



REQUEST FOR PROPOSALS
RFP #2021-04
DIGITAL SCANNING & INDEXING SERVICES
Public Access to Digital Property Files Project

City of Carmel-by-the-Sea

Issue Date: August 4, 2021
RFP Due Date: August 20, 2021

RFP Overview

A.1 Purpose of RFP

The City of Carmel-by-the-Sea ("City") is issuing a Request for Proposals ("RFP") to seek proposals from vendors to assist the City with the implementation of the Public Access to Digital Property Files project ("Project"). The City currently possesses over 5,000 property files that includes plans, drawings, permits, easements and other critical property information. The Project's purpose is to scan and electronically digitize the existing hard copy property files so that the files may then be accessible to the public using the City's existing interactive GIS map.

Specifically, the City seeks a vendor that will:

- (1) Retrieve existing files from City offices in order to scan and digitize the files based upon the specifications identified within Section A.4 of the RFP.
- (2) Once digitized, the vendor will index the files and coordinate the uploading of the files to the City's document management system (Laserfiche).
- (3) Train City staff on loading digitized files to the City's document management system.
- (4) Attend coordination meetings with GIS team, Laserfiche site host, and City staff.
- (5) Assist staff in linking the digitized and stored files to the City's GIS and website.

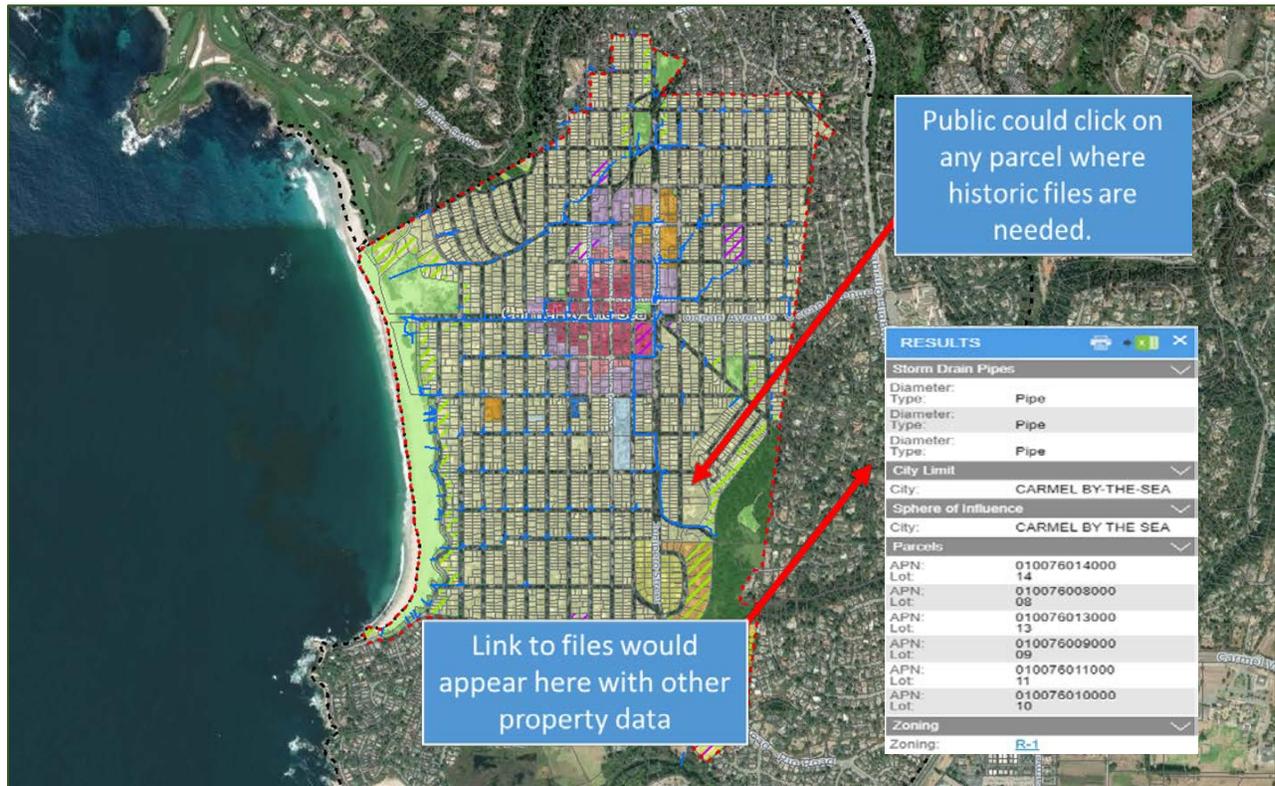
A.2 About the City

Located approximately 120 miles south of San Francisco on the Monterey Peninsula, the City of Carmel-by-the-Sea is a coastal village of one square mile with a population of 4,000. As a General Law City incorporated on October 31, 1916, Carmel-by-the-Sea operates under a Council-City Manager style of government and derives its power from the California Constitution and laws enacted by the State legislature. A publicly elected, five-member City Council, which consists of the Mayor and four Council Members, governs the City. The City provides a variety of services to the residents, businesses and visitors and prides itself on delivering quality and responsive customer service. These services include City Administration, Community Activities, Community Planning and Building, Library, Ambulance, Fire and Police and Public Works. The Community Planning and Building Department (CPB) provides building safety services, code compliance and planning functions. The CPB Director will be managing the Project.

A.3 Project Background

The City currently possesses over 5,000 property files that include plans, drawings, permits, easements and other critical property information. Some 26-inch deep lateral file drawers, 158 in total, house the files, which are located at City Hall. The selected vendor will be responsible for retrieving the files from City Hall in order to scan and digitize the files. Once digitized, the selected vendor will be responsible for indexing the files and coordinating the upload of the files into the City's document management system known as Laserfiche. The City's geographic information system mapping (GIS) currently allows for parcel-to-parcel access to information. Once the property files are indexed and stored, the GIS team will link the files to a boundary map of the City on the City's website. The Project will facilitate the public being able to go online at any time and from anywhere, click on any lot in the City, and receive a link to all public documents in the current physical property file. Once implemented, the Project will assist CPB

in enhancing its customer service, improving staff productivity, and utilizing technology to make operations more efficient. A conceptual rendition of the Project's purpose is depicted below.



A.4 Project Specifications

A.4.1 Retrieval and Return of Original Files

The City currently possesses over 5,000 property files that includes plans, drawings, permits, easements and other critical property information. The files are housed in 26-inch deep lateral file drawers, 158 in total, which are located at City Hall. The City estimates the materials to equate to approximately 290 banker boxes. Proposer is required to retrieve the files from City Hall, in small batches, and return the files, once scanned, to the City in the original carrier (folder, sleeve, etc.).

A.4.12 Scanning of Files

Scanning includes documents of various sizes, including some folded plans with a mix of color and black and white. Please see "Attachment 1" for detailed scanning requirements.

A.4.13 Indexing of Files

After the files are scanned and digitized, the proposer will index the files. Indexing requirements include two (2) fields up to twenty (20) characters and a unique document name up to twenty (20) characters each. The vendor will deliver the indexed files to the City on a portable hard drive. The City may request that the proposer send an electronic copy of any files in proposer's possession to the City as needed.

A.4.14 Training

Proposer is required to provide training to City staff on the process for uploading the scanned and digitized files from the portable hard drive to Laserfiche.

A.4.15 Coordination

The Project requires collaboration between the City, Laserfiche representatives, the City's GIS provider and the selected proposer. The City will host 2-3 meetings regarding the Project's implementation, which includes the selected proposer. Proposer will provide technical assistance as needed during the Project's implementation.

A.5 City's Rights Reserved

- A.5.1** The City reserves the right to select the proposal that in its sole judgment best meets the needs of the City. The lowest proposed cost will not be the sole criterion for selecting the proposal that best meets the City's needs.
- A.5.2** The City reserves the right to reject any or all proposals and to waive technicalities and informalities when the City determines that such waiver is in the City's best interest.
- A.5.3** The City may modify this RFP by issuance of one or more written addenda. The City will post any addenda on the City's website.
- A.5.4** The City reserves the right to meet with select proposers at any time to gather additional information.
- A.5.5** The issuance of the RFP does not commit the City to award a contract; all proposals submitted in response to this RFP become the property of the City and public records, and as such, may be subject to public review.
- A.5.6** The City shall not be liable for any pre-contractual expenses incurred by prospective vendors or selected contractors, including but not limited to costs incurred in the preparation or submission of proposals. Proposers will hold the City harmless and free from any, and all, liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

A.6 Communication Regarding this RFP

All communication from prospective proposers regarding this RFP must be in writing by email to the address listed in section A.7 of this RFP. The City will not accept communication by telephone or in person. Attempts by, or on behalf of, a prospective or existing vendor to make telephone or personal contact with any City employee regarding this RFP, may lead to the elimination of that vendor from further consideration. Attempts by, or on behalf of, a prospective or existing vendor to contact or to influence any member of the selection committee, any member of the City Council, or any employee of the City of Carmel-by-the-Sea with regard to the acceptance of a proposal may lead to elimination of that vendor from further consideration.

A.7 Inquiries and Requests for Clarification

- A.7.1** In an effort to maintain fairness in the process, the City will accept inquiries concerning this procurement by email to the following contact:

Contact: Brandon Swanson
Title: Community Planning and Building Director
Email: bswanson@ci.carmel.ca.us

A.7.2 All questions concerning the RFP must reference the RFP page number and section heading. The City will post all questions it received by the deadline and the corresponding responses on the City's website.

A.8 Procurement Schedule

The City reserves the right to change the procurement schedule. All changes to the schedule will be in the form of an addendum to this RFP and posted on the City's website. The successful vendor will be required to enter into a Professional Services Agreement with the City of Carmel-by-the-Sea. An example of this agreement template has been included as **Attachment 2**.

Procurement Schedule	
August 4, 2021	RFP released
August 13, 2021	Deadline for RFP Clarification Questions (4:00 PM PDT)
August 16, 2021	Responses to RFP Questions Posted on City Website (4:00 PM PDT)
August 20, 2021	Proposals Due (1:00 PM PDT)
Week of August 23, 2021	Notice of Intent to Award
September 7, 2021	City Council approval to award Professional Services Agreement
September 14, 2021	Commence Implementation

A.9 Evaluation Criteria

The City will review all proposals received using the evaluation criteria listed below.

A.9.1 Proposer's Qualifications

- A. Demonstrated ability of proposer to scan multiple mediums of material based upon size, color, type of document, etc.
- B. Demonstrated knowledge and experience of proposer in indexing files
- C. Demonstrated experience of proposer with projects that are similar in nature

A.9.2 Implementation Plan

- A. Proposer's understanding of the Project
- B. Proposer's approach to Project implementation
- C. Proposer's estimated implementation timeline

A.9.3 References

- A. Past Experience with Similar Organizations and References

A.9.4 Cost

- A. Reasonableness of Fees

A.10 Proposal Submission Instructions

A.10.1 Submit proposals in a sealed envelope or package with the Proposer's name and address and clearly marked on the exterior of the envelope or box "**RFP #2021-04, Proposal for Digital Scanning and Indexing Services**".

A.10.2 Submit proposals by the deadline to the address listed below:

City Clerk
 Carmel-by-the-Sea City Hall
 P.O. Box CC
 Monte Verde Street between Ocean and Seventh Avenues
 Carmel-by-the-Sea, CA 93921
 Phone: 831.620.2000

A.10.3 Submit three (3) non-bound hard copies. The City encourages proposals to be double-sided and printed on recycled paper.

A.10.4 Proposals are due by 1:00 P.M. PDT on August 20, 2021. The City will then review proposals based upon the evaluation criteria in A.9.

A.10.5 The City will not accept late proposals. The City will not accept emailed proposals.

A.10.6 Failure to comply with the requirements of this RFP may result in disqualification.

A.10.7 Signature on the proposal by the proposer constitutes acceptance by the proposer of terms, conditions, and requirements set forth herein.

A.10.8 By submitting a proposal, the proposer is providing a guarantee to the City that, if chosen, the proposer will be able to provide the proposed services within the timeframe identified by the City.

A.10.9 Once the notice of intent to award is issued by the City, all proposals and any subsequent contract, shall be deemed public record per California Government Code Sections 6250-6270, "California Public Records Act." Proprietary material must be clearly marked as such. Proposer must clearly identify the sections of the proposal with the word "confidential" printed on the top right corner of each page. The City will consider a proposer's request for exemption from disclosure; however, the City will make its decision based upon applicable law.

A.11 Organization of Proposal

A.11.1 Cover letter must be completed and included as the first page of the proposal. The cover letter must be on the proposer's official business letterhead stationery and be signed by an individual that is authorized to bind the firm contractually. Please include:

- Proposer's name and address
- Contact person's name
- Contact person's telephone, fax and email

A.11.2 Executive Summary shall not exceed two (2) pages and should summarize the proposal by providing salient features of the proposal as noted below:

- The proposer's background and qualifications, including all subcontractors, in providing scanning and indexing services
- The proposer's ability to scan and index multiple mediums
- The proposer's protocols for handling files
- The proposer's ability to coordinate scanning and indexing services with document management systems, GIS or other mapping software and public-facing websites
- A discussion that demonstrates that the proposer understands the purpose of the RFP and the City's goals, outcomes and objectives and operating/business needs

- Confirmation that proposer is willing to accept the City's contracting and insurance requirements and enter into a professional services agreement with the City

A. 11.3 Implementation Plan will document the Proposer's approach to implementing the Project and include the following aspects of implementation:

- Proposed plan for phasing small batches of files, indicating the volume of files per batch, estimated number of batches and estimated timeline to scan all files
- Proposed staffing for project, including number of staff assigned, major roles of staff and qualifications of proposer's team members
- Approach to ensuring efficiency in scanning batches while also ensuring the integrity of files and approach to quality control
- Proposed methodology and approach to indexing files
- Proposed approach to training City staff to upload digitized files
- Proposed approach to working with other service providers, including document management systems and GIS
- Proposed approach to provide technical assistance and support during and after Project implementation as requested by the City

A. 11.4 Client References will include three (3) references for projects that are similar to the scope of work identified within the RFP and include the following:

- Name of Client
- Brief description of service provided
- Contact Name, Title, Current Telephone and Email

A. 11.5 Cost Proposal will include the features noted below. Due to the complexity and volume of the files, as well as budgetary considerations, the City will be phasing the project over multiple-years. Proposers should indicate:

- Fee schedule based upon phasing of the Project
- The percentage of files that will be scanned and indexed in relation to the fees
- Components of the fee schedule including estimated number of hours to complete the Project and hourly rate of staff involved or cost per file as applicable
- Indicate whether the fee proposal is inclusive of time spent attending meetings, travel time and costs to attend meetings in person if necessary, training of City staff and as needed support after Project implementation
- Scanning prices should be broken down as 600 DPI Black/White, Grayscale, and Full Color scanning with the document preparation and indexing associated with each scanned item by various paper sizes (letter, legal, ledger, e-sized, ANSI-C, ANSI-D, ANSI-E and oversized documents). Any additional charges that may be associated with the scope of work must also be identified, including, but not limited to: providing on-demand images needed prior to next delivery, pick-up and/or delivery, transportation and/or handling of records, fuel, and mileage charges.

ATTACHMENTS:

- Attachment 1 – Scanning Criteria
- Attachment 2 – EXAMPLE: City of Carmel-by-the-Sea Professional Services Agreement

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ATTACHMENT 1 – SCANNING CRITERIA

THE FOLLOWING SCANNING CRITERIA MUST BE MET:

- A. Laserfiche:
Ability to scan content directly and seamlessly into Laserfiche using an upload utility – must have a tool that directly uploads content to Laserfiche including the ability to file directly into established folders and ability to add required meta data.
- B. Ability to Scan:
 - a. Manila folder – content in file folders
 - b. Legal documents
 - c. Letters
 - d. Carbon copies
 - e. Photo exhibits
 - f. Spiral bound books
 - g. Tabbed paper
 - h. All ANSI sized documents
- C. Images:
 - a. Duplex scan documents to capture both front and back of documents where needed. Images must be oriented correctly for viewing. Text must be readable up to the edge of the document.
 - b. Image clean-up: the scanned documents should be de-skewed, de-speckled, blank pages and black borders removed, hole punch images removed and background color drop out (where possible). Color images must be viewable quality so that detail in the image is captured.
 - c. For the purposes of this RFP, Proposer is invited to offer suggestions on how best to scan color photos to maintain the quality and detail of an image while striving to reduce size of the electronic image.
- D. OCR all content with guarantee of 99.5% accuracy on images and ability for 600 dpi images.
- E. Quality checking images scanned:
 - a. Visual inspection of each image against the original, rescanning documents as needed
 - b. Manual image quality adjustment and QA of every image for clarity, legibility, quality, cut-offs or file type compression errors
 - c. Images are of the same or better quality than the original
 - d. Ensure all images are accurately indexed
 - e. All documents are to be scanned and returned in the same order as provided
 - f. All folders within the XML file should appear in the same order as they exist in paper
 - g. The City may perform a QA of each image and associated indexing delivered by the vendor; if the City discovers unacceptable images, the Vendor, at no additional cost to the City, will correct all such unacceptable images
- F. Data entry of index fields following Laserfiche Templates. Fields change depending on document scanned. City will provide detailed instructions.
- G. Quality checking index data
- H. Perform rework on errors or omissions with no additional charge.

- I. Warranty period of 6 months against defects
- J. Records must be saved in PDF/A format.
- K. Any and all City documents in the possession of the Proposer must be stored in a climate controlled safe and secure location. The City must have access to all City documents in the Proposer's possession upon request, with a hard copy or electronic file provided within 24 hours.
- L. Document prep:
 - a. Ability to scan small documents such as receipts in line with large size documents in a single scan
 - b. Staple and fastener removal
 - c. Metal, plastic, twine, glue binder removal
 - d. Industrial staple removal capability including box and plier staples
 - e. Fix torn pages prior to scanning
 - f. Black and white, greyscale and color scanning options
- M. Once electronically imaged, documents shall be returned to their original state (re-stapled, bound, rolled, etc.) and returned to the original filing location, unless specifically instructed by the Project Manager.
- N. Pick-up and delivery of paper documents. When content is picked up, there must be at least two representatives of the scanning organization present; pick up must not be outsourced. There shall always be two representatives with the content in transit.
- O. Pickup and delivery are to occur every three to four weeks or as agreed upon by the City and the vendor.
 - a. Vendor must pick up and return original documents promptly according to an established schedule
 - b. Vendor must provide a proof of pickup acknowledgement, to be signed by the Vendor staff and City staff
 - c. Vendor must return original documents after scanning or conversion, and provide a proof of return acknowledgement, to be signed by the Vendor staff and City staff
- P. Proposer to maintain documented chain of command through an audit trail.
- Q. Proposer must agree to provide private transport; content will never be mixed in transit with other clients, nor additional, non-mission critical stops to occur en route.
- R. Content will not leave the state of California.
- S. Proposer must agree to provide access to the original or a scanned copy of the documents, if needed, within 2 days of receiving notice from the City.

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Attachment 2 - EXAMPLE:
PROFESSIONAL SERVICES AGREEMENT
for the
[Name of the Project and/or type of services
Agreement #]

THIS AGREEMENT is executed this ____ day of _____, 20____, by and between the City of Carmel-By-The-Sea, a municipal corporation, (hereinafter "City"), and **[Name of Consultant and entity type]**, (hereinafter "Consultant"), collectively referred to herein as the "parties".

WHEREAS, the City wishes to engage Consultant to perform the services required by this Agreement; and

WHEREAS, Consultant is willing to render such professional services, as hereinafter defined, on the following terms and conditions; and

WHEREAS, Consultant represents that it is trained, experienced and competent and holds all necessary licenses and certifications to perform the services required by this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties hereby covenant and agree as follows:

1. SERVICES

- A. **Scope of Services.** Consultant agrees to provide to the City, as the scope of services ("Scope of Services") under this Agreement, the following: **[insert general description of the scope of work]**. The Scope of Services is attached hereto as Exhibit "A." The Scope of Services under this Agreement should include, but is not limited to, a project description, project phases, task descriptions, identification of key personnel, identification of subconsultants, their key personnel and general description of services that will be performed, as further set forth in this Agreement and attachments hereto. Consultant agrees to all of the following:
- i. Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculations, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary to perform the services required of Consultant under this Agreement.
 - ii. Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are listed in Exhibit "B" [Key Personnel], which is made a part of this Agreement.
 - iii. Consultant must make every reasonable effort to maintain the stability and continuity of Consultant's key personnel and subcontractors, if any, listed in Exhibit B to perform the services required under this Agreement. Consultant must notify City and obtain City's written approval with respect of any changes in key personnel prior to the performance of any services by replacement personnel.

- iv. Consultant must obtain City's prior written approval before utilizing any subcontractors to perform any services under this Agreement. This written approval must include the identity of the subcontractor and the terms of compensation.
- v. Consultant represents that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant will at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described in this Agreement. In meeting its obligations under this Agreement, Consultant must employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.
- vi. City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. Acceptance of any of Consultant's work by City will not constitute a waiver of any of the provisions of this Agreement.
- vii. The Consultant must maintain any work site in the City in a safe condition, free of hazards to persons and property resulting from its operations.

B. Change Orders.

- i. Agreements and Change Orders exceeding \$24,999 require City Council approval to be valid.
- ii. The City may order changes to the Scope of Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing, and executed by Consultant and City. The cost or credit to City resulting from changes in the services will be determined by the written agreement between the parties. However, any increase in compensation beyond the compensation limit amount approved by the City Council must be authorized in advance by the City Council and any service provided by Consultant in the absence of such approval are at Consultant's sole risk.
- iii. Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in the Scope of Services or otherwise required by this Agreement, unless such additional services are authorized in advance and in writing by City.
- iv. If Consultant believes that additional services are needed to complete the Scope of Services, Consultant will provide the City Administrator with written notification describing the proposed additional services, the reasons for such services, and a detailed proposal regarding cost.

C. Familiarity with Services and Site.

- i. By executing this Agreement, Consultant represents that Consultant:
 - a. has thoroughly investigated and considered the Scope of Services to be performed;

- b. has carefully considered how the services should be performed;
 - c. understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement; and
 - d. possesses all licenses required under local, state or federal law to perform the services contemplated by this Agreement, and will maintain all required licenses during the performance of this Agreement.
- ii. If services involve work upon any site, Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing its services. Should Consultant discover any latent or unknown conditions that may materially affect the performance of services, Consultant will immediately inform District of such fact and will not proceed except at Consultant's own risk until written instructions are received from City.

2. COMPENSATION

- A. **Total Fee.** Subject to any limitations set forth in this Agreement, the City agrees to pay and Consultant agrees to accept as full and fair consideration for the performance of this Agreement, hourly fees as set forth in Consultant's Compensation & Fee Schedule (Exhibit "C"), in a total amount not-to-exceed _____ Thousand ____ Hundred and ____ Dollars (\$____.00). Such compensation is the "Maximum Authorized Expenditure" under this Agreement. The Fee Schedule includes, but is not limited to, fees for each phase and task, not-to-exceed total fee, hourly rates, reimbursable rates and subconsultant mark-up rates. The use of subconsultants will not be considered a reimbursable expense, and such costs must be applied towards the approved budgeted amount. Payment of any compensation to Consultant is contingent upon performance of the terms and conditions of this Agreement to the satisfaction of the City. If the City determines that the Services set forth in the written invoice have not performed in accordance with the terms of this Agreement, the City is not responsible for payment until the Services have been satisfactorily performed.
- B. **Invoicing.** Consultant must submit to the City monthly written invoices to the City's Project Representative, identified in Section 5 below. Invoices must be prepared in a form satisfactory to the City, describing the services rendered and associated costs for the period covered by the invoice. The City will provide invoicing format upon request. Consultant may not bill the City for duplicate services performed by more than one person. Consultant's invoices must include, but are not limited to, the following information:
- i. Project Title, the City's Purchase Order number and City's Project Code(s) for each project;
 - ii. Invoice number and date;
 - iii. A brief description of services performed for each project phase and/or task;
 - iv. The budgeted amount for each phase, task and item, including the total amount, with the same for approved Change Orders, if any;

- v. Amount invoiced to date divided by the agreed total compensation, expressed as a percentage, with the same for approved Change Orders, if any;
- vi. The amount earned and invoiced to date for each phase, task and/or item, including the total amount, with the same for approved Change Orders, if any;
- vii. The amount previously invoiced for each phase, task and/or item, including the total amount, with the same for approved Change Orders, if any;
- viii. The amount due for the period covered by this invoice for each phase, task, and/or item, including the total amount, with the same for approved Change Orders, if any;
- ix. For time and materials authorizations, the number of hours spent, by whom and their hourly rate for each phase, task and/or item, including the total amount;
- x. The costs incurred, including reimbursables, for each phase, task, and/or item for the agreed total compensation and approved Change Orders, if any, along with a brief description of those costs;
- xi. The total amount due for the period covered by this invoice, including subconsultants and vendors of services or goods;
- xii. Copies of subconsultant, vendor, and reimbursable invoices including hourly breakdowns when requested by City.
- xiii. Copies of subconsultant and vendor lien releases.

Any such invoices must be in full accord with any and all applicable provisions of this Agreement. Consultant must submit invoices to the City on or before the sixteenth (16th) day of each month for services performed in the preceding month.

The City will review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with this Agreement. In the event that no charges or expenses are disputed, the invoice will be approved and paid.

Except as to any charges for work performed or expenses incurred by Consultant that are disputed by City, the City will pay on each such invoice within thirty (30) days of receipt; provided, however, that if Consultant submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement. If any charges or expenses are disputed by City, the invoice will be returned by City to Consultant for correction and resubmission, and the City will not be obligated to process any payment to Consultant until thirty (30) days after a correct and complying invoice has been submitted by Consultant. Payment to Consultant for services performed under this Agreement may not be deemed to waive any defects in the services performed by Consultant, even if such defects were known to City at the time of payment. City reserves the right to withhold future payment to Consultant if any aspect of the Consultant's work is found to be non-conforming to the terms of this Agreement.

The City is not obligated to pay Consultant a greater percentage of the Maximum Authorized Expenditure than the actual percentage of services completed as of the invoice date.

Consultant agrees to remit and is responsible for all withholding taxes, income taxes, unemployment insurance deductions, and any other deductions required by applicable federal, state or local laws and regulations for Consultant, its employees, subconsultants and vendors of services or goods.

- C. **Adjustment of Maximum Authorized Expenditure.** The City may increase or decrease the Maximum Authorized Expenditure by issuing a Change Order to the Agreement in accordance with Section 1.B “Change Orders” above. Should Consultant consider that any request or instruction from the City’s Project Representative constitutes a change in the scope of services, Consultant will advise the City’s Project Representative, in writing, within fourteen (14) calendar days of such request or instruction. Without said written advice within the time period specified, the City is not obligated to make any payment of additional compensation to Consultant.
- D. **Hourly Rates.** Payment for all authorized services, including payment for authorized on-call, as-needed services, will be made by the City to Consultant in accordance with the various hourly rates as set forth in the Consultant’s Compensation & Fee Schedule (Exhibit “C”).
- E. **Subconsultants and Vendors.** Invoices for subconsultants and vendors of services or goods will be paid by the City to Consultant in accordance with the various rates as set forth in the Consultant’s Compensation & Fee Schedule (Exhibit “C”). All reimbursable expenses will be considered as included within the Maximum Authorized Expenditure. Consultant is solely responsible for payment to subconsultants and vendors of services or goods, and the City is not responsible or liable for any payments to subconsultants and vendors, either directly or indirectly.
- F. **Audit and Examination of Accounts:**
 - i. Consultant must keep and will cause any assignee or subconsultant under this Agreement to keep accurate books of records and accounts, in accordance with sound accounting principles, which pertain to services to be performed under this Agreement.
 - ii. Any audit conducted of books of records and accounts must be kept in accordance with generally accepted professional standards and guidelines for auditing.
 - iii. Consultant must disclose and make available any and all information, reports, books of records or accounts pertaining to this Agreement to the City and any city of the County of Monterey, or other federal, state, regional or governmental agency which provides funding for these Services.
 - iv. Consultant must include the requirements of Section 2F, “Audit and Examination of Accounts”, in all contracts with assignees or subconsultants under this Agreement.

- v. All records provided for in this Section are to be maintained and made available throughout the performance of this Agreement and for a period of not less than four (4) years after full completion of the Services. All records, which pertain to actual disputes, litigation, appeals or claims, must be maintained and made available for a period of not less than four (4) years after final resolution of such disputes, litigation, appeals or claims.

[INCLUDE THE FOLLOWING SECTION IF PSA IS FOR AN ON-CALL AGREEMENT OR CONTAINS OPTION FOR ON-CALL WORK]

- G. **On-Call Agreements.** The amount of work (scope of services) to be requested during the Agreement term cannot be well defined at the outset. The Consultant agrees to perform the work on an on-call basis in such increments and at such times as defined in written work requirements issued by the City as the need arises. The Consultant agrees that the offer to perform the work at the various rates as set forth in the Consultant's Fee Schedule (Exhibit "C") remains in effect for all work requirements issued by the City during the Agreement term or until the exhaustion of the Agreement funding limit, whichever occurs first. The City does not guaranty a minimum dollar value of work.

3. AGREEMENT TERM

- A. **Term.** The work under this Agreement will commence by [start date of contract] and must be completed by [end date of contract] unless sooner terminated or the City grants an extension of time in writing pursuant to the terms of this Agreement, except for provisions in this Agreement that will survive the termination or completion of this Agreement. Consultant will perform Change Order services as set out in Section 1.B, "Amendment of Services (Change Orders)", in a timely manner or in accordance with the agreed upon Change Order Project Schedule.
- B. **Timely Work.** Consultant will perform all Services in a timely fashion, as set forth more specifically in Section 3.A, "Term", and Section 3.C, "Project Schedule", of this Agreement. Failure to perform is deemed a material breach of this Agreement, and the City may terminate this Agreement with no further liability hereunder, or may authorize, in writing, an extension of time to the Agreement.
- C. **Project Schedule.** Services must be completed by Consultant in accordance with the Project Schedule set forth in Exhibit "C". The parties may, from time to time, by Change Order, alter the Project Schedule. Consultant will provide the Services pursuant to the Project Schedule or any applicable Project Schedule Change Order. If at any time Consultant discovers that the Project Schedule cannot be met, Consultant must promptly notify the City in writing and provide a revised Project Schedule for review and consideration by City.

[THE FOLLOWING PARAGRAPH TO BE INCLUDED IF A PROJECT SCHEDULE IS NOT REQUIRED BUT SPECIFIC PROJECT DATES ARE KNOWN OR REQUIRED]

If a Project Schedule is not required, Consultant will perform the Services under this Agreement in accordance with the following phase, task and/or milestone dates:

[List phase, task, milestone, funding, design, design review, construction and other deadline dates as applicable]

- D. **Notice to Proceed.** Upon execution of this Agreement by both parties and the receipt of all documentation required by this Agreement to be provided by Consultant to the City, including proof of insurance and tax identification numbers, the City will issue a written Notice to Proceed to the Consultant. The City may, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the work. Upon receipt of such notices, Consultant will diligently proceed with the Services authorized and complete those Services within the agreed time specified in said notice. Consultant will not proceed with any of the Services unless they have received a Notice to Proceed from the City.

4. CONSULTANT'S EMPLOYEES AND SUBCONSULTANTS

- A. **Listed Employees and Subconsultants.** Consultant will perform the Services using the individuals listed in the Key Employees and Subconsultants List attached hereto in Exhibit "B".
- B. **Substitution of Employees or Subconsultants:**
- i. Consultant may not substitute any key employee or subconsultant listed in Exhibit "B" without the prior written approval of the City, and such approval will not be unreasonably withheld. The City will not approve removal or substitution of employees or subconsultants for the reason that Consultant or its affiliates has called on such individuals to perform services for another client of the Consultant.
 - ii. If, at any time, the City reasonably objects to the performance, experience, qualifications or suitability of any of Consultant's employees or subconsultants, then Consultant may, upon written request from the City, replace such employee or subconsultant. Consultant must, subject to scheduling and staffing considerations, make reasonable efforts to replace the individual with an individual of similar competency and experience.
 - iii. Whether or not the City consents to, or requests a substitution of any employee or subconsultant of Consultant, the City will not be liable to pay additional compensation to Consultant for any replacement or substitution.
- C. **Sub-agreements with Subconsultants.** Consultant will incorporate the terms and conditions of this Agreement into all sub-agreements with subconsultants in respect of the Services necessary to preserve all rights of the City under this Agreement. Consultant is fully responsible to the City of all acts and omissions of subconsultants and of persons employed by any subconsultant.
- D. **Not an Agent of the City.** Nothing in this Agreement will be interpreted to render the City the agent, employer, or partner of Consultant, or the employer of anyone working for or subcontracted by Consultant, and Consultant must not do anything that would result in anyone working for or subcontracted by Consultant being considered an employee of the City. Consultant is not, and must not claim to be, an agent of the City.

E. **Independent Contractor:**

- i. Consultant is an independent contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The City may not control or direct the details, means, methods or processes by which Consultant performs the Services. Consultant is responsible for performance of the Services and may not delegate or assign any Services to any other person except as provided for in this Agreement. Consultant is solely liable for the work quality and conditions of any partners, employees and subconsultants.
- ii. No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and Consultant may not become entitled by virtue of this Agreement to receive from the City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. Consultant will be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Consultant's performance of Services under this Agreement. Consultant will defend, indemnify and hold the City harmless from any and all liability, which the City may incur because of Consultant's failure to pay such taxes.

5. **REPRESENTATIVES AND COMMUNICATIONS**

- A. **City's Project Representative.** The City appoints the individual named below as the City's Project Representative for the purposes of this Agreement ("City's Project Representative"). The City may unilaterally change its project representative upon notice to Consultant.

Name: _____
Title: _____
Address: _____
Telephone: _____
Email: _____

- B. **Consultant's Project Manager.** Consultant appoints the person named below as its Project Manager for the purposes of this Agreement ("Consultant's Project Manager").

Name: _____
Title: _____
Company: _____
Address: _____
Telephone: _____
Email: _____

- C. **Meet and Confer**. Consultant agrees to meet and confer with the City's Project Representative, its agents or employees with regard to Services as may be required by the City to insure timely and adequate performance of this Agreement.
- D. **Communications and Notices**. All communications between the City and Consultant regarding this Agreement, including performance of Services, will be between the City's Project Representative and Consultant's Project Manager. Any notice, report, or other document that either party may be required or may wish to give to the other must be in writing and will be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by email, on the date of transmission, or if by mail, seven (7) calendar days after posting.

6. **INDEMNIFICATION**

Consultant hereby agrees to the following indemnification clause:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Consultant will defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, designated agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury expense and liability (including incidental and consequential damages, Court costs, reasonable attorneys' fees as may be determined by the Court, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant or subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee will not apply to the extent that such Liabilities are caused in part by the active negligence or willful misconduct of such Indemnitee.

Notwithstanding the provisions of the above paragraph, Consultant agrees to indemnify and hold harmless the City from and against all claims, demands, defense costs, liability, expense, or damages arising out of or in connection with damage to or loss of any property belonging to Consultant or Consultant's employees, subconsultants, representatives, patrons, guests or invitees.

In no event will the obligation of the Consultant exceed the limitations on the duty to defend and indemnify as set forth in Civil Code Sections 2782, 2782.6, and 2782.8.

7. **INSURANCE**

Consultant must submit and maintain in full force all insurance as described herein. Without altering or limiting Consultant's duty to indemnify, Consultant must maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- A. **Commercial General Liability Insurance** including but not limited to premises, personal injuries, bodily injuries, property damage, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

- B. Professional Liability Insurance with limits of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Consultant will have a policy for professional liability coverage that provides coverage on an occurrence basis or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following the City's acceptance of the work.
- C. Automobile Liability Insurance covering all automobiles, including owned, leased, non-owned, and hired automobiles, used in providing Services under this Agreement, with a combined single limit of not less than \$1,000,000 per occurrence.
- D. Workers' Compensation Insurance. If Consultant employs others in the performance of this Agreement, Consultant must maintain Workers' Compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence.
- E. Other Insurance Requirements:
 - i. All insurance required under this Agreement must be written by an insurance company either:
 - a. admitted to do business in California with a current A.M. Best rating of no less than A:VI; or
 - b. an insurance company with a current A.M. Best rating of no less than A:VII. Exception may be made for the State Compensation Insurance Fund when not specifically rated.
 - ii. Each insurance policy required by this Agreement may not be canceled, except with prior written notice to the City.
 - iii. All liability and auto policies must:
 - a. Provide an endorsement naming the City of Carmel-by-the-Sea, its officers, officials, employees, and volunteers as additional insureds. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).
 - b. Provide that such Consultant's insurance is primary as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Carmel-by-the-Sea is excess to the Consultant's insurance and will not contribute with it.
 - c. Contain a "Separation of Insureds" provision substantially equivalent to that used in the ISO form CG 00 01 10 01 or their equivalent.
 - d. Provide for a waiver of any subrogation rights against the City via an ISO CG 24 01 10 93 or its equivalent.

- iv. Prior to the start of work under this Agreement, Consultant will file certificates of insurance and endorsements evidencing the coverage required by this Agreement with the City. Consultant will file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.
- v. Neither the insurance requirements hereunder, nor acceptance or approval of Consultant's insurance, nor whether any claims are covered under any insurance, may in any way modify or change Consultant's obligations under the indemnification clause in this Agreement, which will continue in full force and effect. All coverage available to the Consultant as named insured will also be available and applicable to the additional insured. Notwithstanding these insurance requirements, Consultant is financially liable for its indemnity obligations under this Agreement.
- vi. All policies must be written on a first dollar coverage basis or contain a deductible provision. Any deductibles or self-insured retentions ("SIR") must be declared to and approved by the City. At the option of the City, either: the insured will reduce or eliminate such deductibles or SIR as respects the City, its officers, officials, employees and volunteers; or Consultant will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. In no event will any SIR or insurance policy contain language, whether added by endorsement or contained in the policy conditions, that prohibits satisfaction of any self-insured provision or requirement by anyone other than the named insured, or by any means including other insurance, or which is intended to defeat the intent or protection of an additional insured.
- vii. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- viii. Consultant must require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements in this Agreement.
- ix. If Consultant, for any reason, fails to have in place at all times during the term of this Agreement all of the required insurance coverage, the City may, but is not obligated to, obtain such coverage at Consultant's expense and deduct the cost from the sums due Consultant. Alternatively, City may terminate the Agreement.
- x. The existence of the required insurance coverage under this Agreement will not be deemed to satisfy or limit Consultant's indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Should any coverage carried by the Consultant or any subcontractor of any tier have limits of liability that exceed the limits or have broader coverage than required in this Agreement, those higher limits and that broader coverage are deemed to apply for the benefit of any person or organization included as an additional insured and those limits and broader coverage will become the required minimum limits and insurance coverage in all sections of this Agreement. Any insurance proceeds available to City in excess of the limits and coverages

required by this Agreement, and which is applicable to a given loss, must be made available to City to compensate it for such losses.

- xi. Consultant must give City prompt notice of claims made of lawsuits initiated 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 liability insurance policies.
- xii. The Consultant hereby waives any right of subrogation that any of its insurers may have or that they may accrue out of the payment of any claim related to the Consultant's performance of this Agreement, regardless of whether any endorsements required by this section are obtained.

8. PERFORMANCE STANDARDS

- A. Consultant warrants that Consultant and Consultant's agents, employees, and subconsultants performing Services under this Agreement are specially trained, experienced, and competent and have the degree of specialized expertise contemplated within California Government Code Section 37103, and further, are appropriately licensed to perform the work and deliver the Services required under this Agreement.
- B. Consultant, its agents, employees, and subconsultants must perform all Services in a safe and skillful manner consistent with the usual and customary standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields in accordance with sound professional practices. All work product of Consultant must comply with all applicable laws, rules, regulations, ordinances and codes. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and will advise City of any changes in any laws that may affect Consultant's performance of this Agreement. All Services performed under this Agreement that are required by law to be performed or supervised by licensed personnel must be performed in accordance with such licensing requirements.
- C. Consultant must furnish, at its own expense, all materials, equipment and personnel necessary to carry out the terms of this Agreement. Consultant may not use the City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.
- D. Consultant agrees to perform all work under this Agreement to the satisfaction of City and as specified herein. The City's Project Representative or his or her designee will evaluate the work. If the quality of work is not satisfactory, City in its discretion may meet with Consultant to review the quality of work and resolve the matters of concern, and may require Consultant to repeat the work at no additional fee until it is satisfactory.

9. CITY INFORMATION AND RESOURCES

- A. **Available Information.** The City will make available to Consultant all relevant information, plans, maps, reports, specifications, standards and pertinent data which is in the hands of the City and is required by Consultant to perform the Services. Consultant may rely upon the accuracy and completeness of such information and data furnished by the City, except where it is stated otherwise or unreasonable.

- B. **City Resources.** The City acknowledges that Consultant's ability to provide the Services in accordance with this Agreement may be dependent on the City providing available information and resources in a prompt and timely manner as reasonably required by Consultant. To the extent that the City fails to provide City resources, Consultant will not be liable for any resulting delay in the Services or failure to meet the Project Schedule, but in no event will such delay or failure to provide City resources constitute a breach of this Agreement by the City, nor will Consultant be entitled to extra compensation for same. Consultant's sole remedy shall be an extension of time to complete the Scope of Services.
- C. **Obligations of Consultant.** No reviews, approvals, or inspections carried out or supplied by the City will derogate from the duties and obligations of Consultant, and all responsibility related to performance of the Services will be and remain with Consultant.

10. OWNERSHIP AND USE OF MATERIALS

- A. **Ownership of the Materials.** All data, studies, reports, calculations, field notes, sketches, designs, drawings, plans, specifications, cost estimates, manuals, correspondence, agendas, minutes, notes, audio-visual materials, photographs, models, software data, computer software (if purchased on the City's behalf) and other documents or products produced by Consultant under this Agreement (collectively, "the Materials") are and will remain the property of the City even though Consultant or another party may have physical possession of them or a portion thereof. Consultant hereby waives, in favor of the City, any moral rights Consultant, its employees, subconsultants, vendors, successors or assignees may have in the Materials.
- B. **No Patent or Copyright Infringement.** Consultant guarantees that in its creation of the Materials produced under this Agreement, no federal or state patent or copyright laws were violated. Consultant agrees that all copyrights, which arise from creation of the work or Services pursuant to this Agreement, will be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Consultant covenants that it will defend, indemnify and hold City harmless from any claim or legal action brought against the City for alleged infringement of any patent or copyright related to City's use of Materials produced by Consultant and its employees, agents and subconsultants under this Agreement.
- C. **Delivery and Use of the Materials.** All Materials will be transferred and delivered by Consultant to the City without further compensation following the expiration or sooner termination of this Agreement, provided that the City may, at any time prior to the expiration or earlier termination of this Agreement, give written notice to Consultant requesting delivery by Consultant to the City of all or any part of the Materials in which event Consultant must forthwith comply with such request. The Materials created electronically must be submitted in a format and medium acceptable to the City. The Materials may be used by the City in any manner for the intended purpose or as part of its operations associated with the Materials.
- D. **Survival of Ownership and Use Provisions.** The provisions contained in Section 10, Ownership and Use of Materials survives the expiration or earlier termination of this Agreement, and that this Section is severable for such purpose.

- E. **Additional Copies.** If the City requires additional copies of reports, or any other material that Consultant is required to furnish as part of the Services under this Agreement, Consultant must provide such additional copies, and the City will compensate Consultant for the actual costs related to the production of such copies by Consultant.

11. CONFIDENTIALITY

- A. **No Disclosure.** Consultant must keep confidential and may not disclose, publish or release any information, data, or confidential information of the City to any person other than representatives of the City duly designated for that purpose in writing by the City. Consultant may not use for Consultant's own purposes, or for any purpose other than those of the City, any information, data, or confidential information Consultant may acquire as a result of the performance of the Services under this Agreement. Consultant must promptly transmit to the City any and all requests for disclosure of any such confidential information or records. The obligations under this Section will survive the expiration or earlier termination of this Agreement.
- B. **California Public Records Act.** Consultant acknowledges that the City is subject to the California Public Records Act (Government Code Section 6250 et seq.), known as the "PRA", and agrees to any disclosure of information by the City as required by law. Consultant further acknowledges that it may have access to personal information as defined under the PRA, and Consultant will not use any such personal information for any purposes other than for the performance of Services under this Agreement without the advance written approval of the City.

All Scopes of Services and related documents received will be public records, with the exception of those elements, identified by the Consultant as business trade secrets and are plainly marked "Trade Secret", "Confidential" or "Proprietary". If disclosure is required under the PRA or otherwise by law, the City will not be liable or responsible for the disclosure of any such records and the Consultant will indemnify, defend, and hold the City harmless for any such disclosure.

12. CONFLICT OF INTEREST

Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City relating to this Agreement or that would in any way hinder Consultant's performance of services under this Agreement. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 and following) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.), and California Government Code section 1090.

Consultant is required to file a Form 700 in compliance with the City's Conflict of Interest Code unless a written determination by the City Administrator is made modifying or eliminating said requirement, or unless otherwise exempted by law.

In addition, Consultant, Consultant's employees, and subconsultants agree as follows:

- A. That they will conduct their duties related to this Agreement with impartiality, and must, if they exercise discretionary authority over others in the course of those duties, disqualify themselves

from dealing with anyone with whom a relationship between them could bring the impartiality of Consultant or its employees into question;

- B. May not influence, seek to influence, or otherwise take part in a decision of the City knowing that the decision may further their private interests;
- C. May not accept any commission, discount, allowance, payment, gift, or other benefit connected, directly or indirectly, with the performance of Services related to this Agreement, that causes, or would appear to cause, a conflict of interest;
- D. May have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of the Services related to this Agreement, and if such financial interest is acquired during the term of this Agreement, Consultant must promptly declare it to the City, and;
- E. May not, during the term of this Agreement, perform a service for, or provide advice to, any person, firm, or corporation, which gives rise to a conflict of interest between the obligations of Consultant under this Agreement and the obligations of Consultant to such other person, firm or corporation.

13. DISPUTE RESOLUTION

- A. **Dispute Resolution Procedures.** The parties will make reasonable efforts to promptly resolve any dispute, claim, or controversy arising out of or related to this Agreement (“Dispute”) using the Dispute Resolution Procedures set forth in this Section.
- B. **Negotiations.** First, the City’s Project Representative and Consultant’s Project Manager will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid, and timely disclosure of all relevant facts, information, and documents to facilitate negotiations. Should these negotiations be unsuccessful in resolving the Dispute, the matter will be promptly referred to the City Administrator or designee, and the Consultant’s Principal, who will meet and confer, in good faith, to resolve the Dispute to mutual satisfaction of the parties.
- C. **Mediation.** If all or any portion of a Dispute cannot be resolved by good faith negotiations as set forth above within thirty (30) days of the date that the matter was referred to the City Administrator pursuant to subsection B above, either party may, by notice to the other party, submit the Dispute for formal mediation to a mediator selected mutually by the parties from the Monterey Superior Court’s Court-Directed Mediator Panel list. The duration of any such mediation may not exceed 2 hours unless otherwise agreed to by the parties. The cost of the mediation (including fees of mediators) will be borne equally by the parties, and each party will bear its own costs of participating in mediation. The mediation will take place within or in close proximity to the City of Carmel-by-the-Sea.

In any mediation conducted pursuant to this section, the provisions of California Evidence Code section 1152 will be applicable to limit the admissibility of evidence disclosed by the parties in the course of the mediation. In the event the parties are unsuccessful in resolving the dispute through the mediation process, then the parties agree that the dispute will be submitted to Binding Arbitration to a single Arbitrator in accordance with the existing Rules of Practice and

Procedure of the Judicial Arbitration and Mediation Services, Inc. (JAMS) within thirty (30) days of the close of mediation as declared by the mediator.

- D. **Arbitration.** The submission to Mediation and Arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrator will have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California and is subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts. A "Prevailing Party" will be determined in the Arbitration, and the prevailing party will be entitled to reasonable attorney's fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs will include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorney fees will be considered costs recoverable in that proceeding, and be included in any award.

14. TERMINATION OF AGREEMENT

- A. **Termination for Cause or Default.** The City reserves the right to immediately terminate this Agreement, in whole or in part, if Consultant or any subconsultant defaults or fails to deliver the Services in accordance with the terms and conditions of this Agreement. Such termination must be in writing, setting forth the effective date of termination, and will not result in any penalty or other charges to the City, and may be issued without any prior notice. Without limitation, Consultant is in default of its obligations contained in this Agreement if Consultant, or any subconsultant:
- i. Fails to perform the required Services within the term and/or in the manner provided under this Agreement;
 - ii. Fails to supply sufficient, properly skilled workers or proper workmanship, products, material, tools and equipment to perform the Services;
 - iii. Fails to observe or comply with all laws, ordinances, including all requirements of governmental or quasi-governmental authorities, including federal, state, and local government enactments, bylaws, and other regulations now or, following the date of this Agreement, in force that pertain to;
 - iv. Fails to observe or comply with the City's reasonable instructions;
 - v. Breaches the Conflict of Interest provisions of this Agreement; or
 - vi. Otherwise violates any provision of this Agreement.
- B. **Termination for Convenience.** The City may, at its option and sole discretion, terminate this Agreement, in whole or in part, with or without cause, at any time during the Agreement Term for the convenience of the City, upon ten (10) days written notice to the Consultant.
- C. **Steps after Termination:**

- i. Upon termination of this Agreement by the City for any reason, the City will pay Consultant for satisfactorily performed Services and disbursements incurred by Consultant to the date of termination pursuant to this Agreement, less any amounts necessary to compensate the City for damages or costs incurred by the City arising from Consultant's default. Termination will be without prejudice to any other rights or remedies the City may have.
- ii. Upon receipt of written notice of termination of this Agreement by the City for any reason, Consultant must:
 - a. Promptly cease all Services, including Services provided by any subconsultant, unless otherwise directed by the City; and
 - b. Deliver to the City all the Materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. Such Materials are to be delivered to the City in completed form; however, notwithstanding the provisions of Section 10, Ownership and Use of Materials, herein, the City may condition payment for services rendered to the date of termination upon Consultant's delivery to the City of such Materials.
- iii. If this Agreement is terminated by the City for any reason, the City is hereby expressly permitted to assume the projects and Services, and to complete them by any means including, but not limited to, an agreement with another party.

15. LEGAL ACTION / VENUE

- A. Should either party to this Agreement bring legal action against the other, the validity, interpretation and performance of this Agreement will be controlled by and construed under the laws of the State of California, excluding California's choice of law rules.
- B. Venue for any such action relating to this Agreement will be in Monterey County.
- C. If any legal action or proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing party may recover reasonable attorneys' fees as may be determined by the Arbitrator, experts' fees, and other costs, in addition to any other relief to which the party may be entitled.

16. MISCELLANEOUS PROVISIONS

- A. **Non-discrimination**. During the performance of this Agreement, Consultant, and its subconsultants, may not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, or sexual orientation, either in Consultant's employment practices or in the furnishing of services to recipients. Consultant further acknowledges that harassment in the workplace is not permitted in any form, and will take all necessary actions to prevent such conduct.

- B. **Acceptance of Services Not a Release.** Acceptance by the City of the Services to be performed under this Agreement does not operate as a release of Consultant from professional responsibility for the Services performed.
- C. **Force Majeure.** Either party is absolved from its obligation under this Agreement when and to the extent that performance is delayed or prevented, and in the City's case, when and to the extent that its need for vehicles, materials, or Services to be supplied hereunder are reduced or eliminated by any course, except financial, for reasons beyond its control. Such reasons include, but are not limited to: earthquake, flood, epidemic, fire, explosion, war, civil disorder, act of God or of the public enemy, act of federal, state or local government, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.
- D. **Headings.** The headings do not govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement. The headings are for convenience only.
- E. **Entire Agreement.** This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the terms, conditions, and Services and supersedes any and all prior proposals, understandings, communications, representations and agreements, whether oral or written, relating to the subject matter thereof pursuant to Section 1B, "Change Order of Services". Any Change Order to this Agreement will be effective only if it is in writing signed by both parties hereto and will prevail over any other provision of this Agreement in the event of inconsistency between them.
- F. **Conflict between Agreement and Exhibits.** In the event of a conflict between a provision in this Agreement and a provision in an Exhibit attached to this Agreement, the provisions in this Agreement will take precedence.
- G. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and may be signed in counterparts, but all of which together will constitute one and the same Agreement.
- H. **Multiple Copies of Agreement.** Multiple copies of this Agreement may be executed, but the parties agree that the Agreement on file in the office of the City's City Clerk is the version of the Agreement that governs should any difference exist among counterparts of this Agreement.
- I. **Authority.** Any individual executing this Agreement on behalf of the City or Consultant represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- J. **Severability.** If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired thereby. Limitations of liability and indemnities will survive termination of the Agreement for any cause. If a part of the Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

ATTEST:

By: _____
Britt Avrit, MMC, City Clerk

Date: _____

[EDIT LIST OF ATTACHMENTS]

- Exhibit "A" Scope of Services
- Exhibit "B" Key Personnel & Compensation
- Exhibit "C" Fee Schedule
- Exhibit "D" Project Schedule