

**REQUEST FOR QUALIFICATIONS/
REQUEST FOR PROPOSALS
(RFQ/RFP)**

FOR

**HAZARDOUS MATERIALS AND BUILDING CONDITION
INVESTIGATION AND TESTING
FOR
GOLETA COMMUNITY CENTER**



Amended on May 12, 2016

Submit Qualifications/Proposals to:

City of Goleta
Neighborhood Services & Public Safety Dept.
Attn: Claudia Dato
130 Cremona Drive, Ste. B
Goleta, CA 93117
(805) 961-7554

Due by 5:00 p.m.

Tuesday, May 31, 2016

I. Introduction

The City of Goleta (City) is seeking Statements of Qualifications (SOQs) and Proposals from experienced firms (Consultants) to conduct a comprehensive hazardous materials and substandard building construction investigation of the Goleta Community Center (GCC) located at 5679 Hollister Avenue in Goleta, California.

The City's primary objectives are to:

- Investigate the GCC building and associated educational buildings, both by non-invasive visual and selective destructive methods, to comprehensively evaluate the buildings for presence of any hazardous materials, including but not limited to, asbestos, lead, mercury, and PCBs;
- To identify building elements (e.g. electrical, mechanical, seismic/structural, foundation, etc.) that are substandard or non-compliant with the Building Code during the destructive testing;
- Provide recommendations for the abatement or mitigation of hazardous materials that may be identified, and for corrections or upgrades to substandard or non-compliant building conditions, construction methods or materials; and
- Provide cost estimates for all recommendations.

II. Background

Incorporated on February 1, 2002, the City of Goleta is located along the Highway 101 corridor in southern Santa Barbara County neighboring the City of Santa Barbara and the University of California, Santa Barbara. With a current population of approximately 30,000, Goleta is the fourth largest city in the County. The City's Adopted General Plan allows for a build out population of approximately 38,100 by the year 2030.

After incorporation in 2002, the City assumed a lease agreement that the County of Santa Barbara had with the Goleta Union School District (District) for use of the Goleta Community Center (GCC) located at 5679 Hollister Avenue in Goleta. Under the terms of this agreement, the City paid the District for the remaining 11 years of the 30-year agreement, and in 2013 exercised the option to purchase the seven acres including the GCC facilities. The City also assumed a sub-lease agreement with the Goleta Valley Community Center Foundation, a non-profit entity which provides for the management, use, and general maintenance of the facility. The non-profit corporation currently manages a large number of community uses and programming within the facility and oversees rentals and other reservations of available space. A wide variety of recreational and social events and classes occur at the GCC on a daily basis. The facility is also home to a senior center and hosts a weekday lunchtime meal program for low-income seniors. Overall, thousands of people utilize the GCC each month.

The GCC building was built in 1927 and served as an elementary school until 1976. Some building additions and remodeling occurred in the 1940s and 1950s. In 1976, the School District decided to close the school rather than retrofit it to meet State earthquake standards. At that time the main building was converted to a community

center. The GCC building underwent some additional remodeling and renovation work in the 1970s and 1980s. The City has building plans available for much of the previous work and will make these available to the selected consultant. The GCC includes a fully licensed kitchen, 250 person capacity auditorium, a dining hall that accommodates 125 guests, restrooms, numerous meeting rooms, and two dance studios.

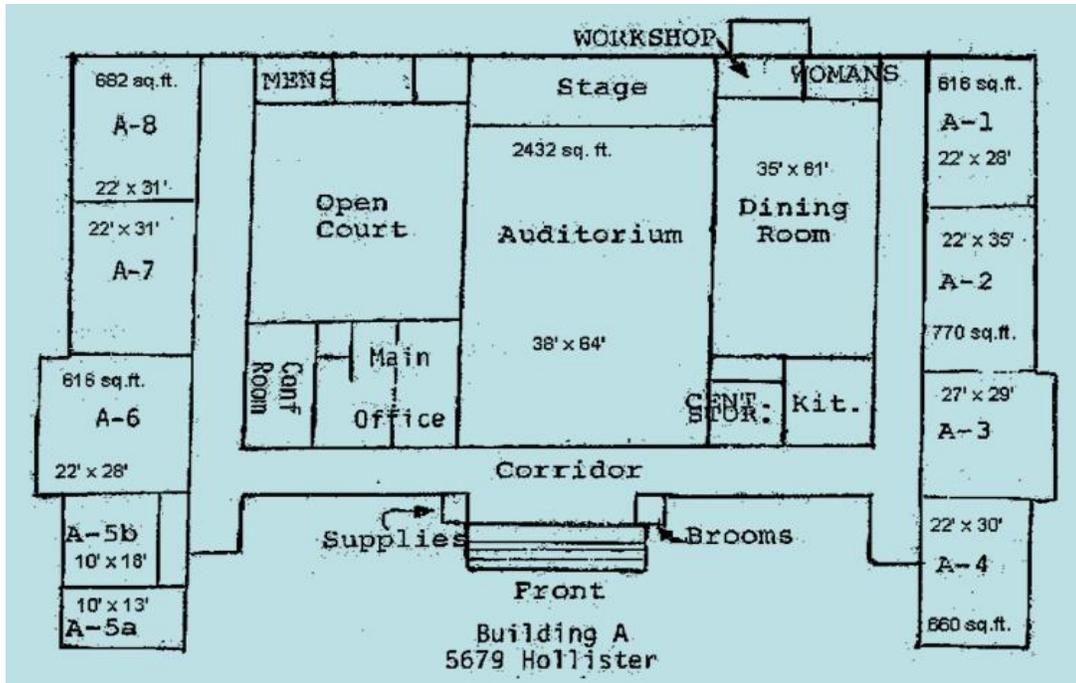
There are several other detached buildings serving as classrooms for a Headstart Pre-school Program and a private day care (the Rainbow School), and another large building in the rear which houses the Boys & Girls Club. With the exception of the rear Boys & Girls Club building and a row of portable classrooms located toward the front of the subject site, the scope of work will include all other permanent detached buildings in addition to the main GCC building. Other addresses associated with the scope of work are 5681 and 5689 Hollister Avenue.

Listing of Buildings/Facilities at Goleta Community Center (GCC)	
GCC Facility/Building	Size/Square Footage
Main Community Center Building	19,607
CAC/Head Start Preschool	6,851
Head Start Classrooms	2,970
Rainbow School	5,376
Total:	34,804

The City is currently exploring various options for undertaking repairs, seismic and ADA upgrades, renovation, expansion or reconstruction of the GCC and related buildings and needs to get a comprehensive understanding of: 1) the presence of hazardous materials, the type and extent of such materials, and the cost implications for associated abatement of such materials; and 2) any hidden substandard construction methods and materials that need to be corrected, upgraded or otherwise addressed and cost estimates for that work. To date, only superficial, non-destructive observations have been made for needed work.

During the destructive investigations and testings for hazardous materials (e.g. wall and ceiling openings, etc.), the City would like the selected Consultant to have a building inspector or contractor present to identify any substandard or non-compliant building materials or construction (e.g. knob and tube electrical, etc.) so the City can get a better scope and cost estimate for potential building upgrades.

Investigative work should also include taking core samples or conducting other testing of building foundations to determine to what extent, if any, building foundation upgrades will be needed.



Floor Plan for Goleta Community Center Main Building

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Building Photos and Floor Plans:

Figure 1 . Main GCC Building Front . Building A



Figure 2 - Front Entrance of Building A

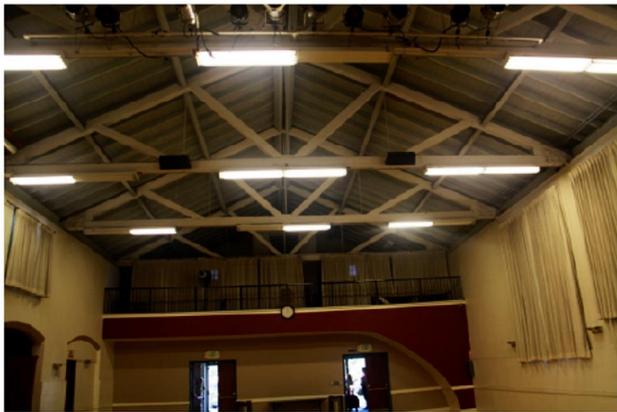


Figure 3 – Building A, Main Auditorium, Roof Truss

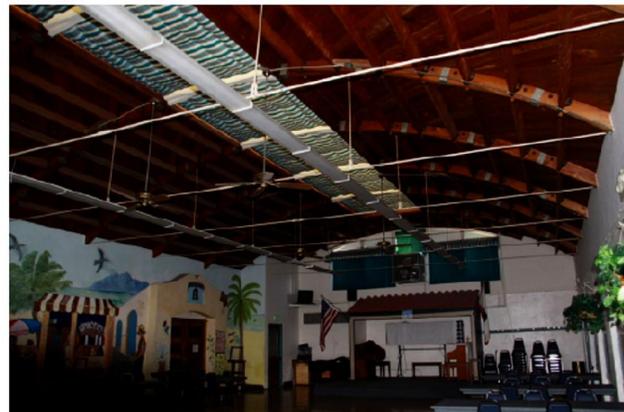
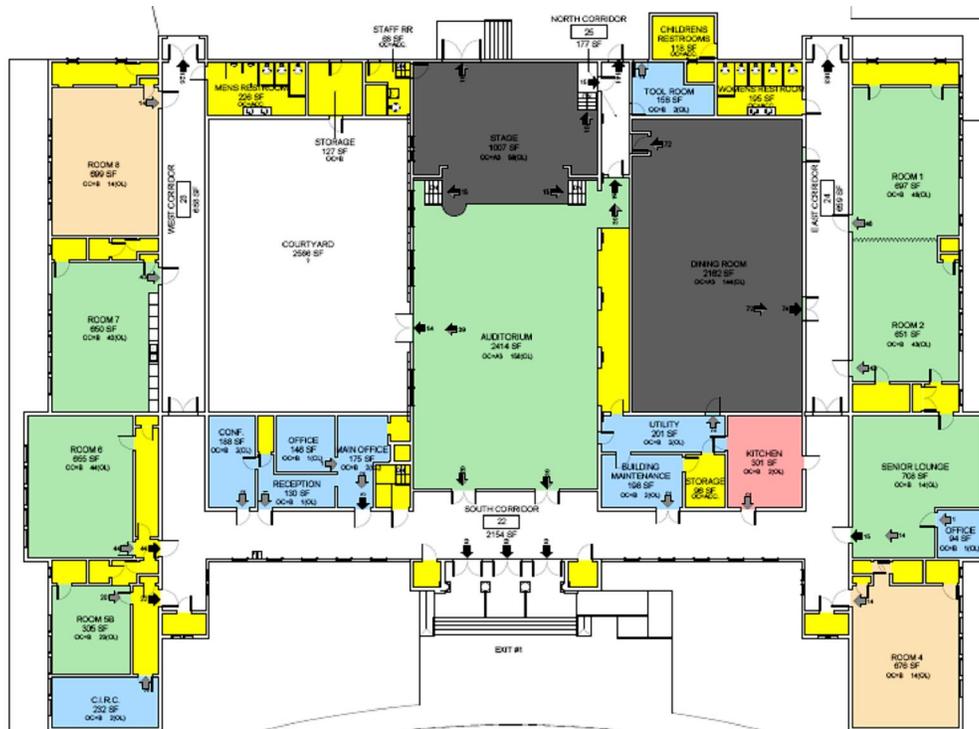


Figure 4 – Building A, Barrel Vaulted Roof Addition



Building A Floor Plan



Figure 5 – Building B



Figure 6 – Building B, Original building to the left, new addition to the right

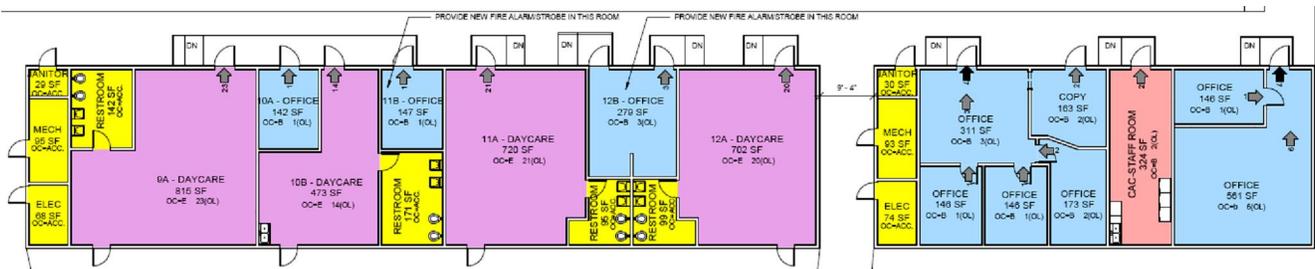
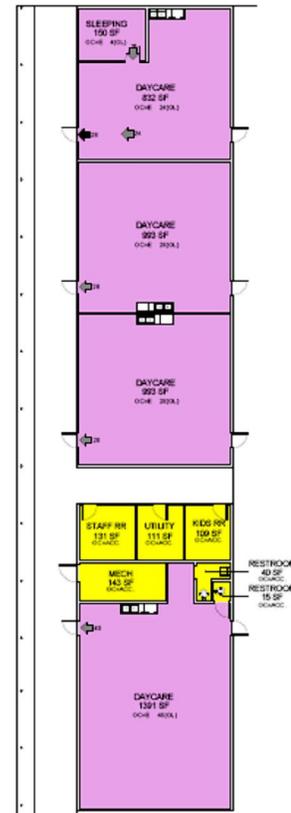


Figure 7 – Building C

Building C Floor Plan



The following resources will be available for review by the selected Consultant:

1. AHERA Asbestos Survey, October 1990. No destructive sampling procedures used.
2. Seismic, ADA and Fire/Life Safety Assessments, April 2013.
3. Geotechnical/Geologic Hazards Study, December 2012.
4. Facilities Reserve Study, September 2010.
5. Various building plans including original 1926 floor plan, building plans for 1949 classrooms (4) and restroom addition (Building B . Headstart), building plans for 1958 classrooms addition (Building C . Rainbow School), and miscellaneous building, mechanical and electrical plans for proposed renovations (some dates unknown).

III. Scope of Work

The following Scope of Work provides for non-destructive and destructive surveying and testing for hazardous materials (including but not limited to asbestos, lead, mercury, and PCB) and identification of substandard building conditions for the Goleta Community Center and associated educational structures. Given the high level of use of all buildings and presence of sensitive users, it may be necessary for some work to be conducted at night or on weekends. The scope of work includes but is not limited to environmental investigation (both visual and destructive), sampling, and testing for preparation of a comprehensive hazardous materials and building condition report. This includes, but may not be limited to, the following tasks:

A. Hazardous Materials Investigation

- a. Establish an investigation approach and sampling method plan of the project buildings in order to adequately and safely collect material samples for testing.
- b. Conduct building investigations to identify suspected hazardous substances and collect samples to support the investigation findings. Material collection shall be per established sampling plan and conducted by properly trained and certified personnel. The testing of material samples shall be completed by an accredited laboratory.
 - 1) For all buildings, the exterior survey shall include, but not be limited to, the building shell, exterior paint, window assemblies, caulking, sealants, exposed waterproofing, roofing, underlayment, insulation, siding and other building materials suspected of containing asbestos, lead or other hazardous materials.
 - 2) The interior survey shall include, but not be limited to, flooring, paint, ceiling assemblies, caulking, sealants, window assemblies, partition assemblies, insulation, pipe insulation, case goods and other building materials suspected of containing asbestos, lead or other hazardous materials.
- c. Determine quantity and location of all hazardous materials on the project site, including asbestos, PCB, mercury, lead and other hazardous materials as defined by the State of California.
- d. Prepare a report of existing hazardous materials signed by the responsible professional for the project that the City can use as a reference and guide for future repair, renovation or demolition work. The hazardous material report shall include the following minimum information:
 - 1) A description of the field activities, observations, and sampling protocols;
 - 2) Written description of locations, type, friability, and the physical condition of the assessed hazardous materials organized by building (e.g. main GCC building, Headstart Classrooms, Rainbow Classrooms, etc.);

- 3) Tabulated results of the sampling and analysis;
- 4) A map indicating building materials sample locations and estimates of hazardous material quantities;
- 5) A discussion of applicable Federal, State, and local laws and regulations;
- 6) Procedures for proper and legal abatement or mitigation options (enclosure, encapsulation, etc.) of any hazardous materials that are discovered;
- 7) A probable cost estimate for the legal abatement of any hazardous materials contained in the subject buildings, organized by identified buildings, based on two scenarios: 1) abatement for comprehensive remodeling or renovation of the project buildings; and 2) demolition of project buildings;
- 8) Conclusions and recommendations concerning the assessed hazardous materials associated with the project buildings.

B. Building Condition Investigation

- a. During the destructive hazardous materials investigations, assess the condition of construction elements observed (e.g. electrical, plumbing, structural, etc.) for violations of current California Building Laws, substandard construction methods/materials, and for signs of deterioration. Any identified issues shall be organized and presented in a supplemental building condition report, along with cost estimates for recommended upgrades and for bringing these items into code compliance. **Please note that each building was previously reviewed from the exterior and interior by visual inspection in order to identify any obvious deficiencies (see list of available studies on page 6). The review was based solely on observation and discussions with facility staff. Observable deficiencies were documented and retrofit cost estimates prepared for each deficiency. This scope of work seeks to identify issues not readily visible, by conducting inspections of areas made visible by the destructive testing being done to investigate the presence of hazardous materials.**
- b. The assessment of building condition shall include structural integrity (walls and foundations) using nondestructive and destructive testing (if appropriate) such as concrete core sampling, ultrasonic testing, ground penetrating radar, inspection openings, excavations or other testing to determine the integrity and stability of project buildings. The results of this assessment shall be included in the building condition report, along with any recommendations and cost estimates.
- c. The condition of the sewer lateral from the street to the main Community Center Building shall be assessed via video inspection.

C. Consultative Meetings

The successful Consultant would be expected to conduct consultative meetings and interviews with City staff, the facility operators, and other relevant parties as necessary to obtain additional acknowledge about the noted facilities. All prior building plans and studies will be made available to the selected Consultant for review. Consultant may also be asked to participate in one City Council meeting.

D. Cost Analysis

The Consultant must be qualified to evaluate the remediation costs for the safe and legal removal of any identified hazardous materials, as well as costs for correcting or upgrading substandard building conditions. The qualified Consultant would also be expected to define the range of assumptions and alternatives, including rennovation versus building demolition.

E. Work Schedule

Consultant shall be expected to submit a draft hazardous material report and building condition report to the City within 90 days of the Notice to Proceed (NTP).

IV. Statement of Qualifications/Proposal

Consultants shall submit four (4) copies and one unbound copy of their Statement of Qualifications (SOQ)/Proposal limited to twelve (12) double-sided pages exclusive of cover letter, resumes, and references. The SOQ/Proposal shall be organized and include the information in the below outline:

A. Cover Letter

The cover letter is to be signed by an officer of the firm authorized to execute a contract with the City.

B. General Qualifications

Provide a summary of the lead firm's qualifications, general information about the lead firm, location of office, years in business and areas of expertise. Provide a brief description of projects involving a similar scope of services. Consultant shall be State certified to evaluate and provide recommendations for the abatement or mitigation of hazardous materials and have five or more years of experience performing similar work. Consultant team must also include professionals qualified to conduct building foundation testing and evaluations of substandard building conditions. Provide brief qualifications for all sub-contractors proposed.

C. Key Staff

Identify key staff and include a description of their abilities, qualifications and experience. Attach resumes of key staff to be assigned to this project. Include a proposed project management structure and organizational chart. Identify any portion of the scope of work that would be subcontracted. Include firm qualifications (brief) and key personnel, telephone number and contact person for all subcontractors. The City reserves the right to approve or reject all consultants, internal staff performing consulting services, or subconsultants proposed by the Consultant.

D. Project Specific Approach and Methodology

Consultant shall describe its understanding of the project and the proposed technical and management approach. **Consultant should expand on the scope of work if appropriate to accomplish the overall objectives of the project, and provide suggestions which might enhance the results or usefulness of the study.** Include assumptions about the number of meetings needed with City staff and other stakeholders to complete the Scope of Work. Consultant shall also include a schedule of work.

E. References

Consultant shall provide a list of references (three minimum) for the firm and any subconsultants, including the names, addresses and telephone numbers of recent clients, preferably other public agencies for which Consultant has done similar work. Include a list of specific projects associated with each reference, date work was performed, cost and key personnel involved.

F. Rates

Consultant shall include a cost proposal that includes all labor costs, overhead costs, subconsultant costs, and an itemized list for direct expenses associated with completing the scope of work. Work must be shown in a matrix format detailed by tasks along with associated personnel hours per task. Consultants' labor rate sheets shall be submitted in a separate sealed envelope.

G. Disadvantaged Business Enterprises (DBE's)

Consultants intending to utilize sub-consultants shall make a good-faith effort to include certified Disadvantaged Business Enterprise (DBE) or Underutilized DBE firms as sub-consultants, and shall describe the good-faith efforts that were taken in an attempt to include a certified DBE as a member of the project team. Although no percentage goals have been established for this project, Consultants submitting proposals should identify whether any certified DBE's will be utilized as sub-consultants and if so, indicate the proposed percentage of work that will be subcontracted to that firm.

H. Insurance

Please be advised that the selected Consultant(s) shall be required to provide the following insurance coverage prior to the City issuing a Notice to Proceed:

Commercial general liability at least as broad as ISO CG 0001 (per occurrence)	\$1,000,000
(General aggregate)	\$2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	\$1,000,000
Errors and omissions liability (per claim and aggregate)	\$1,000,000
Workersqcompensationõ õ õ õ õ õ õ õ õ õ õ õ õ õ õ õ õ	Statutory Limits

V. Consultant Selection Process

Interested Consultants submitting a Statement of Qualifications and Proposal will be evaluated for selection based on the following criteria:

- Responsiveness to RFQ/RFP including cover letter, indication of general and specific interest, and the overall succinctness, quality and appearance of the response;
- Consultant’s understanding of the project, proposed technical and organizational approach and methodology, and ability to successfully complete the scope of work within budget and on schedule;
- History of the Consultant’s firm, including years in business, current number of professional personnel and years of experience of key staff;
- Consultant’s experience and demonstrated work history conducting similar Hazardous Materials Investigations and building condition assessments;
- Consultant’s understanding of all applicable Health and Safety laws including but not limited to Cal/OSHA Title 8, CCR Title 8 Section 1532.1 (Lead), CCR Title 8 Section 1529 (Asbestos), California Department of Public Health Title 17, and any applicable guidelines and requirements of the Environmental Protection Agency, the California Education Code, the California Department of Education, the Department of Toxic Substances Control (DTSC), the California Division of the State Architect regulations, the National Emission Standards for Hazardous Air Pollutants, the Asbestos Hazard Emergency Response Act and California Building Code.
- Qualifications and current work load of key staff;
- Client references with addresses and telephone numbers; and
- Allocation of resources

Following evaluation of the Statement of Qualifications and Proposals by the City, a short list of Consultants may be selected for interview. The number of Consultants selected for interview, if any, will be at the City’s discretion. Interviews are typically limited to approximately 30 minutes (20 minutes for presentation and 10 minutes for questions and answers). Consultants are encouraged to bring no more than four individuals to the interview and to focus exclusively on their experience and qualifications related to the type of project and scope of work identified herein.

VI. General Information

A. Professional Services Agreement

The City reserves the right to accept or reject any or all of the SOQs/Proposals, waive any irregularity and/or to require the proposer to verify, clarify or explain any part of the submitted SOQ/Proposal. The Consultant shall enter into agreement with the City using the City of Goleta's Standard Agreement used for Professional Services (Attachment A).

B. SOQ/Proposal Submission

Statements of Qualifications/Proposals shall follow the format and content specified. SOQs/Proposals should be labeled "**RFQ/RFP – Hazardous Materials and Building Condition Investigation and Testing for Goleta Community Center**" and must be submitted to the address below by **5:00 p.m. on Tuesday, May 31, 2016**:

City of Goleta
Attention: Claudia Dato
130 Cremona Drive, Suite B
Goleta, CA 93117

Late submittals will be rejected and returned.

C. Statement of Qualifications/Proposal Property

All Statements of Qualifications/Proposals become the property of the City upon submission.

D. Cost of Qualifications/Proposal Preparation

City shall not be liable for any pre-contractual expenses incurred by any proposer or by any selected consultant. Each proposer shall protect, defend, indemnify, and hold harmless, the City from any and all liability, claims or expenses whatsoever incurred by, or on behalf of, the entity participating in the preparation of its response to this RFQ/RFP.

E. Amendments to RFQ/RFP

City reserves the right to amend the RFQ/RFP by addendum. If the City deems it necessary, the Qualifications/Proposals submittal deadline will be extended to allow proposers additional time to respond to the RFQ/RFP addendum.

F. Non-Commitment of the City

This RFQ/RFP does not commit the City to award an agreement, to pay any costs incurred in the preparation of a Qualifications/Proposal for this request, or to

produce or contract for services. The City reserves the right to accept or reject any or all Qualifications/Proposals received as a result of this request, or to modify or cancel in part or in its entirety the RFQ/RFP if the City determines it is in the best interest of the City to do so.

G. Inquires

Inquiries concerning this RFQ/RFP should be directed to:

City of Goleta
Claudia Dato, Senior Project Manager
cdato@cityofgoleta.org
(805) 961-7554

Response to questions will be in writing and posted on www.ebidboard.com

H. Notification and Debriefing of Unsuccessful Proposers

City will notify all of the proposers of the selection panel's recommendation. Consultants desiring a debriefing will be allowed to make an appointment with the City. Debriefings will not be scheduled until the City Council has acted to award the contract.

Attachments:

- A. DBE Participation Form
- B. Sample Professional Services Agreement

**ATTACHMENT "A"
DISADVANTAGED BUSINESS ENTERPRISES (DBE)
PARTICIPATION FORM**

Project Name: Goleta Valley Community Center Feasibility Study

Name of DBE Participant	Address	Contract Items or Tasks to be Completed	% of work to be completed

The undersigned will enter into a formal agreement with the DBE¹ Participants for work listed in this Proposal upon execution of a contract with the City of Goleta.

NOTE: Any business listed above must be certified as a Disadvantaged Business Enterprise (DBE) through the CALIFORNIA UNIFIED CERTIFICATION PROGRAM.

Date: _____

Name of Consultant

By: _____

Name: _____

Title: _____

¹ *Disadvantaged business enterprise or DBE* means a for-profit small business concern: (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. Refer to 29 CFR Part 26 §26.5 for the definition of socially and economically disadvantaged individual and related DBE terms.

ATTACHMENT "B"

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES
BETWEEN THE CITY OF GOLETA
AND
(Insert Name of CONSULTANT or CONTRACTOR)**

This **AGREEMENT FOR PROFESSIONAL DESIGN SERVICES** is made and entered into this (day) day of (month), 20___, by and between the CITY OF GOLETA, a municipal corporation (herein referred to as "CITY"), and **CONSULTANT**, (herein referred to as "CONSULTANT").

WHEREAS, CONSULTANT represents that they are sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the CITY; and

WHEREAS, CONSULTANT was (explain process of selection, ie. RFQ, RFP, Bids) selected for award of this AGREEMENT by (Department Director or Manager); and

WHEREAS, CONSULTANT was recommended for award based on _____; and

WHEREAS, CONSULTANT was selected for award of this AGREEMENT by City Council; and

WHEREAS, the City Council, on this ____ day of Month, Year, approved this AGREEMENT and authorized the City Manager to execute this AGREEMENT per the Goleta Municipal Code Section 3.05.240.

CITY and CONSULTANT agree as follows:

1. RETENTION AS CONSULTANT

CITY hereby retains CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the services described in Section 2. CONSULTANT warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by CONSULTANT are as follows:

Professional geotechnical services in conjunction with development of Fire Station 10. Services shall generally include _____, as more particularly set forth in the Scope of Work, attached as Exhibit %A,+and incorporated herein. CONSULTANT shall deliver to CITY the deliverables defined in Exhibit %A+ <or> as follows: **DO NOT USE CONSULTANT'S RFP OR LETTER FOR THE SCOPE OF WORK . Please retype with actual tasks set out.**

3. COMPENSATION AND PAYMENT

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$_____ (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until , after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

(b) **Payment.** CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

4. EXTRA SERVICES

CITY shall pay CONSULTANT for those CITY authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to in advance. Unless CITY and CONSULTANT have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. The applicable hourly rates for extra services shall be at the hourly rates set forth in the compensation exhibit. Any compensation for extra services shall be part of the total compensation and shall not increase the not to exceed amount identified in Section 3.

5. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is (Staff name). Project Manager shall have the authority to act on behalf of the CITY in this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

(Delete following line if no CITY services or responsibilities.)

CITY shall perform the services defined in Exhibit ~~A~~+<or> as follows:

6. TERM, PROGRESS AND COMPLETION

The term of this AGREEMENT is from the date first written above to [Term of agreement should be sufficiently beyond the time needed to complete the services.] _____, unless term of this AGREEMENT is extended or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by paragraph 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed within _____ calendar days following the notice to proceed <or> according to the following schedule: . <or> According to the schedule for delivery of services attached as Exhibit %C+and incorporated here in as %define term.%

7. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports and other documentation (other than CONSULTANT's drafts, notes and internal memorandum), including duplication of same prepared by CONSULTANT in the performance of these services, are the property of CITY. CITY shall be entitled to immediate possession of the same upon completion of the work under this AGREEMENT, or at any earlier or later time when requested by CITY. CITY agrees to hold CONSULTANT harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications for purposes other than those described in this AGREEMENT, unless written authorization of CONSULTANT is first obtained.

8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

This AGREEMENT is for professional services which are personal to CITY. is deemed to be specially experienced and is a key member of CONSULTANT's firm, and shall be directly involved in performing, supervising or assisting in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate this AGREEMENT. The following portions of the work will be subcontracted out to other parties by CONSULTANT:

This AGREEMENT is not assignable by CONSULTANT without CITY's prior consent in writing.

9. HOLD HARMLESS AND INDEMNITY

(a) **Hold Harmless for CONSULTANT's Damages.** CONSULTANT holds CITY, its elected officials, officers, agents, and employees, harmless from all of CONSULTANT's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to CONSULTANT, to CONSULTANT's employees, to CONSULTANT's contractors or subcontractors, or to the owners of CONSULTANT's firm, which damages, losses, injuries or liability occur during the work required under this AGREEMENT, or occur while CONSULTANT is on CITY property, or which are connected, directly or indirectly, with CONSULTANT's performance of any activity or work required under this AGREEMENT.

(b) Defense and Indemnity of Third Party Claims/Liability. CONSULTANT shall indemnify, defend with counsel approved by CITY, and hold harmless CITY, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this AGREEMENT, except such loss or damage which is caused by the sole active negligence or willful misconduct of the CITY. Should conflict of interest principles preclude a single lawyer from representing both CITY and CONSULTANT, or should CITY otherwise find CONSULTANT's legal counsel unacceptable, then CONSULTANT shall reimburse the CITY its costs of defense, including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation. The CONSULTANT shall promptly pay any final judgment rendered against the CITY (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the CONSULTANT's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this AGREEMENT.

(c) No Waiver. CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

10. INSURANCE

CONSULTANT shall, at CONSULTANT's sole cost and expense, provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating of A- or better, Class VII or better, or as otherwise approved by CITY.

Insurance shall include the following (or broader) coverage:

- a) Insurance Services Office Commercial Liability coverage %occurrence+form CG 00 01 or its exact equivalent with an edition date prior to 2004 and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- b) Insurance Services Office form number CA 0001 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider's commercial general liability policy.
- c) Workers' Compensation insurance complying with California workers' compensation laws, including statutory limits for workers' compensation and an Employer's Liability limit of \$1,000,000 per accident or disease.
- d) Professional Liability insurance on a policy form appropriate to CONSULTANT's profession. Limits shall be no less than \$1,000,000 per claim.

Liability insurance policies required to be provided by CONSULTANT hereunder shall contain or be endorsed to contain the following provisions:

- a) CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10 with an edition date prior to 2004, or its exact equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37 with an edition date prior to 2004.
- b) CONSULTANT's insurance shall apply to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage will not be limited to CITY's vicarious liability.
- c) Liability coverage shall be primary and non-contributing with any insurance maintained by CITY.
- d) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.
- e) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.
- f) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.
- g) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by CONSULTANT hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.
- h) CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

11. RELATION OF THE PARTIES

The relationship of the parties to this AGREEMENT shall be that of independent contractors and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

12. CORRECTIONS

In addition to the above indemnification obligations, CONSULTANT shall correct, at its expense, all errors in the work that may be disclosed during CITY's review of CONSULTANT's report or plans. Should CONSULTANT fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONSULTANT or withheld from any funds due to CONSULTANT hereunder.

13. TERMINATION BY CITY

CITY, by notifying CONSULTANT in writing, may upon calendar daysq notice, terminate without cause any portion or all of the services agreed to be performed under this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, CONSULTANT shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to CONSULTANT within 30 days following submission of a final statement by CONSULTANT unless termination is for cause. In such event, CONSULTANT shall be compensated only to the extent required by law.

14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

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

15. AUDIT OF RECORDS

At any time during normal business hours and as often as it may deem necessary, CONSULTANT shall make available to a representative of CITY for examination of all its records with respect to all matters covered by this AGREEMENT and will permit CITY to audit, examine and/or reproduce such records. CONSULTANT will retain such financial

records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this AGREEMENT.

16. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this AGREEMENT by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach.

No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this AGREEMENT, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

17. CONFLICT OF INTEREST

CONSULTANT is unaware of any CITY employee or official that has a financial interest in CONSULTANT'S business. During the term of this AGREEMENT and/or as a result of being awarded this AGREEMENT, CONSULTANT shall not offer, encourage or accept any financial interest in CONSULTANT'S business by any CITY employee or official.

18. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

19. MITIGATION OF DAMAGES

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

20. GOVERNING LAW

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

21. NONDISCRIMINATION

CONSULTANT shall comply with the federal Americans with Disability Act, Public Law 101-336, and observe the disability discrimination prohibitions of such laws in the performance of the work required under this AGREEMENT.

22. TAXPAYER IDENTIFICATION NUMBER

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

23. NON-APPROPRIATION OF FUNDS

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.

24. MODIFICATION OF AGREEMENT

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and CONSULTANT.

25. USE OF THE TERM "CITY"

Reference to %CITY+ in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

26. PERMITS AND LICENSES

CONSULTANT, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates, including a CITY business license, that may be required in connection with the performance of services under this AGREEMENT.

27. CAPTIONS

The captions or headings in this AGREEMENT are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the AGREEMENT.

28. AUTHORIZATION

Each party has expressly authorized the execution of this AGREEMENT on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this AGREEMENT.

29. ENTIRE AGREEMENT BETWEEN PARTIES

Except for CONSULTANT'S proposals and submitted representations for obtaining this AGREEMENT, this AGREEMENT supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services.

30. PARTIAL INVALIDITY

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

31. NOTICES

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

TO CITY:

Attention: City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

TO CONSULTANT:

32. SPECIAL GRANT REQUIREMENTS

32.1 An acknowledgment of FHWA support and a disclaimer must appear in any publication of any material, whether copyrighted or not, based on or developed under the Agreement, in the following terms:

%This material is based upon work supported by the FHWA under Grant Agreement.+

All materials must also contain the following:

%Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the Author(s) and do not necessarily reflect the view of the FHWA.+

32.2 CONSULTANT shall make available to the Government copies of all work developed in performance of this Grant Agreement, including but not limited to software and data. The Government and others acting on its behalf shall have unlimited rights to obtain, reproduce, publish, or otherwise use the data developed in the performance of this Agreement pursuant to 49 C.F.R. Part 18.34.

In concurrence and witness whereof, this AGREEMENT has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

CONSULTANT

Michelle Greene, City Manager

By:
Title:

ATTEST:

Deborah Lopez, City Clerk

By:
Title:

APPROVED AS TO FORM

Tim W. Giles, City Attorney