MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
REQUEST FOR QUALIFICATIONS

June 14, 2017

INVITATION

Description
The Midpeninsula Regional Open Space District (District) is pleased to announce the opportunity to provide on-call general engineering services for project work within the Midpeninsula Regional Open Space District. Project locations are anticipated to be primarily within San Mateo and Santa Clara counties within existing District Open Space Preserves, at potential new property sites, or at District field or administrative offices (see Attachment 1).

The District is seeking qualified, licensed professionals general engineering consulting services/on-call general engineering services.

About the Midpeninsula Regional Open Space District
The District is a public agency that owns and manages over 63,000 acres of land in 26 open space preserves. The District’s boundary includes portions of San Mateo, Santa Clara, and Santa Cruz counties within the Santa Cruz Mountains (see Attachment 1). These areas are managed by the District to preserve a regional greenbelt, protect and restore the environment, and to provide opportunities for ecologically sensitive public access and education. Public recreational use of the Preserves is primarily trail use by hikers, mountain bicyclists, equestrians, and dog walkers. The District leases land for conservation grazing on approximately 10,800 acres as a tool to manage habitat on portions of several preserves. Please visit www.openspace.org for more information about the District.

PROJECT DESCRIPTION

Objective
This Request for Qualifications (RFQ) is being widely distributed to attract a diverse group of firms that are most suited to performing work for the District in the professional service category indicated above. The District is seeking firms who are known for their expertise in engineering, quality of work, and cost effectiveness. It is preferable that firms have successfully completed similar projects for similar entities within similar geographic settings.

Project Opportunities
The District has upcoming projects for which general engineering consulting services are needed that require more staff time or expertise than are currently available to handle the workload. Through this RFQ process, the District seeks to engage the services of consulting firms having the skills to assist with: civil engineering, geotechnical engineering, hydraulic & hydrologic engineering, surveying, traffic engineering & analysis, structural engineering, and construction inspection and management. It is not necessary for a proposer to be able to perform all of the requested services. For example, one applicant may select to provide only one of the abovementioned services, while another applicant may select to provide three of these services.
The District will compile a list of the most qualified proposers to provide on-call services for an initial contract term of two (2) years with the option for the District in its sole discretion to extend the term annually for up to two (2) additional years. The number of firms selected will be dependent on the quality, and number of proposals received during this RFQ process. These firms will work primarily with one District project lead, per work order, under the guidance of senior staff to accomplish projects similar to the type of work listed below. Firms placed on the on-call list can reasonably expect to perform $0 to $50,000 worth of work annually at the District’s sole discretion and based on a variable workload.

The following provides a sampling of the potential types of general engineering consulting services to be completed. The types of work have been separated into seven categories with relevant past projects included as examples. Future work will be similar but not limited to these types of projects.

**Category One: Civil Engineering (plans and specifications)**

Consultant shall provide civil engineering services to implement project and meet industry standard codes and regulations. Plans and specifications will be developed to acquire permits from local agencies and for bidding and construction purposes. Plans may include demolition, grading and drainage, utilities, and construction details. The consultant shall provide professional civil engineering services related to recreational trails, roadways, parking areas, and District facilities. Other tasks may also include third party review of current designs, on-site consultation, and AutoCAD assistance.

Example project:

**Mt. Umunhum Road Rehabilitation**

Road repair design work associated with the safety upgrades and repairs to Mt. Umunhum Road. Project included pulverize and paving of 5.5 miles of roadway, rock fence installation, drainage inlets, concrete barrier, metal beam guard rail, and gabion retaining walls.

**Category Two: Geotechnical Engineering (design, compaction testing, and construction observation)**

Consultant shall provide geotechnical assessments including subsurface and laboratory studies. Professional geotechnical engineering assessments and services may include slope stability, slide repairs, retaining walls, bank stabilization, site inspections and monitoring, material testing, compaction testing, subsurface investigations, feasibility studies, pavement design and peer review.

Example projects:
1. **Mt. Umunhum Summit Project**
   Geotechnical monitoring, material testing, and concrete inspection during construction.

2. **Sears Ranch Road Parking Lot and Road Improvements**
   Geotechnical investigation for the parking lot area and road improvements. Scope included subsurface investigation and recommendations on pavement section.

**Category Three: Hydraulic and Hydrologic Engineering**

Projects located in the vicinity of various creeks, watersheds, and stormwater infrastructure will require hydraulic and hydrologic engineering expertise. The consultant shall provide professional hydraulic and hydrologic engineering services related to runoff calculations, post-construction stormwater controls (Regional Water Quality Control Board C.3 Requirements), erosion controls, hydraulic and hydrologic modeling, Stormwater Pollution Prevention Plans (SWPPP) and SWPPP monitoring, water tank sizing and design, pipe and culvert design, and storm basin design and analysis.

The consultant will need to be familiar with the existing Municipal Regional Permit issued by the Regional Water Quality Control Board and how it is applied to the design of Low Impact Development improvements and Green Infrastructure. The Consultant shall design Low Impact Development improvements and Green Infrastructure to the latest adopted version of the Municipal Regional Permit.

Example project:

**Powell Road Erosion and Stability Assessment**
Review erosion and stability concerns along the Powell Open Space Patrol Road located in Monte Bello Open Space Preserve in the unincorporated area of Santa Clara County.

**Category Four: Topographic Survey**

Consultant shall provide topographic survey services related to project design, construction staking, and boundary line clarification. Some boundaries may be well established while others are not. The consultant shall provide professional surveying services related to construction staking and layout; locations of property lines, boundaries, easements, and rights-of-way; topographic surveys; aerial topographic surveys; prepare and interpret deeds and descriptions; drone survey; develop legal descriptions and plat maps; aerial photography and mapping; and 3-D laser scanning.

The consultant shall provide all drawings in AutoCAD Civil 3D and all source files for survey work.

Example project:

**Mt. Umunhum Summit Restoration**
Survey work for Mt. Umunhum public access improvements, including parking area and helicopter landing zone.
Category Five: Traffic Engineering and Analysis

Consultant shall provide traffic engineering and analysis services in support of project designs. Traffic engineering and analysis surveying services shall be related to signage and striping plans, traffic count, traffic analysis for driveway site distances, lane requirement analysis for road improvements, and traffic control plans.

Example project:

**Bear Creek Redwoods Parking Area**
Consultant provided traffic count and analysis to determine the appropriate location of the parking lot driveway. Analysis took into account traffic speed, volume, and sight distance.

Category Six: Structural Engineering

Consultant shall provide structural engineering services for structural analysis, design, peer review, and evaluation. Work may include, but will not be limited to, the design of retaining walls, pedestrian and vehicular bridges, facilities, and footings. The consultant shall provide professional structural engineering services related to bridges, retaining walls, footings, foundations, building pads, inspections, seismic retrofits and rehabilitation, and structural modeling and analysis.

The consultant shall also provide: a) design services for various projects requiring structural engineering to the latest structural and seismic provisions; b) all back up calculations for any structural design elements; c) field inspection of existing structural elements to ensure compliance with approved design plans and specifications; and d) analysis, reports, quality control, and value engineering.

Example project:

**Mt Umunhum Trail Bridge Project**
Engineering services for design of pedestrian bridges at three stream crossings.

Category Seven: Construction Inspection and Management

Consultant shall provide construction inspection and management services to ensure projects are implemented and constructed in accordance with the project plans and specifications. Professional construction inspection and management services may include roadways, bridges, recreational trails, District facilities, retaining walls, and slope repair. Majority of the work are within sensitive habitats. Consultant will work alongside of District staff, including Capital Project Managers and Planners, to manage and document construction activities. Consultant will be responsible for all services necessary and required for the inspection, management, coordination and administration of a project, so that the required construction work is properly
executed and completed in a timely fashion and conforms to the requirements of the project plans and specifications.

**Project Locations**
Project locations are primarily remote, often difficult to access sites within San Mateo and Santa Clara counties. Projects sites may include any existing District Open Space Preserves, potential new property sites, or District field or administrative offices (see Attachment 1). Access to project sites often requires the use of a four-wheel drive vehicle, trained driver, and hiking over rough uneven terrain. Project hazards may include stinging insects, venomous animals, weather extremes (rain, snow, sleet, heat etc.) Driving access to the Preserves is over windy, narrow access roads that require significant time to travel, adding increased travel time to and from project sites.

**Project Scope of Work**
The District will develop individual scopes of work on a project by project basis. Individual scopes of work will then be offered to the best qualified firm selected for each particular project. If two or more firms are similarly qualified individual scopes of work may be offered on an alternating basis.

**SUBMISSION REQUIREMENTS**
The goal for each firm should be to prepare a proposal that is comprehensive. The proposal should describe how the proposing firm is specially qualified to perform the type of work cost effectively and at an acceptable scale for the setting.

Interested firms should submit the following:

1.) **Desired On-Call Services Checklist and Three Project Examples**
Please review the enclosed desired on-call services checklist (see Attachment 2) and indicate the on-call services for which your firm would like to be considered. Indicate your firms desire to be considered for each service by placing a checkmark in the adjoining field. Selecting more, or fewer, services will have no impact on the District’s selection of on call consultants.

The proposal for the on-call must include three example projects from the past five years that match each of the services the firm wishes to be qualified to perform. For example, if the firm wishes to complete topographic survey work, a relevant project must be included that demonstrates expertise and qualification in topographic surveys. Projects examples may demonstrate expertise in more than one service area, but the burden to demonstrate expertise in each area specifically is unchanged. Qualifications in each area will mostly be determined by assessing the relevant projects in conjunction with the firm’s expertise and focus. Firms must fill out the ‘checklist’ (see Attachment 2) with a short project name so that the submittal portions can be compared.

Example projects may include prior work for Midpen, but those projects should not exceed more than 25% of total project examples. Proposers are encouraged not to assume Midpen staff are familiar with a firm’s work for Midpen or whether that work demonstrates qualifications or expertise.
These example projects must
- Clearly indicate which on-call service(s) this project relates to
- Name of the project and client reference
- Describe the project including methods used to perform the project
- Describe the firm’s role in the project
- When it occurred
- Who on the proposal team performed the work
- Rough cost of services and construction

2.) Project Team Composition and Structure (*Please limit to one double-sided page)
Provide an organizational chart, including a description of the probable work team including the names and roles of the key personnel assigned and any sub-consultants. Include all key project team members and explain their roles and responsibilities. Identify the project team leader who is the primary contact for day to day correspondence with the District. This item should be no more than one-page total.

3.) Resumes (Please limit to one double-sided page per team member)
For each team member please provide a resume including the items listed below.

a) Professional Qualifications
   Individuals shall provide any licenses, professional memberships, awards, offices held, etc., which make your firm uniquely qualified to be considered for projects requiring general engineering consulting services.

b) Educational Experience
   Indicate degrees obtained, date obtained and from what institutions. Please indicate relevant coursework and/or projects, and any awards or scholarships.

c) Relevant Work Experience and Relevant Projects
   Please indicate previous employers, positions held, years at each position, prior projects, project locations, and project ownership. Indicate experience that most closely aligns with the District’s anticipated and unanticipated projects. Project examples on the individual resumes (as opposed to the three example projects described above) are to be used to demonstrate the expertise of the individual and can overlap as needed.

d) References
   Provide a list of at least three current references that have relevant knowledge concerning the person’s individual or firm’s ability to work on similar projects, including names, affiliations, addresses, and current telephone numbers. At least two references should be a person at an agency or entity outside of the person’s current employer. For the firm’s primary contact, please provide references that can attest to the primary contact person’s ability to manage similar projects and communicate effectively with their clients as well as the ability of field staff to provide the services for which the firm has indicated they
wish to be considered. Please indicate any specific projects or species for which each
person is a reference.

4.) **Fee Proposal** (Please limit to one double-sided page)
The fee proposal should include the charge rates of the people who would perform the work
(please identify tasks to be performed by sub-consultants), and a standard hourly rate schedule.
Please also include a list of anticipated reimbursable expenses and their associated rates as a
separate line item.

5.) **Insurance and Indemnification**
A statement of the firm’s acceptance of the District’s insurance and indemnification
requirements, or any reservations the firm has with the requirements. Please see attached
Midpeninsula Regional Open Space *District Agreement for Professional Services* (see
Attachment 3).

Please keep proposals to no more than six (6) double-sided pages, not including professional
resumes, checklists, and qualifications.

**Schedule**
The following is a tentative schedule that is subject to change. The District will inform all teams
of changes in the schedule by email correspondence.

- **Friday July 7, 2017**  Deadline for questions
- **Friday July 14, 2017**  Deadline to receive proposals (three hardcopies and one electronic)
- **Week of July 24th, 2017**  Phone interviews with selection committee as needed
- **Week of July 31st, 2017**  Proposals ranked/selections made by committee
- **Week of August 7th, 2017**  Midpen awards consultant contract, and
  contract agreement documentation process begins

**Selection Procedure**
The District will select a consultant based on the responsiveness of the firm or individual to the
RFQ and information contained in the proposal. Each applying firm can ask to be considered for
as many, or as few, of the possible types of general engineering services as they wish. The
breadth of services that each firm can provide will have no bearing as to whether or not that firm
is selected. Ranking criteria for selection will include the firm’s experience and demonstrated
success with similar projects, work with similar agencies, the qualifications of the specific
personnel who will work on the project, fee structure, availability of the firm to complete
anticipated projects, and the ability of the firm to provide appropriate insurance in adequate
amounts including professional errors and omissions insurance.

The proposed fee schedules will be evaluated after an initial ranking of the qualifications of each
firm submitting a proposal. The District may contact firms to clarify items contained in their
proposal or to conduct phone interviews as needed.
Each respondent is required to submit three (3) hard copies and one electronic copy of the proposal to the Midpeninsula Regional Open Space District, by 12:00 noon, July 14, 2017. Please call to verify receipt of proposals. All proposals shall become the sole property of the District. Proposals will be received at the following address:

Dave Jaeckel, Management Analyst
Project and Planning Delivery Team
Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022-1404
(650) 625-6516

Midpeninsula Regional Open Space District reserves the right to reject any or all proposals received and to request additional information as deemed necessary and appropriate. Following review of the proposals submitted, selected teams may be notified of the opportunity to phone interview with the District, during the week of July 24th, 2017.

General Stipulations
The District is not responsible for any expenses which proposers may incur in preparing and submitting the proposal. The District will not be liable for any costs incurred by the proposers that are related to the RFP process; this includes production of the proposal, interviews/presentations, travel and accommodations. The District reserves the right to request or negotiate modifications to the proposals that are deemed appropriate. All proposals received from proposers in response to this Request for Proposal will become the property of the District and will not be returned to the proposers. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of the District. The District reserves the right to reject any and all proposals and to waive minor irregularities. The District also reserves the right to seek new proposals or re-advertise if responses have not been satisfactory or for any other reason.

PUBLIC RECORDS AND PROPRIETARY INFORMATION, INDEMNIFICATION
The District recognizes that proposers will occasionally believe that all or portions of their proposals are confidential or proprietary. This can present problems in participating in a public agency RFP process. All proposals, strategies, supporting information, rate schedules and other information and documents are presumptively public records under the California Public Records Act (Gov’t Code section 6250 et seq.), subject to prompt disclosure upon request by any member of the public.

The District is not soliciting, does not wish to receive, and will not treat any information received under this proposal as proprietary or confidential information, unless specifically called for or expressly accepted by the District General Counsel in writing, and will be accepted and considered only when, in the sole discretion of the District it is necessary to serve the public purpose of the project. If the inclusion of confidential or proprietary information is determined to be necessary to the proposal, proposers must identify each and every specific item and each and every page, and segregate the information into a separate envelope or electronic file labeled conspicuously as confidential, with a cover page describing the information and applicable law
exempting the same from disclosure. Any material marked or claimed as confidential or proprietary may be returned to the proposer by the District or destroyed and may not be considered in the review of proposals if the claim does not appear justified or would inhibit the public purposes of the project proposed.

If the documents have been properly marked and expressly accepted as confidential and proprietary in writing by the District General Counsel, the District will make its best effort to advise the proposer of any Public Records Act request, should any be received, seeking documents claimed to be confidential or proprietary, to give the proposer an opportunity to take legal steps to protect such property from disclosure to third-party requester. The District expressly disclaims any duty and will not defend the confidentiality or proprietary nature of any information submitted. By submitting any confidential or proprietary information to the District, the proposer agrees to holds harmless and indemnify and defend the District and its officers, employees, and agents for any and all costs, including attorneys fees, incurred by the District or awarded to a Public Records Act requester relating to a request for release of proposer’s data should the proposer ask the information to be handled as proprietary or confidential.

Requests for Additional Information and Questions
Specific questions related to the RFP must be addressed via email correspondence to the District. Answers, additional, and updated information will be distributed to all firms receiving this RFPQ. Please verify if and when updated information is received from the District. Questions must be submitted no later than July 7, 2017.

Please submit all inquiries to: Dave Jaeckel, Management Analyst, at: djaeckel@openspace.org.

Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022
650.625.6573
LIST OF ATTACHMENTS
Attachment 1
Map of District preserves and boundary within which potential projects may occur

Attachment 2
List of desired on-call services

Attachment 3
District Agreement for Professional Services
On-Call Services

<table>
<thead>
<tr>
<th>Category One: Civil Engineering (plans and specifications)</th>
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<td>Typical projects may involve: design for recreational trails, roadways, bridges, and preserve facilities; demolition plans; etc.</td>
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<tr>
<th>Category Two: Geotechnical Engineering (design, compaction testing, and construction observation)</th>
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<tr>
<td>Typical projects may involve: slope stability (analysis and evaluation); slide repairs; retaining walls; bank stabilization; site inspections and monitoring; subsurface investigations; feasibility studies; peer review; etc.</td>
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<th>Category Three: Hydraulic and Hydrologic Engineering</th>
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<td>Typical projects may involve: runoff calculations; post-construction stormwater controls (RWQCB C.3 Requirements); erosion controls; hydraulic and hydrologic modeling; Stormwater Pollution Prevention Plans (SWPPP) and SWPPP monitoring; water tank sizing and design; pipe and culvert design; storm basin design and analysis; etc.</td>
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<th>Category Four: Surveying</th>
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<td>Typical projects may involve: construction staking and layout; locations of property lines, boundaries, easements, and rights-of-way; construction surveys for improvements projects; traditional topographic surveys and aerial topographic surveys; prepare and interpret deeds and descriptions; develop legal descriptions and plat maps; aerial photography and mapping; 3-D laser scanning; etc.</td>
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<th>Category Five: Traffic Engineering and Analysis</th>
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<td>Typical projects may involve: prepare and review signage and striping plans; traffic analysis for driveway site distances; lane requirement analysis for road improvements; traffic handling plans for various construction projects; etc.</td>
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<th>Category Six: Structural Engineering</th>
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<td>Typical projects may involve: retaining walls; misc. site related structures; bridges; footings; foundations; building pads; inspections; seismic retrofit and rehabilitation; structural modeling and analysis; etc.</td>
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<th>Category Seven: Construction Inspection and Management</th>
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<td>Typical projects may involve: construction inspection and management services with a focus on infrastructure including, but not limited to, roadways; bridges; recreational trails; preserve facilities; retaining walls; slope repair; work within sensitive habitats; etc.</td>
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AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
AND

THIS AGREEMENT is by and between _______ ("Consultant") and the Midpeninsula Regional Open Space District, a public body of the State of California ("District"). Consultant and District agree:

1. **Services.** Consultant shall provide the Services set forth in Exhibit A, attached hereto and incorporated herein.

2. **Compensation.** Notwithstanding the expenditure by Consultant of time and materials in excess of said Maximum compensation amount, Consultant agrees to perform all of the Scope of Services herein required of Consultant for $_______ including all materials and other reimbursable amounts ("Maximum Compensation"). Consultant shall submit invoices on a monthly basis. All bills submitted by Consultant shall contain sufficient information to determine whether the amount deemed due and payable is accurate. Bills shall include a brief description of services performed, the date services were performed, the number of hours spent and by whom, a brief description of any costs incurred and the Consultant’s signature.

3. **Term.** This Agreement commences on full execution hereof and terminates on _______ unless otherwise extended or terminated pursuant to the provisions hereof. Consultant agrees to diligently prosecute the services to be provided under this Agreement to completion and in accordance with any schedules specified herein. In the performance of this Agreement, time is of the essence. Time extensions for delays beyond the Consultant’s control, other than delays caused by the District, shall be requested in writing to the District’s Contract Administrator prior to the expiration of the specified completion date.

4. **Assignment and Subcontracting.** A substantial inducement to District for entering into this Agreement is the professional reputation and competence of Consultant. Neither this Agreement nor any interest herein may be assigned or subcontracted by Consultant without the prior written approval of District. It is expressly understood and agreed by both parties that Consultant is an independent contractor and not an employee of the District.

5. **Insurance.** Consultant, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof, acceptable to the District, the insurance coverages specified in Exhibit B, "District Insurance Requirements," attached hereto and incorporated herein by reference. Consultant shall demonstrate proof of required insurance coverage prior to the commencement of services required under this Agreement, by delivery of Certificates of Insurance to District.

6. **Indemnification.** Consultant shall indemnify, defend, and hold District, its directors, officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of, pertaining or relating to the negligence, recklessness or willful misconduct of Consultant, its employees, subcontractors, or agents, or on account of the performance or character of the Services, except for any such claim arising out of the sole negligence or willful misconduct of the District, its officers, employees, agents, or volunteers. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Notwithstanding the foregoing, for any design professional services, the duty to defend and indemnify District shall be limited to that allowed pursuant to California Civil Code section 2782.8. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.
7. **Termination and Abandonment.** This Agreement may be cancelled at any time by District for its convenience upon written notice to Consultant. In the event of such termination, Consultant shall be entitled to pro-rated compensation for authorized Services performed prior to the effective date of termination provided however that District may condition payment of such compensation upon Consultant's delivery to District of any or all materials described herein. In the event the Consultant ceases performing services under this Agreement or otherwise abandons the project prior to completing all of the Services described in this Agreement, Consultant shall, without delay, deliver to District all materials and records prepared or obtained in the performance of this Agreement. Consultant shall be paid for the reasonable value of the authorized Services performed up to the time of Consultant’s cessation or abandonment, less a deduction for any damages or additional expenses which District incurs as a result of such cessation or abandonment.

8. **Ownership of Materials.** All documents, materials, and records of a finished nature, including but not limited to final plans, specifications, video or audio tapes, photographs, computer data, software, reports, maps, electronic files and films, and any final revisions, prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of District and are assumed to be public records within the meaning of the California Public Records Act unless expressly deemed otherwise by District. All documents and materials of a preliminary nature, including but not limited to notes, sketches, preliminary plans, computations and other data, and any other material referenced in this Section, prepared or obtained in the performance of this Agreement, shall be made available, upon request, to District at no additional charge and without restriction or limitation on their use. Upon District’s request, Consultant shall execute appropriate documents to assign to the District the copyright or trademark to work created pursuant to this Agreement. Consultant shall return all District property in Consultant’s control or possession immediately upon termination.

9. **Compliance with Laws.** In the performance of this Agreement, Consultant shall abide by and conform to any and all applicable laws of the United States and the State of California, and all ordinances, regulations, and policies of the District. Consultant warrants that all work done under this Agreement will be in compliance with all applicable safety rules, laws, statutes, and practices, including but not limited to Cal/OSHA regulations. If a license or registration of any kind is required of Consultant, its employees, agents, or subcontractors by law, Consultant warrants that such license has been obtained, is valid and in good standing, and Consultant shall keep it in effect at all times during the term of this Agreement, and that any applicable bond shall be posted in accordance with all applicable laws and regulations.

10. **Conflict of Interest.** Consultant warrants and covenants that Consultant presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, Consultant shall promptly notify District of the existence of such conflict of interest so that the District may determine whether to terminate this Agreement. Consultant further warrants its compliance with the Political Reform Act (Government Code § 81000 et seq.) respecting this Agreement.

11. **Whole Agreement and Amendments.** This Agreement constitutes the entire understanding and Agreement of the parties and integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or any previous written or oral Agreements between the parties with respect to all or any part of the subject matter hereof. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein. This Agreement may be amended only by a written document, executed by both Consultant and District’s General Manager, and approved as to form by the District’s General Counsel. Such document shall expressly state that it is intended by the parties to amend certain terms and conditions of this Agreement.
Agreement. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. Multiple copies of this Agreement may be executed but the parties agree that the Agreement on file in the office of District's District Clerk is the version of the Agreement that shall take precedence should any differences exist among counterparts of the document. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

12. **Capacity of Parties.** Each signatory and party hereto warrants and represents to the other party that it has all legal authority and capacity and direction from its principal to enter into this Agreement and that all necessary actions have been taken so as to enable it to enter into this Agreement.

13. **Severability.** Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

14. **Notice.** Any notice required or desired to be given under this Agreement shall be in writing and shall be personally served or, in lieu of personal service, may be given by (i) depositing such notice in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to a party at its address set forth in Exhibit A; (ii) transmitting such notice by means of Federal Express or similar overnight commercial courier (“Courier”), postage paid and addressed to the other at its street address set forth below; (iii) transmitting the same by facsimile, in which case notice shall be deemed delivered upon confirmation of receipt by the sending facsimile machine’s acknowledgment of such with date and time printout; or (iv) by personal delivery. Any notice given by Courier shall be deemed given on the date shown on the receipt for acceptance or rejection of the notice. Either party may, by written notice, change the address to which notices addressed to it shall thereafter be sent.

15. **Miscellaneous.**
   a. Except to the extent that it provides a part of the definition of the term used herein, the captions used in this Agreement are for convenience only and shall not be considered in the construction of interpretation of any provision hereof, nor taken as a correct or complete segregation of the several units of materials and labor.
   b. Capitalized terms refer to the definition provide with its first usage in the Agreement.
   c. When the context of this Agreement requires, the neuter gender includes the masculine, the feminine, a partnership or corporation, trust or joint venture, and the singular includes the plural.
   d. The terms “shall”, “will”, “must” and “agree” are mandatory. The term “may” is permissive.
   e. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.
   f. When a party is required to do something by this Agreement, it shall do so at its sole cost and expense without right to reimbursement from the other party unless specific provision is made otherwise.
   g. Where any party is obligated not to perform any act, such party is also obligated to restrain any others within its control from performing such act, including its agents, invitees, contractors, subcontractors and employees.
IN WITNESS WHEREOF, Consultant and District execute this Agreement.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT
330 Distel Circle
Los Altos, CA 94022-1404

By: ____________________________  By: ____________________________
Name
Title

Date: ____________________________  Date: ____________________________

Attest: ____________________________
Jennifer Woodworth
District Clerk

Federal Employer ID Number: ____________
License Number: ____________
Expiration Date: ____________

Approved as to form:
________________________________
Sheryl Schaffner
General Counsel

Attachments:
Exhibit A Scope of Services
Exhibit B District Insurance Provisions
EXHIBIT A
Scope of services and compensation
EXHIBIT B
INSURANCE REQUIREMENTS

Before beginning any of the services or work called for by any term of this Agreement, Consultant, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to the District, the insurance specified herein.

Insurance Requirements.
- Statutory Worker’s Compensation Insurance and Employer’s Liability Insurance coverage: $1,000,000
- Commercial General Liability Insurance: $1,000,000 (Minimum), $2,000,000 Aggregate
- Business Automobile Liability Insurance-with coverage evidencing “any auto” and with limits of at least $1,000,000 per occurrence.
- Errors and Omissions Insurance (or Professional Liability): $1,000,000

Workers’ Compensation. Statutory Workers’ Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant shall be provided if required under the California Labor Code.

Commercial General and Automobile Liability. Consultant, at Consultant’s own cost and expense, shall maintain Commercial General and Business Automobile Liability insurance for the period covered by this Agreement in an amount not less than the amount set forth in this Exhibit B, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Agreement, including the use of hired, owned and non-owned automobiles. Coverage shall be at least as broad as the latest edition of the Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto). No endorsement shall be attached limiting the coverage.
  a. A policy endorsement must be delivered to District demonstrating that District, its officers, employees, agents, and volunteers are to be covered as insured as respects each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured’s general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to District, its officers, employees, agents, or volunteers.
  b. The insurance shall cover on an occurrence or an accident basis, and not on a claims made basis.
  c. An endorsement must state that coverage is primary insurance and that no other insurance affected by the District will be called upon to contribute to a loss under the coverage.
  d. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to District and its officers, employees, agents, and volunteers.
  e. Insurance is to be placed with California-admitted insurers.
Professional Liability. Where Consultant is a licensed professional, Consultant, at Consultant's own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount set forth in this Exhibit B covering the licensed professionals' errors and omissions, as follows:

a. The policy must contain a cross liability or severability of interest clause.

b. The following provisions shall apply if the professional liability coverages are written on a claims made form:
   1) The retroactive date of the policy must be shown and must be before the date of the Agreement. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work.
   If coverage is canceled or not renewed and it is not replaced with another claim made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The District shall have the right to exercise at the Consultant's cost, any extended reporting provisions of the policy should the Consultant cancel or not renew the coverage.
   A copy of the claim reporting requirements must be submitted to the District prior to the commencement of any work under this Agreement.

Deductibles and Self-Insured Retentions. Consultant shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. Any self-insured retention or deductible is subject to approval of District. During the period covered by this Agreement, upon express written authorization of District Legal Counsel, Consultant may increase such deductibles or self-insured retentions with respect to District, its officers, employees, agents, and volunteers. The District Legal Counsel may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

Notice of Reduction in Coverage. In the event that any coverage required under the Agreement is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to District at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

Remedies. In addition to any other remedies District may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option:
- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof;
- Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies District may have and is not the exclusive remedy for Consultant's failure to maintain insurance or secure appropriate endorsements.