, and any-and-all other costs, expenses, and charges incurred by Consultant, its agents, and employees to provide the Services.

(b) City shall pay Consultant no later than 30 days after City receives a written invoice from Consultant and verifies the Services were performed for the payment requested.

6. Term. The term of this Agreement commences on _____, 20____, and terminates upon the completion of the Services or _____, 20____, whichever occurs first.

7. Termination by City. City may terminate any portion or all of the Services by giving Consultant at least 30 calendar-days written notice. Upon receipt of a termination notice, Consultant shall immediately stop all work in progress on the Services except where necessary to preserve the benefit of the work, and then assemble the work on the Services for delivery to City on the termination date. All compensation for Services performed prior to the termination date shall be payable to Consultant in accordance with Section 5.

8. Ownership of Documents. All drawings, designs, data, photographs, reports and other items prepared or obtained by Consultant in the performance of the Services are City's property and Consultant shall deliver them to City upon demand.

9. Copyright and Right of Use. All items created by Consultant for City under this Agreement are works made for hire, and Consultant shall give City the copyright and all intellectual property rights to all items developed, prepared, and delivered as part of the Services. Consultant agrees that all aspects of the Services and items created thereby will be original works of creation and will not use, in whole or in part, any work created by any other party, except when expressly disclosed by Consultant to City and Consultant obtains a license to such items for the benefit of City. All licenses must be perpetual, world-wide, non-exclusive, and royalty free sufficient in scope to permit City's full use and enjoyment of its ownership rights in the items created by the Services.

10. Confidentiality. Consultant shall not disclose any confidential or proprietary information received from City to anyone except Consultant's employees who require access to the information to perform the Services. This obligation shall survive

termination and remain in full force and effect until the information, and any copies thereof, are destroyed or returned to City.

11. Defense, Indemnity, and Hold Harmless. To the fullest extent permitted by law, Consultant shall hold harmless, indemnify, and defend with counsel selected by the City or otherwise acceptable to the City, the City and its elected and appointed officials, officers, directors, employees, agents and designated volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services contemplated by this Agreement, or in connection with Consultant's failure to comply with any of its obligations contained in this Agreement, except for such Liability caused by the sole active negligence or willful misconduct of City. Consultant's obligations to hold harmless, indemnify, and defend shall not be excused because of Consultant's inability to evaluate Liability or because Consultant evaluates Liability and determines that Consultant is not liable to the claimant. These obligations are independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this Agreement. These obligations shall survive the completion or termination of this Agreement. Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City.

- (a) **Modification for Construction Contracts.** To the extent this Agreement is a "construction contract" covered by California Civil Code section 2782, then Consultant's duty to indemnify shall not apply in a manner prohibited by California Civil Code section 2782.
- (b) **Modification for Design Professional Services.** To the extent this Agreement is for "design professional services" defined in California Civil Code section 2782.8, then Consultant's duties to defend and indemnify shall only apply to the extent provided for in California Civil Code section 2782.8(a), unless section 2782.8(a) is not applicable for one of the reasons set forth in 2782.8(e).

12. Insurance. Consultant shall procure and maintain insurance during the term of this Agreement in the amounts and under the terms set forth in Exhibit "B" against claims that may arise from or in connection with this Agreement and performance of the Services. Upon reasonable written notice, Consultant shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by City's Risk Manager.

13. Acceptance of Final Payment. Consultant's acceptance of final payment will release City from any and all claims and liabilities for compensation under this Agreement.

14. Acceptance of Work. City's acceptance of, or payment to Consultant for, the Services does not release Consultant from its responsibility for the accuracy, completeness, or competency of the Services, nor do the actions constitute an assumption of Consultant's responsibility or liability by City for any defect or error in the Services.

ATTACHMENT A

15. Conflict of Interest. Consultant represents that no City employee or official has a financial interest in Consultant. Consultant shall not offer, encourage, or accept any financial interest in any part of Consultant's business by or from a City employee or official during the term of this Agreement or as a result of being awarded this Agreement. If any of the Services are paid by reimbursement from an agreement between City and a private party, Consultant represents that it has not performed any work for that private party during the 12-month period prior to the execution of this Agreement, and that it shall not negotiate, offer or accept any contract for services from that party during the term of this Agreement.

16. Economic Disclosure. Consultant shall comply with City's local conflict of interest code and the Political Reform Act, and prepare and file an economic disclosure statement if the Services involve making, or participation in making, decisions which may have a material effect on the Consultants' financial interest. While it is Consultant's sole responsibility to evaluate its conflicts of interest, the Consultant nevertheless agrees to prepare and file an economic disclosure statement if requested by City.

17. Non-Exclusive Agreement. This is a non-exclusive agreement. City reserves the right to provide, and to retain other consultants to provide, services that are the same or similar to the Services described in this Agreement.

18. No Assignment. Consultant shall not assign or subcontract any of the Services without City's prior written consent. For the purposes of this section, a change of fifty-percent or more in the ownership or control of Consultant constitutes an assignment.

19. Remedies. All remedies permitted or available under this Agreement, or at law or in equity, are cumulative and alternative, and the invocation of a right or remedy will not be construed to waive or elect a remedy with respect to any other available right or remedy. As a condition precedent to commencing legal action involving a claim or dispute against City arising from this Agreement, the Consultant must present a written claim to City in accordance with Chapter 3.42 of the Livermore Municipal Code.

20. Construction of Language. The terms and conditions in this Agreement have been arrived at through negotiation and each party had a full and fair opportunity to review and revise this Agreement with legal counsel. Any ambiguity in this Agreement will not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language in the body of the Agreement and an attachment hereto, the language in the body of the Agreement controls.

21. Entire Agreement; Modification. This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to the Services. Any modification to this Agreement must be in writing and signed by both parties. In the event the original of this Agreement is lost or destroyed, an archival copy maintained by City can be used in place of the original for all purposes with the same effect as if it was the original.

22. Notice. Notices under this Agreement must be delivered to the addresses below by deposit in the United States mail or by overnight delivery service, with postage prepaid and delivery confirmation:

TO CITY: Attention:

 1052 S Livermore Avenue
 Livermore, California 94550

TO CONSULTANT: Attention:

23. Waiver. Failure to insist upon the strict performance of any term or conditions in this Agreement, no matter how long the failure continues, is not a waiver of the term or condition and does not bar the right to subsequently demand strict performance. To be effective, a waiver must be in writing and signed by the non-breaching party.

24. Severability. If a court of competent jurisdiction determines a provision in this Agreement is invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired in any way.

25. Survival. The terms, conditions, and obligations in Sections 8, 9, 10, and 11 shall survive the completion or termination of this Agreement.

26. Electronic Signatures. By signing this document, you are agreeing that you have reviewed this disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

27. Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email, or other electronically delivered signatures of the Parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals and shall be valid and effective for all purposes.

Signatures and Attachment List on the Next Page

ATTACHMENT A

In concurrence and witness whereof, and in recognition of the mutual consideration provided therefore, the parties have executed this Agreement, effective on the date first written above.

CONSULTANT:

Dated:

By:
Title:

CITY OF LIVERMORE:

Dated:

{Name of person authorized to sign per Muni Code 2.68}
{Title}

APPROVED AS TO FORM:

Assistant/City Attorney

APPROVED AS TO INSURANCE:

Risk Manager/Analyst

Attachments:

- Exhibit A – Scope of Work
- Exhibit B – Insurance Requirements

ATTACHMENT A

**THIS FORM IS TO BE
COMPLETED BY CITY STAFF
ONLY**

**CITY OF LIVERMORE
DETERMINATION OF CONFLICT OF INTEREST
REPORTING FOR CONSULTANTS**

Consultant Name (include name of specific person doing work if known).

[Empty text box for Consultant Name]

Contract/Project Title.

[Empty text box for Contract/Project Title]

Brief Description of work to be done, or final product, and how it will be used.

[Empty text box for Brief Description]

Is the Consultant making, participating in making, or influencing a governmental decision?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Is the Consultant performing work that could or would be done by an employee identified in the City of Livermore Conflict of Interest Code?	Yes <input type="checkbox"/> No <input type="checkbox"/> If YES, please identify the title for the designated employee:

Completed by Department Head

Signature: _____

Date: _____

City Attorney Determination:

Disclosure: None Category 1 Category 2 Category 3 Category 4

Name and address of each individual subject to reporting requirements:

[Empty text box for Name and address of each individual subject]

Comments:

[Empty text box for Comments]

Assistant/City Attorney

Signature: _____

Date: _____

EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Consultant/Contractor shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
\$1,000,000 per occurrence/**\$2,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
\$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
Statutory limits as required by the State of California including **\$1,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Consultant/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability".
4. Professional Liability/Errors and Omissions:
\$1,000,000 per occurrence.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Consultant/Contractor; or automobiles owned, leased, hired or borrowed by the Consultant/Contractor. The coverage shall contain no special

- limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.
2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Consultant's/Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. 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 the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
 3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
 4. The Consultant's/Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
 6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
 7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Consultant/Contractor shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before work commences. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.