



# Request for Proposals

Development Impact Fee Nexus Study & Fee Updates

**City of Morro Bay  
595 Harbor St  
Morro Bay, CA 93442**

## Key Request for Proposal Dates

Key Milestone	Schedule
RFP Issued	August 17, 2023
Submit Questions By	August 30, 2023
Responses to Questions Posted By	September 8, 2023
Submit Proposals By	September 21, 2023
Oral Interviews (Tentative)	September 27-29, 2023
Notice of Award	October 2-4, 2023
Contract Negotiation & Execution	October 5-13, 2023
Tentative Project Start Date	October 16, 2023
Target Project Completion Date	March 1, 2024

Questions regarding this RFP should be directed to:

Melissa Green, Senior Budget Analyst  
595 Harbor Street  
Morro Bay, CA 93442  
805-772-6218  
[magreen@morrobayca.gov](mailto:magreen@morrobayca.gov)



# Request for Proposals

## Development Impact Fee Nexus Study & Fee Updates

The City of Morro Bay (“City”) is requesting proposals from qualified firms to develop a Development Impact Fee Nexus Study and propose Development Impact Fee (DIF) Updates for the City. The City assesses a variety of DIFs on new development and redevelopment to help the City pay for the infrastructure that the new development activity will require. The City’s impact fee program must comply with the Mitigation Fee Act (California Government Code Section 66000 et seq., also known as Assembly Bill 1600) and the requirements of Assembly Bill 602, effective January 1, 2022.

The Proposer shall prepare an effective, clear, and concise proposal. The City is requesting five (5) hard copies and one (1) electronic copy in PDF format.

**All proposals must be received before 5:00 pm PDT on Thursday, September 21, 2023.**

### Development Impact Fee Nexus Study & Fee Updates

Morro Bay City Hall  
ATTN: Melissa Green  
595 Harbor St  
Morro Bay, CA 93442

Electronic copy to: [magreen@morrobayca.gov](mailto:magreen@morrobayca.gov)

Proposals received after that date and time will not be considered. Each submission must be submitted to the City Clerk's Office in a sealed envelope with the proposal title and bidder name. Submit the not-to-exceed fee proposal and standard hourly billing rates in a separate sealed envelope and as a separate electronic document to the e-mail address provided above.

There is no express or implied obligation for the City of Morro Bay to reimburse responding firms for any expenses incurred in preparing proposals in response to this request. The City of Morro Bay reserves the right to reject any proposals submitted.

A team of City representatives will review applications submitted in response to this request for proposal (RFP). The team will review all complete, eligible, qualified submittals received by the deadline. Upon evaluating the qualifications provided in the applications, the team may identify top vendors to be invited for finalist interviews.



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## I. Overview

### A. Purpose

The City of Morro Bay (“City”) is requesting proposals from qualified firms to develop a Development Impact Fee Nexus Study and propose Development Impact Fees (DIF) for the City. The City assesses various development impact fees on new development and redevelopment to help the City pay for the infrastructure that the new development activity will require. The City’s impact fee program must comply with the Mitigation Fee Act (California Government Code Section 66000 et seq., also known as Assembly Bill 1600) and the requirements of Assembly Bill 602, effective January 1, 2022.

### B. Background Information

The City of Morro Bay, incorporated in 1964, is in San Luis Obispo County, on the Central Coast of California, at the crossroads of Highway 1 and Highway 41, 12 miles north of San Luis Obispo.

The City operates utilizing the Council-Manager form of government with a five-member council elected at large by City residents for staggered four-year terms. More information, including the City’s adopted budget, goals, and organizational structure, can be found on the City’s website: [www.morrobayca.gov](http://www.morrobayca.gov)

## II. Scope of the Request for Proposal

This RFP is a step in the City’s procurement process to competitively acquire the desired services and products. Firms responding to this RFP shall be prepared to deliver products and perform the work necessary to provide the services described within approximately four to five months of the project start date. The project consists of furnishing all labor, materials, equipment, tools, supervision, and travel necessary to complete the following tasks:

1. *Document Review:*
  - a. AB 1600 Reports completed annually
  - b. Prior Fee Study (2007)
  - c. General Plan/ Local Coastal Program (LCP)
  - d. [Capital Improvement Program Budget](#) and capital needs information (including the [One Water Plan](#), and additional capital needs assessments in progress, the results of which will need to be coordinated with this effort as time permits)
2. *Findings and Fees:* Provide sufficient information, a completed Nexus Study, and the necessary findings to help the City update the DIF Program based on proposed infrastructure requirements to support the City’s General Plan growth projections and the City’s Capital Improvement needs. The Proposer will work with the City Staff to determine other supporting infrastructure (i.e., equipment, vehicles, etc.) or other operational services that could rightfully be included in the fee program to ensure the costs of such supporting infrastructure are paid by development.
3. *Meetings:* The Proposer shall include attendance at the following meetings, as a minimum, in their proposal. Should the consultant identify a meeting they feel necessary to achieve results beyond the meetings described below, they shall describe them in their proposal. Meetings with staff can be virtual, as needed. Proposer should budget for three on-site meetings to



present to Advisory Bodies and City Council. Proposer shall include rates for additional meetings, should they be required.

- a. Kick-off meeting between Proposer and City staff to review objectives of the study, agree to methodology, confirm project schedule and milestones, and discuss data needs.
  - b. Data collection and clarification meetings with City staff to obtain relevant information or clarify information required to complete the Nexus Study.
  - c. Review findings with City staff. Proposer to provide information supporting findings and proposed fees.
  - d. Two stakeholder meetings with groups such as the local Chamber of Commerce and Building Industry Association to explain infrastructure needs and to seek market feasibility input.
  - e. Two meetings of Advisory Boards (possibly structured as joint meetings or ad hoc committee of advisory board members) to present Public Review Draft Nexus Study and Fee Updates and seek input.
  - f. City council meeting to present Draft Nexus Study and Fee Updates. Discuss methodology and findings, provide a formal presentation, answer questions, and collect input to prepare the final draft.
  - g. If needed, additional City Council meetings to follow up on the first meeting and present the final draft.
4. *Best Practices*: Recommend best practices to help ensure effective and accurate assumptions for the Nexus Study, accurate DIF collections, and efficient tracking and reporting on DIF activities as required by AB 1600 and AB 602.
- a. Fee Accounting: The Proposer shall evaluate the City's current system of fee accounting and administration and recommend an improved approach, if necessary, consistent with the Mitigation Fee Act and standard accounting principles.
  - b. Consistent with the City's overall funding and financing policies, the study should address credits and reimbursements for oversizing and recommend a policy for future Reimbursement Agreements.
  - c. The Proposer should evaluate the City's current reporting practices and recommend best practices for annual reports to City Council.
  - d. Fee levels may increase each year to keep pace with inflation. The Proposer should address whether the Consumer Price Index, California Construction Cost Index (CCCI), or another index should be the preferred basis for annual increases, consistent with State law.
5. *Report Deliverables*: Prepare a DIF Nexus Study and recommend DIF fee updates for submittal to the City Council containing background information, methodology, findings, and recommendations. More specifically, Proposer shall fulfill the following requirements, as a minimum:
- a. Administrative Draft: The Proposer will prepare and provide a comprehensive administrative draft, as well as technical reports for each fee category, including but not limited to methodology, findings, supporting justification, recommended DIF, recommendation for the elimination/consolidation of existing fees based on the



creation of new fees, methodology for calculating and applying fee credits in each category, and calculations that provide the legal nexus between the fee recommendations and new development as required by law.

- i. The Proposer will document all work assumptions, analysis procedures, findings, graphics, impacts, and recommendations, with technical documentation in appendices. The administrative draft will include an executive summary and conclusion.
      - ii. Generally, the administrative draft will consist of a discussion of the framework, project description, applicable statutory/legal framework, methodologies used, analysis, a list of projects to fund and their prioritization by type, and fee and fee credit methodology recommendations.
      - iii. The administrative draft will include strategies and options for City Council consideration, including but not limited to incentives (fee deferrals or waivers) for affordable housing production. Impact fee revenue will likely be insufficient to address new development infrastructure needs, as envisioned. The Proposer should anticipate working with City staff to refine the project lists and cost estimates and prioritize improvement items to balance revenue generation and economic feasibility considerations. Proposer will include strategies and options for City Council to keep fee levels reasonable and analyze how these options would impact the City's Capital Improvement Program.
      - iv. The Proposer will revise the administrative draft according to one set of consolidated comments on the draft report from City staff.
    - b. **Public Review Draft:** Proposer will develop and present a Public Review Draft at stakeholder, advisory body, and City Council meetings as described in section II(3) of this RFP. The purpose of these meetings is to solicit community and stakeholder input. The Proposer shall develop summary information such as visual presentations and printable handouts for these meetings that summarize the findings and analysis from the Public Review Draft.
    - c. **Final Draft:** After incorporating input from the administrative and public review drafts, the Proposer shall prepare a final report draft. The Proposer will present the final study to the City Council during a public hearing and make any revisions requested by City Council. The Proposer will assist staff and participate in the presentation to Council if any additional follow-up meetings are needed to complete the adoption of the DIF.
  6. **Public Noticing:** The Proposer shall prepare all required public notices and draft resolutions and ordinances required for City Council public hearings related to adopting the new fees.
  7. **Additional Tasks:** If the Proposer feels that additional deliverables are warranted, they must be identified in the proposal.



### III. Proposal Content and Organization

#### A. Cover Letter

The cover letter shall be signed by an official authorized to bind the proposing entity and shall contain a statement that the proposal is valid for at least ninety (90) days. It shall provide the following:

1. An overview of the proposing entity's history, ownership, organizational structure, and qualifications.
2. A description summarizing the Proposer's experience performing similar services to municipal clients over the years.
3. Demonstration of experience engaging with agency staff and formal and informal decision-makers and stakeholders for projects covering similar work.

#### B. Key Project Staff and Qualifications

The qualified firms shall have extensive experience executing development impact fee nexus studies for agencies of similar size and range of services as the City of Morro Bay. The qualified firms must be appropriately licensed, staffed, equipped, and financed to perform the work relevant to a project of this nature. The qualified firms shall have proven methodologies for collecting and analyzing data pertinent to a project of this nature and for converting the data to the studies specified in this RFP.

Proposers shall provide:

1. An organizational chart and staffing plan for the proposed team, clearly specifying the individual designated as the Project Manager and the amount of their time that would be devoted to this project.
2. Resumes of key project personnel.
3. Identify any plans to subcontract any portion of the work and provide the same details and qualifications for the subcontracting firms.
  - a. Failure to disclose subcontractors may result in dismissal of the proposal from consideration.

#### C. Scope of Services, Work Plan, and Schedule

A successful proposal should outline the methodology, planning, and timing strategies that will result in the development of practical deliverables to the City of Morro Bay. Proposals should:

1. Demonstrate that the Proposer clearly understands the project and has the experience, skill, and expertise necessary to complete the technical and analytical work on issues related to DIF studies.
2. Clearly describe the approach and all activities to be undertaken, including engaging City staff, managing the project, and communicating with the City.
3. Describe internal controls and review them to ensure accuracy and identify any supplemental tasks or recommended alternatives.
4. Demonstrate the ability to produce the required product in a timely fashion and the ability to present any necessary reports or studies to City staff, elected officials, or the public.



5. Include an estimated project timeline for the development impact fee nexus study and fee updates.
6. Include a schedule that includes resource (both City employees and vendor employees) requirements, a step-by-step work plan of all activities involved in the conduct of the work, and timelines for those steps, identifying major steps and milestones.

#### D. Client References and Work Product Examples

1. Provide at least three municipal agencies, corresponding contact information, and similar work product examples.

#### E. Project Budget Estimate and Fee Schedule

Project budget estimates should include a project schedule for the study with activities, milestones, and deliverables, and the project budget should be defined, at minimum, as follows:

1. By task with a collective total by milestone and deliverable
2. Labor rates for all project team members
3. The proposed hourly fee schedule during the engagement period
4. All reimbursable fees and expenses should be included in a not to exceed fixed fee.

#### F. Exceptions

The City's standard Professional Services Agreement and insurance requirements are provided in Attachment 1. Proposers should provide any exceptions to the terms or conditions of the Agreement in writing and attach them as part of the proposal.

### IV. Proposal Evaluation and Selection

The review team may consist of some or all the following: City staff, outside experts, representatives of the local business community, members of other local or regional organizations, and representatives of the public. The final approval of any contract award recommendation will necessitate review and approval by the City Manager and potentially the City Council. The City may interview a limited number of finalists after reviewing and ranking proposals. Interviews may be conducted in person or virtually. Submissions will be evaluated on the following factors:

1. Responsiveness to the instructions, requirements, and terms and conditions of this RFP.
2. Project methodology and work plan.
3. Demonstrated understanding of the project scope and tasks to be completed.
4. Project team's qualifications, expertise, credentials, licenses, and overall experience in carrying out the scope of service, including references and work product examples.
5. Proposer's municipal public sector experience conducting similar studies for cities of similar size and complexity.
6. The demonstrated competence, ability, capacity, and skill of the Proposer to provide the services promptly, within the time specified, within budget, and without delay or interference.
7. Whether the price is fair, reasonable, and competitive.



## V. Special Conditions

### G. Contract Agreement and Insurance Requirements.

The selected consultant shall be required to enter a city-prepared Agreement for Consultant Services approved by the City Attorney. Consultants shall be prepared to accept the terms and conditions of the City's Agreement for Consultant Services, including all insurance requirements. The successful consultant's bid and the terms and conditions stated in this RFP will be part of the contract between the City of Morro Bay and the Consultant. This RFP outlines the specifications and requirements, but not necessarily all of the terms and conditions that will be incorporated into the final agreement between the City of Morro Bay and the successful Consultant.

### H. Reservations.

This RFP does not commit the City to award a contract, to defray any costs incurred in preparing a proposal pursuant to this RFP, or to procure or contract for work. No payment of any kind will be provided to the Consultant responding to this RFP, or parties they represent, for obtaining any of the information solicited.

### I. Public Records.

All proposals submitted in response to this RFP become the property of the City. Unless specified as trade-protected, information in the proposal may be subject to public review. Any information contained in the proposal that is proprietary must be clearly designated. Marking the entire proposal as proprietary will be neither accepted nor honored. Proprietary information submitted in response to this RFP will be handled in accordance with the California Public Records Act.

### J. Right to Cancel and Amend.

The City reserves the right to cancel, for any or no reason, in part or in its entirety, this RFP, including but not limited to selection schedule, submittal date, and submittal requirements. If the City cancels or revises the RFP, all Consultants will be notified in writing.

### K. Additional Information.

The City reserves the right to request additional information and clarification from any or all Consultants.

### L. Conflict of Interest.

Consultant covenants that the company, its officers, employees, and/or agents presently have no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services requested herein by the City. Consultant further covenants that, in the performance of any contract or agreement resulting from this RFP, no subcontractor or person having such an interest shall be employed. Consultant certifies that to the best of Consultant's knowledge, no one who has or will have any financial interest under any contract or agreement resulting from this RFP is an officer or employee of the City.



#### M. Release of Public Information.

Consultants who respond to this RFP and wish to release information to the public regarding selection, contract award, or data provided by the City must receive prior written approval from the City before disclosing such information to the public.

#### N. Non-Assignment.

If a contract is awarded, the selected Consultant shall neither assign, nor delegate, in part or in whole, any duties without the prior written consent of the City which shall not be unreasonably withheld.

#### O. Collusion.

Each Consultant certifies that the company, its officers, employees and/or agents are not a party to any collusive action, fraud, or any action that may be in violation of the Sherman Antitrust Act. The Consultant certifies that the company, its officers, employees and/or agents have not offered or received any kickbacks or inducements from any other bidding Consultant, supplier, manufacturer, or subcontractor in connection with the proposal and that the company, its officers, employees and agents have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value. Any or all bids shall be rejected if there is any reason to believe collusion exists among the bidding Consultants. More than one bid from an individual firm, partnership, corporation, or association under the same or different names may be rejected.

Reasonable grounds for believing that a bidding Consultant has an interest in more than one proposal for the proposed work may result in rejection of all bids in which the bidding Consultant is believed to have an interest.

#### P. Debarment.

By submitting a proposal, the Consultant certifies that the company is not currently debarred from submitting proposals and/or bids for contracts issued by any City or political subdivision or agency of the State of California, and that it is not an agent of a person or entity that is currently debarred from submitting proposals and/or bids for contracts issued by any City or political subdivision or agency of the State of California.

#### Q. Equal Employment Opportunity Compliance.

The selected Consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Consultant shall take affirmative action to ensure that all employees and applicants for employment shall be treated with equality in all aspects of employment processes including, but not limited to, hiring, transfer, promotion, training, compensation, and termination, regardless of their race, creed, color, sex, national origin, age, or physical handicap.



## R. Right to Audit.

The selected Consultant shall maintain such financial records and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. The selected Consultant shall retain these records for a period of three years after final payment, or until they are audited by the City, whichever event occurs first. These records shall be made available during the term of the contract or service agreement and the subsequent three-year period for examination, transcription, and audit by the City or its designees.



## VII. Attachments

Attached is a sample copy of the City's Agreement for Consultant Services, subject to change by the City.

**AGREEMENT FOR SERVICES  
BETWEEN CITY OF MORRO BAY AND**  
Click or tap here to enter text.

THIS AGREEMENT FOR SERVICES (“**Agreement**”) is made and entered into this Click or tap here to enter text. day of Click or tap here to enter text., 2023 by and between City OF MORRO BAY, a California municipal corporation (“**City**”) and Click or tap here to enter text., a Click or tap here to enter text. (“**Consultant**”). City and Consultant may be referred to individually as “**Party**” or collectively as “**Parties.**” In consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.** In compliance with all terms and conditions of this Agreement, Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit A and incorporated herein by this reference, which may be referred to herein as the “**services**” or “**work**” hereunder. As a material inducement to City entering into this Agreement, Consultant represents and warrants: a) all services set forth in the Scope of Services will be performed in a competent and satisfactory manner; b) all materials used for services will be both of good quality as well as fit for the purpose intended; and, c) Consultant shall follow the highest professional standards and practices in performing the services required hereunder.

**1.2 Consultant’s Proposal.** The Scope of Services shall include the scope of services or work included in Consultant’s proposal or bid, which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal or bid, and this Agreement, the terms of this Agreement shall govern. No other terms and conditions from Consultant’s proposal or bid, other than description of scope of services or work, shall apply to this Agreement, unless specifically agreed to by City in writing.

**1.3 Compliance with Law.** All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of City and any federal, State or local governmental agency having jurisdiction in effect at the time services are rendered. City, and its officers, employees and agents, shall not be liable at law or in equity for failure of Consultant to comply with this Section.

**1.4 Licenses, Permits, Fees and Assessments.** Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

**1.5 Additional Services and Compensation.** City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes to the work by altering, adding to

or deducting from said work. No such extra work may be undertaken unless a written order, consistent with both Section 9.4 as well as Morro Bay Municipal Code (“**MBMC**”) section 3.08.060 (and as amended), is first given by City to Consultant, incorporating therein any adjustment in the Contract Sum for the actual costs of the extra work and/or the time to perform this Agreement, which said adjustments are subject to the written approval of Consultant. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other consultants.

**1.6 Familiarity with Work.** By executing this Agreement, Consultant represents and warrants Consultant: a) has thoroughly investigated and considered services to be performed, b) has carefully considered how services should be performed, and c) fully understands the facilities, difficulties and restrictions attending performance of services under this Agreement.

**1.7 Software and Computer Services.** If the Scope of Services includes the provision and/or installation of any software, computer system, or other computer technology, Consultant represents and warrants that it is familiar with and/or has inspected City’s current infrastructure, equipment, computer system and software and that the software, computer system, or other computer technology provided and/or installed by Consultant under this Agreement is compatible, and shall be fully functional, with such infrastructure, equipment, computer system and software of City. Consultant acknowledges that City is relying on this representation by Consultant as a material consideration in entering into this Agreement.

**1.8 Prevailing Wages.** If services include any “public work” or “maintenance work,” as those terms are defined in California Labor Code section 1720 *et seq.* and California Code of Regulations, Title 8, section 16000 *et seq.*, and if the total compensation is \$1,000 or more, Consultant shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 *et seq.* and 1810 *et seq.*, and all other applicable laws.

**1.9 Special Requirements.** Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the “Special Requirements” attached hereto as Exhibit B and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit B and any other provisions of this Agreement, the provisions of Exhibit B shall govern.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT**

**2.1 Contract Sum.** Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the “Schedule of Compensation” attached hereto as **Exhibit C** and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed [Click or tap here to enter text.](#) Dollars (\$[Click or tap here to enter text.](#)) (“**Contract Sum**”), unless additional compensation is approved pursuant to Section 1.5. Compensation may include reimbursement, for actual and necessary expenditures, if both specified in the Schedule of Compensation, as well as approved by City in advance. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed

necessary by City. Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

**2.2 Invoices.** Unless some other method of payment is specified in Exhibit C, Schedule of Compensation, in any month in which Consultant wishes to receive payment, no later than the first business day of such month, Consultant shall submit to City, in a form approved by City's Finance Director, an invoice for services rendered prior to the date of the invoice. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of this Agreement. Except as provided in Sections 7.3, 7.4 and 7.5, City shall pay Consultant for all expenses stated thereon which are approved by City pursuant to this Agreement generally within thirty (30) days, and City will use its best efforts to make payment no later than forty-five (45) days, from the submission of an invoice in an approved form. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law. Each invoice is to include (unless otherwise specified by City): 1) line items for all personnel describing the work performed, the number of hours worked, and the hourly rate; 2) line items for all materials and equipment properly charged to the Services; 3) line items for all other approved reimbursable expenses claimed, with supporting documentation; and 4) line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

### **ARTICLE 3. PERFORMANCE SCHEDULE**

**3.1 Time of Essence.** Time is of the essence in the performance of this Agreement.

**3.2 Term.** Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services, which shall be no later than [Click or tap here to enter text.](#)

**3.3 Schedule of Performance.** Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as **Exhibit D** and incorporated herein by this reference.

**3.4 Force Majeure.** The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if Consultant shall within ten (10) days of the commencement of such delay notify City in writing of the causes of the delay. City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City's determination shall be final and conclusive upon the Parties to this

Agreement. In no event shall Consultant be entitled to recover damages against City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of this Agreement pursuant to this Section.

#### **ARTICLE 4. COORDINATION OF WORK**

**4.1 Representative of Consultant.** The representative of Consultant is [Click or tap here to enter text.](#), who is authorized to act on Consultant's behalf with respect to the work or services specified herein and to make all decisions in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of the representative was a substantial inducement for City to enter into this Agreement. Therefore, the representative shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the representative may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City.

**4.2 Contract Officer for City.** The Contract Officer for City is [Click or tap here to enter text.](#) (or such person as may be designated by the City Manager). The Contract Officer shall be the primary person on behalf of City responsible for the administration of the Agreement. It shall be Consultant's responsibility to assure that the Contract Officer is kept informed of both the progress of the performance of the services as well as any decisions which must be made by City.

**4.3 Approvals from City.** City approvals or actions, pursuant to the authority of this Agreement, are to be made (unless otherwise specified) either by the City Manager or by their delegate as provided for in writing.

**4.4 Independent Contractor.** Neither City, nor any of its officers, employees or agents, shall have any control over the manner or means by which Consultant, or its officers, employees, agents or subcontractors, perform the services required herein, except as otherwise set forth herein. Consultant shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it, or any of its officers, employees, agents or subcontractors, are officers, employees or agents of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner. Consultant represents and warrants that the personnel used to provide services to City pursuant to this Agreement shall at all times be under Consultant's exclusive control and direction. No City employee benefits shall be available to Consultant, its officers, employees, agents or subcontractors, in connection with the performance of this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, agents or subcontractors, for injury or sickness arising out of performing services hereunder. In the event that Consultant or any officer, employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System, to be classified as other than an independent contractor for City, then Consultant shall indemnify, defend, and hold harmless City for the payment of any and all assessed fines, penalties, judgments, employee and/or employer

contributions, and any other damages and costs assessed to City as a consequence of, or in any way attributable to, the assertion that Consultant, or any officer, employee, agent, or subcontractor Consultant used to provide services under this Agreement, is/are employees of City.

**4.5 Subcontracting or Assignment.** The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Therefore, without express written approval of City, Consultant shall not contract with any other entity to perform in whole or in part services required hereunder without express written approval of City, and neither this Agreement nor any interest herein may be transferred or assigned. No approved transfer shall release Consultant, or any surety or insured of Consultant, of any liability hereunder without express written consent of City.

## **ARTICLE 5. INSURANCE AND INDEMNIFICATION**

**5.1 Insurance Coverages.** Prior to commencement of any services under this Agreement, and without limiting Consultant's indemnification obligation to City, Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, for the duration of the Agreement, primary policies of insurance of the type and amounts below, issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by City, which shall cover all elected and appointed officers, employees and agents of City. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.

(a) **Commercial General Liability Insurance.** A policy of commercial general liability insurance, with coverage at least as broad as Insurance Services Office ("ISO") form CG 00 01, written on a per occurrence basis for bodily injury, personal injury and property damage. Defense costs must be paid in addition to limits. Coverage for an additional insured shall not be limited to its vicarious liability. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

(b) **Worker's Compensation Insurance.** A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) **Automobile Liability.** A policy of comprehensive automobile liability insurance, at least as broad as ISO form CA 00 01, written on a per occurrence basis covering bodily injury and property damage in an amount not less than \$1,000,000 combined single limit

for each accident. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) **Professional Liability.** Professional liability insurance appropriate to Consultant's profession. This coverage may be written on a "claims made" basis and must include coverage for contractual liability. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of City submit written evidence of this continuous coverage. Limits shall be no less than \$1,000,000 per claim and no less than \$1,000,000 general aggregate.

(e) **Cyber Liability.** Cyber liability insurance appropriate to Consultant's profession and the services hereunder, written on a per occurrence basis, with limits not less than \$1,000,000 per occurrence/loss, and \$2,000,000 in the aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by Consultant pursuant to this Agreement and shall include, but not be limited to, claims involving: infringement of intellectual property; copyright; trademark; invasion of privacy violations; data breach; electronic information theft, loss, damage, destruction, alteration or misuse; release of private information; extortion; and, network security. The policy shall provide coverage for breach response costs, regulatory fines and penalties, and credit monitoring expenses, with limits sufficient to respond to these obligations.

(f) **Excess Liability Insurance.** Excess liability insurance may be used to satisfy the obligations herein. If excess liability insurance is used then the policy shall meet all the requirements herein and be at least as broad as the primary coverages set forth herein. Such policy shall: 1) include a drop down feature requiring the policy to respond if primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason; 2) be payable on behalf of wording as opposed to reimbursement; 3) have concurrency of effective dates with primary policies; 4) "follow form" to the underlying primary policies; and, 5) provide insureds, under primary policies required herein, shall be insureds under the excess liability policy.

(g) **Subcontractors.** In the event Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, Consultant shall either: 1) include each subcontractor as insureds under its policies of insurance required herein; or, 2) Consultant shall furnish to City all documentation, required in Article 5 for Consultant, for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

## 5.2 **General Insurance Requirements.**

(a) **Proof of Insurance, Enforcement and Notice.** No work or services under this Agreement shall commence until both Consultant has provided City with insurance certificates, endorsement forms and appropriate insurance binders evidencing the above insurance coverages, as well as said documentation is approved by City. City reserves the right to inspect complete, certified copies of, and endorsements to, all required insurance policies, at any time.

Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City. In the event any insurance policy required under this Agreement is cancelled or amended (and the insurance policy is not replaced pursuant to subsection (b) below), or does not comply with Article 5, then: 1) City has the right but not the duty to obtain insurance required herein and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments; or, 2) City, notwithstanding any other provisions of this Agreement, may immediately terminate this Agreement. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required insurance policies.

(b) **Cancellation/Amendment.** All of herein required policies of insurance shall provide the insurance may not be amended or cancelled by insurer or any Party hereto without providing thirty (30) calendar days prior written notice (with exception of ten (10) calendar days prior written notice for nonpayment) to City. In the event any of said policies of insurance are amended or cancelled, Consultant shall, five (5) business days prior to the cancellation date, submit new evidence of insurance in conformance with this Agreement to City.

(c) **Additional Insureds.** The commercial general liability policy provided for in Section 5.1(a) and the automobile liability policy provided for in Section 5.1(c) both shall name City and its elected and appointed officers, employees and agents ("City Parties") as additional insureds and such coverage shall contain no special limitations on the scope of protection afforded to City and City Parties. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and policies of insurance shall not contain any cross-liability exclusions.

(d) **Primary, Subrogation, Contribution and Coverage.** All of the above policies of insurance shall be primary insurance. The insurers for above policies, Consultant and any subcontractors are all deemed hereof to waive all rights of subrogation and contribution they may have against City or City Parties, and their respective insurers, and all insurance policies required herein shall be endorsed to waive such rights. Any insurance maintained by City or City Parties will apply in excess of, and not contribute with, Consultant's insurance. If Consultant maintains broader coverage and/or higher limits than the minimum amounts provided herein, City requires and shall be entitled to the broader coverage and/or higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City and City Parties. None of the coverages required herein will be in compliance with this Agreement if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing. Requirements of specific coverage features or limits contained herein are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any Party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

(e) **Limitations, Self- Insured Retention and Deductibles.** Consultant agrees that requirements of Article 5 shall not be construed as limiting in any way the extent to which

Consultant may be held responsible for the payment of damages to any persons or property resulting from Consultant's activities or the activities of any person or persons for which Consultant is otherwise responsible nor shall it limit Consultant's indemnification liabilities as provided in Section 5.3. All insurance policies must specify that where the primary insured does not satisfy any self-insured retention, any additional insured may satisfy the self-insured retention. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City and City Parties, or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, attorney's fees, defense expenses and claims.

### **5.3 Indemnification.**

(a) **General Obligations.** Consultant agrees, to the full extent permitted by law, to indemnify, defend and hold harmless City and its elected and appointed officers, employees and agents (each an "**Indemnitee**" and collectively, "**Indemnitees**") against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein "**Claims or Liabilities**") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable (each an "**Indemnitor**" and collectively, "**Indemnitors**"), or arising from Indemnitors' reckless or willful misconduct, or arising from Indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith: 1) Consultant will defend any action or actions filed or threatened in connection with any such Claims or Liabilities, or at option of Indemnitee(s) will reimburse and pay for all costs and expenses, including legal costs and attorneys' fees, incurred by Indemnitee(s) in connection therewith; and, 2) Consultant will promptly pay any judgment rendered against Indemnitee(s) for any such Claims or Liabilities, and will save and hold Indemnitee(s) harmless therefrom.

(b) **Further Provisions.** The indemnity obligation herein shall be binding on successors, assigns and heirs of Consultant and shall survive termination of this Agreement. Consultant shall incorporate similar indemnity agreements as provided herein with its subcontractors, and if Consultant fails to do so Consultant shall be fully responsible to indemnify City hereunder therefor. Failure of City and/or City Parties (collectively "City" for solely this Section 5.3(b)) to monitor compliance with any of the indemnification provisions herein shall not be a waiver hereof. The indemnification provisions herein do not apply to claims or liabilities occurring as a result of City's sole negligence or willful misconduct, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnification provided herein includes Claims or Liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Indemnitors in the performance of professional services hereunder. Payment of invoices by City is not a condition precedent to enforcement of the indemnity obligation herein. In the event of any dispute between Consultant and City, as to whether liability arises from the sole negligence or willful misconduct

of City, Consultant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating City as solely negligent or responsible for willful misconduct. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

(c) **Professional Liability.** When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless Indemnitees against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all Claims and Liabilities, consistent with all obligations provided for in this Section 5.3, to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission, or reckless or willful misconduct of Indemnitors in the performance of professional services under this Agreement.

## **ARTICLE 6. RECORDS, REPORTS AND RELEASE OF INFORMATION**

**6.1 Records.** Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder ("**books and records**") as shall be necessary to perform the services required by this Agreement and enable City to evaluate the performance of such services. Any and all such books and records shall be maintained in accordance with generally accepted accounting principles, shall be complete and detailed, and shall be readily accessible. City shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts. Such books and records shall be maintained for a period of three (3) years following completion of the services hereunder. City shall have access to such books and records in the event any audit is required. Consultant shall fully cooperate with City in providing access to any and all Consultant records and documents if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

**6.2 Ownership of Documents.** All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials ("**documents and materials**") prepared by Consultant, its officers, employees, agents and subcontractors in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of City and/or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership, use, reuse, or assignment of the documents and materials hereunder. Consultant may retain copies of such documents and materials for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents and materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, with respect to any Consultant documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for City.

**6.3 Confidentiality and Release of Information.** All information gained or work product produced by Consultant in its performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant.

Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from City. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from City or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant immediately gives City notice of such court order or subpoena. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Consultant’s conduct. As concerning, regarding or related to, in any way, this Agreement and the work performed thereunder: a) Consultant shall immediately notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party; b) City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding; and, c) Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant, however, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

**7.1 California Law.** This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Luis Obispo, State of California, or any other appropriate court in such county, and Consultant agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.

**7.2 Suspension, or Termination, Prior to Expiration of Term.** This Section shall govern any termination of this Agreement except as specifically provided in Section 7.4 for termination for cause. City reserves the right to terminate or suspend this Agreement, or any portion hereof, at any time, for any reason, with or without cause, upon ten (10) days’ notice to Consultant, except that where termination or suspension is due to the fault of Consultant, the period of notice may be such shorter time as determined by City. Upon receipt of any notice of termination or suspension, Consultant shall immediately cease all services hereunder, unless the notice provides otherwise, or except such as specifically approved by City. Upon submittal of an invoice consistent with Section 2.2, Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination or suspension and for any services authorized by City thereafter in accordance with the Schedule of Compensation, or such as may be approved by City, except as provided in Section 7.5. In event of termination, or suspension, without cause pursuant to this Section, there is no need to provide opportunity to cure pursuant to Section 7.3.

**7.3 Default of Consultant and Opportunity to Cure.** In the event that Consultant is

in default under the terms of this Agreement, City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively ten (10) days, but may be extended, or reduced, if circumstances warrant, as determined by City. During the period of time that Consultant is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices, without liability for interest. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default by conclusion of noticed timeframe, City may immediately both terminate this Agreement with notice to Consultant as well as pursue the remedy in Section 7.4, without prejudice to any other remedy to which City may be entitled at law, in equity or under this Agreement. Any failure on the part of City to give notice of Consultant's default shall not be deemed to result in a waiver of City's legal rights or any rights arising out of any provision of this Agreement.

**7.4 Termination for Default of Consultant.** If termination is due to the failure of Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.3, take over the work and prosecute the same to completion by contract or otherwise, and Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Consultant for the purpose of set-off or partial payment of the amounts owed City therefor.

**7.5 Retention of Funds.** Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Consultant to insure, indemnify, and protect City as elsewhere provided herein.

**7.6 Waiver.** Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement of this Agreement imposes no additional obligations on

City nor does it waive any rights hereunder. Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

**7.7 Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

**7.8 Legal Action.** In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.

**7.9 Attorneys' Fees.** If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, consultants' fees, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. Such fees and costs shall be enforceable whether or not such action is prosecuted to judgment.

## **ARTICLE 8. INDIVIDUAL LIABILITY, CONFLICTS AND NON-DISCRIMINATION**

**8.1 Non-liability of City Officers and Employees.** No officer or employee of City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

**8.2 Conflict of Interest.** Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of City. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict of interest exists upon sending Consultant written notice describing the conflict. No officer or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects their financial interest or the financial interest of any corporation, partnership or association in which they are, directly or indirectly, interested, in violation of any

State statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

**8.3 Covenant Against Discrimination.** Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

**9.1 Notices.** Any notice or other communication either Party desires or is required to give to the other Party or any other person in regards to this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, in the case of City addressed to City Clerk at City of Morro Bay, 595 Harbor Street, Morro Bay, CA 93442, and in the case of Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

**9.2 Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement, headings used, or any other rule of construction which might otherwise apply.

**9.3 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

**9.4 Integration; Amendment.** This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties as to the Agreement. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all prior and contemporaneous negotiations, arrangements, agreements and understandings, if any, between the Parties, concerning this Agreement, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Consultant and (consistent with, as amended, Chapter 3.08 of the MBMC) by City.

**9.5 Severability.** Should a portion of this Agreement be declared invalid or unenforceable by a judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties unless the invalid

provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

**9.6 No Undue Influence.** Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to remedies in Section 7.4 and any and all remedies at law or equity.

**9.7 Corporate Authority.** The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

SAMPLE

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF MORRO BAY, a California municipal corporation

\_\_\_\_\_  
Click or tap here to enter text.

Click or tap here to enter text.

**ATTEST:**

\_\_\_\_\_  
Dana Swanson, City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Chris F. Neumeyer, City Attorney

**CONSULTANT:**

Click or tap here to enter text., a Click or tap here to enter text.

By: \_\_\_\_\_

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Click or tap here to enter text.

By: \_\_\_\_\_

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**Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairperson of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. (Cal. Corp. Code § 313.) APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY**