

**REQUEST FOR PROPOSALS  
FOR THE CITY OF CAPITOLA**



Construction Management Services  
Community Center Renovation

DEADLINE FOR SUBMISSION:

Proposals are due prior to 11:00am April 26, 2024

**City of Capitola  
Public Works Department  
420 Capitola Avenue  
Capitola, CA 95010**



# CITY OF CAPITOLA

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## NOTICE REQUEST FOR PROPOSALS CONSTRUCTION MANAGEMENT SERVICES – COMMUNITY CENTER RENOVATION

Notice is hereby given that sealed proposals will be received until April 26, 2024 **at or before 11:00 a.m.** local time, for performing all work necessary and incidental to:

**Providing construction management services in accordance with the RFP.**

The Request for Proposal is available electronically as a free download at <https://www.cityofcapitola.org/rfps>. Addenda will be available as a download at the same web location. Proposers are responsible for determining if any addenda have been issued.

**Proposal Submittal:** Proposals may be submitted in either electronic (preferred) or physical (hard copy) format:

**Electronic Format:** Email proposal in PDF format to Jessica Kahn, Public Works Director, at [jkahn@ci.capitola.ca.us](mailto:jkahn@ci.capitola.ca.us). Include in the subject line “PROPOSAL – CONSTRUCTION MANAGEMENT SERVICES – COMMUNITY CENTER RENOVATION”.

**Physical Format:** Mail / deliver one (1) hard copy of your proposal to: City of Capitola, 420 Capitola Avenue, Capitola, CA 95010, Attn: Jessica Kahn, Public Works Director. Submit Proposal in a sealed envelope marked “PROPOSAL – CONSTRUCTION MANAGEMENT SERVICES – COMMUNITY CENTER RENOVATION”.

**Proposals received after the submittal deadline will not be considered.**

Questions about this RFP must be submitted by email to Jessica Kahn, Public Works Director, at [jkahn@ci.capitola.ca.us](mailto:jkahn@ci.capitola.ca.us). Requests for clarification or correction must be received no later than April 17, 2024 at 4:00 p.m. (PT).

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## I. INTRODUCTION

The City of Capitola is soliciting written proposals from qualified firms to provide construction management and support services for the Capitola Community Center Renovation Project. Proposals shall be submitted by firms that have a capable and demonstrable background in the type of work described in Section III of this notice. In addition, all interested firms shall have sufficient, readily available resources in the form of trained personnel, support services, specialized consultants, and financial resources to carry out the work without delay or shortcomings.

## II. DESCRIPTION OF THE PROJECT

The Capitola Community Center Project aims to enhance accessibility and usability both indoors and outdoors. It involves eliminating architectural barriers within the center, such as improving maneuvering space, paths, and restrooms. Interior upgrades include new paint, ceiling treatments, office reconfiguration, flooring replacement, partition enhancements, and kitchen remodeling. Electrical upgrades are planned, along with restroom renovations. Exterior improvements focus on accessibility, including reconstructing patios and walkways for ADA compliance, enhancing outdoor spaces, and adding signage for better navigation. Overall, the project aims to create a modern, functional, and compliant environment for community members.

The project is funded by the California Department of Housing and Community Development (HCD) through a Community Development Block Grant (CDBG) and by the California Natural Resources Agency (CNRA). All work must comply with state and federal, and local requirements. Per HCD guidelines, it is anticipated that this project must be put out for construction bid by July 30, 2024.

For the purpose of submitting a proposal, firms should assume the construction schedule below.

<u>Date</u>	<u>Duration</u>	<u>Phase/Event</u>
May 2024	N/A	City Council Award
June 2024	16 weeks	Notice to Proceed (CM); Bidding; Contractor Selection
September 2024	3 weeks	Pre-Construction
October 2024	45 weeks	Construction
August 2025	4 weeks	Punchlist & Close-out
September 2025	30 days	Final Acceptance / Notice of Completion

Various reference materials concerning this project (including current plans, cost estimate, NEPA documents, etc.) can be accessed on the following File Transfer Protocol (FTP) site:

<https://www.dropbox.com/scl/fo/7e0xrlytm38qh0tivaeoo/h?rlkey=vzdnrf96iqztywomia05vyde1&dl=0>

### III. SCOPE OF SERVICES

The scope of work for construction management services will be at the discretion of the City. The main categories of work will include but is not limited to:

- Contractor Pre-qualification
- Bidding and Contract Award Assistance
- Project and Contract Administration
- Construction Observation, Inspection and Specialty Inspection
- Change Order Management
- Construction Claims Analysis and Support
- Project Closeout and Acceptance Services

The detailed scope of work is included as Appendix B.

### IV. PROPOSAL

Proposers who wish to be considered for this project must submit proposals as outlined in Notice for Request for Proposals. Electronic documents should be submitted in PDF form. The proposal shall be limited to twenty (20) pages. Resumes for proposed personnel will not be counted towards the page limit. Proposals should be as concise as possible and specific to this project. At a minimum, each proposal must include the following information in sections as outlined below:

#### A. Cover Letter

The proposal shall be submitted with a cover letter. The letter accompanying the proposal must provide the name, title, address, telephone number, and signature of the individual(s) authorized to negotiate and bind the firm contractually. An unsigned proposal or one signed by an individual unauthorized to bind the firm may be rejected. The cover letter shall provide a summary of the firm's capabilities and availability of construction management staff, information and qualifications of the proposed lead who will be representing the firm.

#### B. Project Approach and Proposed Scope of Work

Provide a detailed description of the firm's proposed approach to implementing the Scope of Services described in Section III and Appendix B. The approach shall at a minimum include the following:

- Implementation plan for the tasks described in the scope of services and **any recommended revisions or additions to the list of tasks, these recommendations should be specifically identified within the plan;**
- Any innovative approaches to implementing these services; and
- Proposed scope of work based on Appendix B.

#### C. Experience and Qualifications

- Provide a brief history of the firm, including: name of the firm, general services, experience, the year the firm was established under the current name, the principal place of business, and the location of local office(s). Indicate any other previous names for the firm during the last five (5) years and the year any name change was effective.
- Provide a list of at least three (3) prior projects within the last five (5) years in which firm provided relevant services similar to this assignment. The list shall include the following for each assignment:
  - Name of client
  - Location (city and state)
  - Name and brief description of construction project
  - Name of Project Architect
  - Start date of construction and (expected) date of completion for CMS
  - Construction value and CMS contract value
  - Respondent's scope and role in the project (include explanation of methodologies and approaches used)
  - Client reference for services provided including name, position, phone, and email.
  - Identify the personnel that will be assigned to the key positions (refer to Section IV.F - Resumes and Qualifications of Proposed Personnel). Provide a brief biography and highlight special qualifications, including:
    - Total years of experience, including number of years with the current firm.
    - Up to three (3) recent relevant projects; include a brief description of the project (scope, size, cost, etc.), the individual's specific role on the assignment, the year the individual's work on the assignment was completed, and the individual's employer while working on the assignment.

If relevant, Firms should note any projects with clients who used grant funding in their projects. For those projects only, please note what grant was used and how the firm assisted the client in grant management.

**D. Team Organizational Structure**

Describe the firm's team organization, including identification of any partners or subconsultants/ subcontractors. Indicate the role and responsibilities of all subconsultants/subcontractors.

**E. Estimated Labor Hours**

This section should include the estimated labor hours by personnel proposed for the project for each task identified in the Scope of Services and project assignments described in Section II. A standard hourly rate fee for the firm and its subconsultants are required to be submitted in a separate envelope as described in Section IV.G. All pertinent and relevant assumptions that may affect the proposed hours shall be clearly listed in the proposal.

**F. Resumes and Qualifications of Proposed Personnel**

This section should include resumes for all personnel proposed for the Project. Resumes will not be counted toward the page limit established in this section.

**G. Proposed Budget and Fee Schedule**

The proposal shall include a proposed budget and fee schedule based upon the labor hours included as Section IV.E of the proposal.

**H. Conflict of Interest**

Provide names of individuals associated with the firm that have a potential conflict of interest. The City may not contract with a proposer if the proposer is an employee, officer, or director of the proposer's firm, or any immediate family member of the preceding, has served as an elected official, employee, board, or commission member of the City who influences the making of the contract. Furthermore, the City may not contract with any proposer whose income, investment, or real property interest may be affected by the contract. Proposals are subject to disqualification on the basis of such a conflict of interest as determined by the City.

**I. Terms and Conditions**

The proposal shall stipulate that it is predicated upon all the terms and conditions of the RFP as noted in Appendix C. In addition, it shall contain a statement to the effect that it is valid for a period of one hundred twenty (120) days from the date of receipt thereof by the City. It shall be signed by an official authorized to bind the organization.

**V. AGREEMENT AND PAYMENT**

**A. Agreement**

The selected firm will be required to execute an Agreement for Construction Management Services (Agreement) for the project on the City's form as made part of this Request for Proposal as Appendix D. All proposers are directed particularly to review all Indemnification, Hold Harmless and Insurance requirements set forth in this Agreement. Any requested changes to the City's Agreement must be submitted with the proposal and will be evaluated as part of the proposal. Changes to the Agreement may render the proposal non-responsive. **If no Agreement changes are submitted with the proposal, it will be assumed the selected firm accepts the Agreement document as presented.**

#### **B. Payment**

The method of payment to the successful proposer shall be on a time and expense reimbursement basis with a maximum "not to exceed" fee as set by the proposer in his proposal as being the maximum cost to perform all work. This figure shall include direct costs and overhead such as, but not limited to, transportation, communications, subsistence, and materials and any subcontracted items of work. Progress payments will be based on actual hours, hourly costs and support service costs charged to the project on a monthly basis. The selected firm will provide appropriate detail and supporting documentation for all invoices, including hours worked on the project by professional and hourly rates charged, and an itemized list of expenses for reimbursement and accompanying receipts/invoices. The same standards shall apply when submitting for subcontractor fees.

No payments will be made prior to execution of the agreement.

### **VI. SELECTION PROCESS**

All proposals properly received before the application deadline will be evaluated by a Review Committee. All proposals properly received before the submission deadline will be evaluated based on the criteria below. The criteria will be given a number score leading to a total of 100 points.

1. Understanding of the scope of the project.
2. Qualifications and experience of the Proposer.
3. Experience providing the desired services for Capitola and/or surrounding communities.



4. Thoroughness of response, approach to providing sound services, and ability to provide services to meet objectives
5. Strength of examples of representative projects.

The City may elect to conduct interviews of the top-rated Proposers. The Proposer whose overall proposal is rated the highest will be invited for an interview to negotiate a final contract. If an agreement is not reached, negotiations may be terminated and commenced with the next highest rated Proposer.

The City reserves the right to negotiate the specific requirements and costs using the selected proposal as a basis. The City is not bound to select any of the Proposers submitting proposals, may waive any irregularities in proposals and their submittal which may be advantageous to the City, and is not liable for any costs of preparation and submittal of proposals, including any presentations made to the City.

## **VII. SELECTION TIMELINE**

The City has designated the following activities and dates as key to the project schedule. Proposers are encouraged to assist the City in adhering to this timeline. The City reserves the right to change the schedule at its own discretion.

### Anticipated Schedule for Selection

Issuance of Request for Proposals		March 26, 2024
Deadline to submit Questions	4:00 p.m.	April 17, 2024
Deadline to submit Proposals	11:00 a.m.	April 26, 2024
Interviews (if deemed required)		May 2024
Contract Award		May 23, 2024

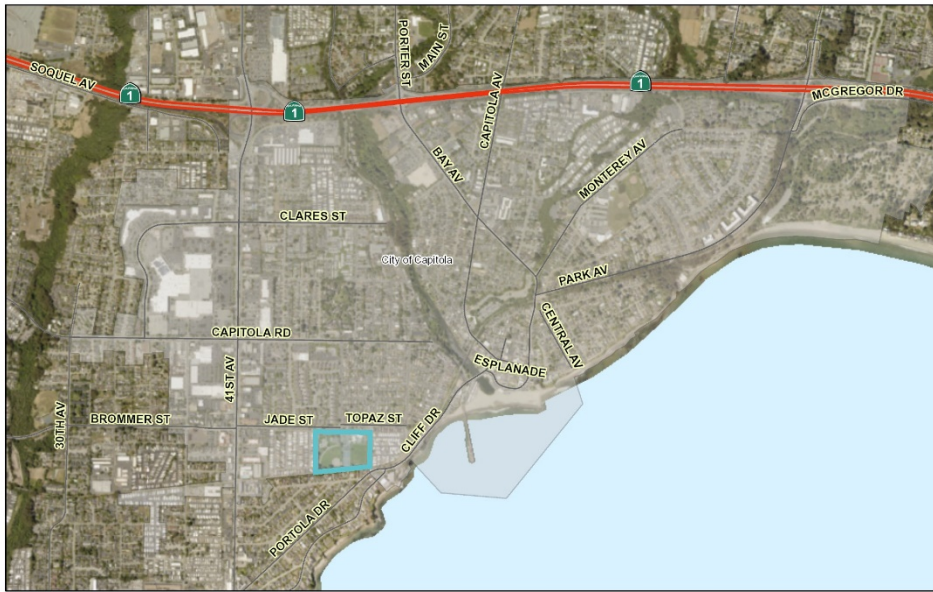
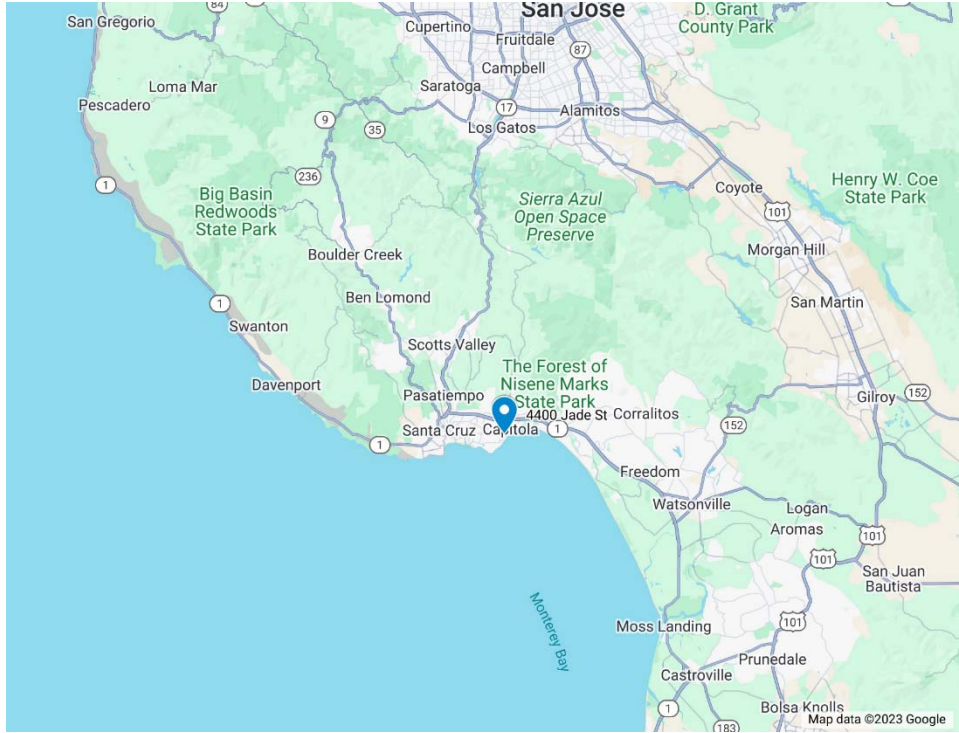
## **VIII. DOCUMENTS AND QUESTIONS**

The Request for Proposal is available electronically as a free download at <https://www.cityofcapitola.org/rfps>. Addenda will be available as a download at the same web location. Proposers are responsible for determining if any addenda have been issued. Questions regarding this RFP will not be accepted after April 17, 2024 at 4:00 p.m.

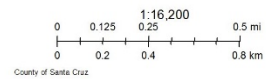
## **IX. ATTACHMENTS:**

- Appendix A: Location Map
- Appendix B: Scope of Work
- Appendix C: RFP Terms and Conditions
- Appendix D: Sample Agreement

**APPENDIX A LOCATION**  
**Capitola Community Center Renovation Project**  
 4400 Jade Street, Capitola, CA 95010



December 19, 2023  
**State Highways**    **Major Roads**    **City Limits**  
 — State Highways    — Major Roads    ■ City Limits



## APPENDIX B SCOPE OF WORK

### I. Project and Contract Administration

- a) Coordinate pre-construction and weekly progress meetings and prepare and distribute agenda and meeting minutes.
- b) Evaluate the Construction Contractor's contract schedule for actual versus planned progress and document all scheduling discrepancies and deviations.
- c) Communicate effectively and coordinate with Construction Contractor and Project Manager as defined below.
  - Project Manager (PM) – The individual or entity authorized to represent the City of Capitola for the project.
  - Construction Contractor – The individual, partnership, corporation, joint venture, or other legal entity having a Contract with the City of Capitola to perform proposed improvement project to be determine during advertisement and award of the construction contract.
- d) Prepare and submit construction monthly progress reports along with monthly Construction Management (CM) payment invoice. Monthly progress reports shall include the following:
  - Overview of work accomplished, including photos;
  - Work to be completed the following month;
  - Updated schedule of work;
  - Explanations for deviations from the initial schedule;
  - Explanation of any upcoming risks/problem areas and corrective action to be taken; and
  - Status of submittals, RFIs, change orders, and claims.
- e) Review of Construction Contractor's work for compliance with contract documents, environmental documents, state laws, regulations, etc.
- f) Review Construction Contractor submittals for compliance with contract documents and coordinate Project Manager and Architect review.
- g) Review Construction Contractor Requests for Information (RFIs) and coordinate with Architect for resolution and response. Log all RFIs and associated response.
- h) Review Construction Contractor monthly invoices and recommend payment requests.

- i) Provide Construction Contractor with acceptability or deficiencies in work and required actions for contract compliance.
- j) Maintain project document files in the format and location specified by the City.
- k) Electronic and hard copy project record management and filing using Department's and/or PM's systems.
- l) Preparation and distribution management of various documents, correspondence and submittals.
- m) Maintenance of tracking logs.
- n) Review project schedules created with project management software. o)

Cost estimation.

- p) Construction contract change order preparation. q)

Preparation and distribution of meeting minutes.

- r) Review of labor compliance submittals including certified payroll records. s)

Tracking of costs and budget.

## **II. Construction Observation, Inspection and Specialty Inspection**

- a) Inspect and observe Construction Contractor's work daily for compliance with the contract documents.
- b) Maintain daily inspection reports of work, including photos, descriptions of daily activities, any corrective actions to be taken by Construction Contractor, persons and equipment onsite, and work to be completed the following day(s).
- c) Review of materials and equipment delivered to site for compliance with submittals and contract documents.
- d) Coordinate material testing and specialty inspections as required between the Contractor and City's Specialty Construction Inspection consultant.
- e) Review of Construction Contractor's compliance with all permits, stormwater regulations and permits (Stormwater Pollution Prevention Plan (SWPPP)), environmental documents, and mitigation measures.
- f) Maintain reports of required building permit inspections and signoffs including required corrections and the dates they are completed.

- g) Review of Construction Contractor's compliance with health and safety standards and regulations and reporting of non-compliance.
- h) Monitor record documents to ensure proper maintenance and completion by Contractor.

### **III. Change Order Management**

- a) Coordinate, review, and evaluate potential change orders and cost estimates/quotations.
- b) Coordinate, review, evaluate, and recommend course of action for contract change order requests and submittals.
- c) Inspect and evaluate site conditions that are perceived to be different than shown in contract documents.
- d) Review, gather, and evaluate information for resolution of potential claims or disputes.

### **V. Construction Claims Analysis and Support**

- a) Consultant staff providing construction management and support services for a project may be required to retrieve documents, prepare reports and participate in interviews near or after completion of construction as needed to assist the City in resolving claims made by or against the construction Contractor for the project. Provide services of a senior level Construction Manager to analyze and make recommendations for claims resolution.

*\*Providing Expert Witness Testimony is NOT included in the scope of work in this agreement.*

### **VII. Project Closeout and Acceptance Services**

- a) Perform site inspection(s) to determine if facilities are complete and in compliance with contract documents.
- b) Develop corrective item work lists (punch lists) and inspection of corrective actions performed.
- c) Recommend retention release to Construction Contractor.
- d) Verify all O&M Manual submittals as well as spare parts as required by the contract documents.
- e) Coordinate final submittal of organized and complete record drawings in accordance

with contract documents.

- f) Verify Construction Contractor has made all payments and that all required releases including warranty release, lien release(s), and release of claims have been submitted by Construction Contractor.
- g) Prepare and submit final construction report.
- h) Review final payment and release of retention.

All items of labor, material and equipment not specified in detail that are incidental to or necessary for the complete construction and project delivery shall be included in the proposal.

## APPENDIX C PROPOSAL TERMS AND CONDITIONS

1. This RFP does not commit the City to enter into an agreement, to pay any cost incurred in the preparation of a submittal to this request or in subsequent negotiations, or to procure or contract for the project.
2. At any time prior to the specified time and date set for the submission, a person/firm, or their designated representative, may withdraw their proposal.
3. The issuance of this RFP and the acceptance of a proposal do not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right, at the City's sole discretion, to:
  - Reject any or all proposals.
  - Reissue an RFP.
  - Extend the time frame for submission of the proposals by notification to all parties who have registered an interest in this RFP with the City.
  - Request more information from any or all applicants.
  - Waive any immaterial defect or informality.
  - Decline to go forward with the RFP. The City expressly reserves the right not to proceed to contract under this RFP.
  - Reject any Subcontractor or Contractor proposed by the Proposer.
  - Accept whichever proposal(s) that may be in the best interest of the City.
4. All services shall be provided in accordance with Appendix D, the City's Professional Services Agreement. Final terms of any agreement will be established during negotiations. Negotiations may be terminated by the City for failure to reach mutually acceptable terms and the City may award the Agreement to the next qualified Proposer.

5. Proposals become the property of the City and information contained therein shall become public documents subject to disclosure laws after the contract is awarded. (Government Code Section 6250 et seq.). The City reserves the right to make use of any information or idea contained in the Proposal. Proposer must notify the City in advance of any proprietary or confidential materials contained in the Proposal and provide justification for not making such material public. The City will have the sole discretion to disclose or not disclose such material subject to state law. All materials, ideas, and formats submitted in response to this RFP will become the property of the City upon receipt.
6. Consultant is obligated to provide evidence of insurance liability pursuant to City requirements (see Appendix D for insurance requirements).
7. Consultant shall obtain a City of Capitola Business Registration prior to commencing any work.
8. The selected Proposer will maintain any required professional licenses and registrations during the life of the contract with the City.
9. The Proposer may utilize the services of subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors. Unless a specific subcontractor is listed by the Proposer, Proposer is representing to City that Proposer has all appropriate licenses, certifications, and registrations to perform the work hereunder. After submission of the proposal, the Proposer shall not award work to any unlisted subcontractor without prior written approval of the City. The proposer shall be fully responsible to the City for the performance of his/her subcontractors, and of persons either directly or indirectly employed by them. Nothing contained herein shall create any contractual relation between any subcontractor and the City.
10. Proposers are responsible for making all necessary investigations and examination of records related to this RFP. Failure to do so will not act to relieve any condition of a potential Agreement or the requirements set out in this RFP. It is mutually understood and agreed that the submission of a proposal shall be considered evidence that the Proposer has made such examinations and investigations. No request for modification of proposal shall be considered after its submission on the grounds that the Proposer was not fully informed as to any fact or condition.
11. Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the City, in writing, if the proposer discovers any ambiguity, discrepancy, omission or other error in the RFP. Any such notification should be directed to the City promptly after discovery, but in no event later than five (5) working days prior to the date for receipt of proposals. Protests of the contract award must be made, no later than five (5) working days after the aggrieved party knows or should have known of the facts giving rise to the protest.



12. The City may, from time to time, issue Addenda to the RFP. Proposers are responsible for ensuring that they have received any and all Addenda. Each Proposer is responsible for verifying that it has received all Addenda issued, if any. Proposers must acknowledge receipt of all Addenda, if any, in their proposals. Failure to acknowledge receipt of all Addenda may cause a Proposal to be deemed incomplete and non-responsive.

13. Any Agreement resulting from this RFP will be awarded to a firm whose Proposal meets the technical requirements of the RFP and is evaluated as the highest rank proposal. Proposals will be ranked in accordance with the evaluation criteria stated in this RFP. Negotiations regarding a fair and reasonable price will occur subsequent to consultant selection. Should the City be unable to obtain a fair and reasonable price through negotiations with the highest qualified proposer, the City shall enter into negotiations with the next highest qualified proposer and may award that agreement if the parties are able to arrive at a fair and reasonable price. If that is unattainable, the City shall enter into negotiations with the next highest qualified proposer in sequence until an agreement is reached.

14. The City reserves the right to contract with other firms during the contract term or to issue multiple contracts for individual aspects of the project as may be deemed in the best interests of the City.

15. The City's payment terms are 30 (thirty) days from the receipt of an original invoice and City acceptance of the quantity and quality of the services being billed. City reserves the right to delay any post-termination payment until completion or confirmed abandonment of the project, as may be determined in the City's sole discretion, so as to permit a full and complete accounting of costs.

## APPENDIX D SAMPLE AGREEMENT

**CITY OF CAPITOLA**  
**PROFESSIONAL SERVICES AGREEMENT**  
Consultant Name Here

THIS AGREEMENT is entered into on June XX, 2022, by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" and Consultant Name Here , hereinafter called "Consultant".

WHEREAS, City desires certain services described in Appendix One and Consultant is capable of providing and desires to provide these services;

NOW, THEREFORE, City and Consultant for the consideration and upon the terms and conditions hereinafter specified agree as follows:

**SECTION 1**  
**Scope of Services**

The services to be performed under this Agreement are for consulting services and further detailed in Appendix One.

**SECTION 2**  
**Duties of Consultant**

All work performed by Consultant, or under its direction, shall be sufficient to satisfy the City's objectives for entering into this Agreement and shall be rendered in accordance with the generally accepted practices, and to the standards of, Consultant's profession.

Consultant shall not undertake any work beyond the scope of work set forth in Appendix One unless such additional work is approved in advance and in writing by City. The cost of such additional work shall be reimbursed to Consultant by City on the same basis as provided for in Section 4.

If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the Consultant's responsibility excluding, nevertheless, the security and safety of any facility of City within the job site which is not under the Consultant's control.

Consultant shall meet with Community Development Director, called "Director," or other City personnel, or third parties as necessary, on all matters connected with carrying out of Consultant's services described in Appendix One. Such meetings shall be held at the request of either party hereto. Review and City approval of completed work shall be obtained monthly, or at such intervals as may be mutually agreed upon, during the course of this work.

**SECTION 3**  
**Duties of the City**

City shall make available to Consultant all data and information in the City's possession which City deems necessary to the preparation and execution of the work, and City shall actively aid and assist Consultant in obtaining such information from other agencies and individuals as necessary.

The Director may authorize a staff person to serve as his or her representative for conferring with Consultant relative to Consultant's services. The work in progress hereunder shall be reviewed from time to time by City at the discretion of City or upon the request of Consultant. If the work is satisfactory, it will be approved. If the work is not satisfactory, City will inform Consultant of the changes or revisions necessary to secure approval.

#### SECTION 4 **Fees and Payment**

Payment for the Consultant's services shall be made upon a schedule and within the limit, or limits shown, upon Appendix Two. Such payment shall be considered the full compensation for all personnel, materials, supplies, and equipment used by Consultant in carrying out the work. If Consultant is compensated on an hourly basis, Consultant shall track the number of hours Consultant, and each of Consultant's employees, has worked under this Agreement during each fiscal year (July 1 through June 30) and Consultant shall immediately notify City if the number of hours worked during any fiscal year by any of Consultant's employees reaches 900 hours. In addition, each invoice submitted by Consultant to City shall specify the number of hours to date Consultant, and each of Consultant's employees, has worked under this Agreement during the current fiscal year.

#### SECTION 5 **Changes in Work**

City may order major changes in scope or character of the work, either decreasing or increasing the scope of Consultant's services. No changes in the Scope of Work as described in Appendix One shall be made without the City's written approval. Any change requiring compensation in excess of the sum specified in Appendix Two shall be approved in advance in writing by the City.

#### SECTION 6 **Time of Beginning and Schedule for Completion**

This Agreement will become effective when signed by both parties and will terminate on the earlier of:

- The date Consultant completes the services required by this Agreement, as agreed by the City; or
- The date either party terminates the Agreement as provided below.

Work shall begin on or about **DATE**.

In the event that major changes are ordered or Consultant is delayed in performance of its services by circumstances beyond its control, the City will grant Consultant a reasonable adjustment in the schedule for completion provided that to do so would not frustrate the City's objective for entering into this Agreement. Consultant must submit all claims for adjustments to City within thirty calendar days of the time of occurrence of circumstances necessitating the adjustment.

#### SECTION 7 **Termination**

City shall have the right to terminate this Agreement at any time upon giving ten days written notice to Consultant. Consultant may terminate this Agreement upon written notice to City should the City fail to fulfill its duties as set forth in this Agreement. In the event of termination, City shall pay the Consultant for all services performed and accepted under this Agreement up to the date of termination.

#### SECTION 8

## **Insurance**

Consultant shall procure and maintain for the duration of the contract and for **1** years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, or employees.

### ***Minimum Scope of Insurance***

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001).
2. Insurance Services office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California, and Employer's Liability Insurance.
4. Professional (Errors and Omissions) Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage shall include contractual liability.

### ***Minimum Limits of Insurance***

Consultant shall maintain limits no less than:

- |  |   |
|--|---|
| 1. General Liability:<br>(including operations,<br>products and completed<br>operations) | <b>\$1,000,000</b> per occurrence and <b>\$2,000,000</b> in aggregate (including operations, for bodily injury, personal and property damage. |
| 2. Automobile Liability:   | <b>\$1,000,000</b> per accident for bodily injury and property damage.  |
| 3. Employer's Liability Insurance  | <b>\$1,000,000 per accident for bodily injury and property damage.</b>  |
| 4. Errors and Omissions<br>Liability:<br>Limits  | <b>\$1,000,000</b> per claim and <b>\$2,000,000</b> in the aggregate.   |

### ***Other Insurance Provisions***

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

1. The City of Capitola, its officers, officials, employees and volunteers are to be covered as additional insured's as respects: liability arising out of work or operations performed by or on behalf of the Consultant or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after prior written notice has been given to the City.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

### ***Waiver of Subrogation***

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Capitola** for all work performed by the Contractor, its employees, agents and subcontractors.

### ***Verification of Coverage***

Consultant shall furnish the City with original certificates and amendatory endorsements affecting coverage by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

## **SECTION 9 Indemnification**

For General Services: To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless the City, its directors, officers, employees from and against any and all claims, demands, actions, liabilities, damages, judgments, or expenses (including attorneys' fees and costs) arising from the acts or omissions of Consultant's employees or agents in any way related to the obligations or in the performance of services under this Agreement, except for design professional services as defined in Civil Code § 2782.8, and except where caused by the sole or active negligence, or willful misconduct of the City.

For Design Professional Services under Civil Code §2782.8: To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless the City, its directors, officers, and employees from and against any and all claims, demands, actions, liabilities, damages, or expenses (including

attorneys' fees and costs) arising from the negligence, recklessness, or willful misconduct of the Consultant, Consultant's employees, or agents in any way related to the obligations or in the performance of design professional services under this Agreement as defined in Civil Code §2782.8, except where caused by the sole or active negligence, or willful misconduct of the City. The costs to defend charged to the Consultant relating to design professional services shall not exceed the Consultant's proportionate percentage of fault per Civil Code §2782.8 and against all claims, damages, losses, and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the Consultant, Consultant's employees, agents or subcontractors, except where caused by the active negligence, sole negligence, or willful misconduct of the City.

#### SECTION 10

#### **Civil Rights Compliance/Equal Opportunity Assurance**

Every supplier of materials and services and all consultants doing business with the City of Capitola shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, and shall be an equal opportunity employer as defined by Title VII of the Civil Rights Act of 1964 and including the California Fair Employment and Housing Act of 1980. As such, consultant shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, age or sex with respect to hiring, application for employment, tenure or terms and conditions of employment. Consultant agrees to abide by all of the foregoing statutes and regulations.

#### SECTION 11

#### **Legal Action/Attorneys' Fees**

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which he or she may be entitled. The laws of the State of California shall govern all matters relating to the validity, interpretation, and effect of this Agreement and any authorized or alleged changes, the performance of any of its terms, as well as the rights and obligations of Consultant and the City.

#### SECTION 12

#### **Assignment**

This Agreement shall not be assigned without first obtaining the express written consent of the Director after approval of the City Council.

#### SECTION 13

#### **Amendments**

This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the City and Consultant. Consultant acknowledges that no such amendment shall be effective until approved and authorized by the City Council, or an officer of the City when the City Council may from time to time empower an officer of the City to approve and authorize such amendments. No representative of the City is authorized to obligate the City to pay the cost or value of services beyond the scope of services set forth in Appendix Two. Such authority is retained solely by the City Council. Unless expressly authorized by the City Council, Consultant's compensation shall be limited to that set forth in Appendix Two.

#### SECTION 14

### **Miscellaneous Provisions**

1. *Project Manager.* Director reserves the right to approve the project manager assigned by Consultant to said work. No change in assignment may occur without prior written approval of the City.
2. *Consultant Service.* Consultant is employed to render professional services only and any payments made to Consultant are compensation solely for such professional services.
3. *Licensure.* Consultant warrants that he or she has complied with any and all applicable governmental licensing requirements.
4. *Other Agreements.* This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter, and no other agreement, statement or promise related to the subject matter of this Agreement which is not contained in this Agreement shall be valid or binding.
5. *City Property.* Upon payment for the work performed, or portion thereof, all drawings, specifications, records, or other documents generated by Consultant pursuant to this Agreement are, and shall remain, the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information and reference in connection with the City's use and/or occupancy of the project. The drawings, specifications, records, documents, and Consultant's other work product shall not be used by the Consultant on other projects, except by agreement in writing and with appropriate compensation to the City.
6. *Consultant's Records.* Consultant shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for this project. Such records and documentation shall be kept available at Consultant's office during the period of this Agreement, and after the term of this Agreement for a period of three years from the date of the final City payment for Consultant's services.
7. *Independent Contractor.* In the performance of its work, it is expressly understood that Consultant, including Consultant's agents, servants, employees, and subcontractors, is an independent contractor solely responsible for its acts and omissions, and Consultant shall not be considered an employee of the City for any purpose.
8. *Conflicts of Interest.* Consultant stipulates that corporately or individually, its firm, its employees and subcontractors have no financial interest in either the success or failure of any project which is, or may be, dependent on the results of the Consultant's work product prepared pursuant to this Agreement.
9. *Notices.* All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:



CITY  
CITY OF CAPITOLA  
420 Capitola Avenue  
Capitola, CA 95010  
831-475-7300

CONSULTANT

By: \_\_\_\_\_  
Benjamin Goldstein, City Manager

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Samantha Zutler, City Attorney

Professional Services Agreement \_\_\_\_\_ (insert date of contract)

Consultant Name Here

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**APPENDIX ONE**  
**Scope of Services**

## **APPENDIX TWO Fees and Payments**

Consultant will provide invoices to the City for all services and expenses on a monthly basis. City will endeavor to pay all invoices within 30 days of receipt. The total amount billed by Consultant and paid by City pursuant to this agreement shall not exceed \$\_\_\_\_\_ without written advance authorization from the City.

Consultant hereby represents and warrants, based upon Consultant's independent determination of the time and labor, including overtime, which will be required to perform said services, that Consultant will provide all said services at a cost which will not exceed the maximum price set forth in this agreement for Consultant's services. Consultant hereby assumes the risk that Consultant will perform said services within this maximum price constraint and Consultant acknowledges that its inability to do so shall not excuse completion of the services and shall not provide a basis for additional compensation.

Salary expenses include the actual direct pay of personnel assigned to the project (except for routine secretarial and account services) plus payroll taxes, insurance, sick leave, holidays, vacation, and other fringe benefits. The percentage of compensation attributable to salary expenses includes all of Consultant's indirect overhead costs and fees. For purposes of this Agreement, Consultant's salary expenses and non-salary expenses will be compensated at the rates set forth in the fee schedule attached to this appendix and in accordance with the terms set forth therein. Non-salary expenses include travel, meals and lodging while traveling, materials other than normal office supplies, reproduction and printing costs, equipment rental, computer services, service of subconsultants or subcontractors, and other identifiable job expenses. The use of Consultant's vehicles for travel shall be paid at the current Internal Revenue Service published mileage rate.

Salary payment for personnel time will be made at the rates set forth in the attached fee schedule for all time charged to the project. Normal payroll rates are for 40 hours per week. Consultant shall not charge the City for personnel overtime salary at rates higher than those set forth in the attached fee schedule without the City's prior written authorization.

In no event shall the total fee charged for the scope of work set forth in Appendix One exceed the total budget of \$\_\_\_\_\_, without specific, written advance authorization from the City.

Payments shall be made monthly by the City, based on itemized invoices from the Consultant which list actual costs and expenses. Such payments shall be for the invoice amount. The monthly statements shall contain the following affidavit signed by a principal of the Consultant's firm:

"I hereby certify as principal of the firm of Consultant Name Here, that the charge of \$\_\_\_\_\_ as summarized above and shown in detail on the attachments is fair and reasonable, is in accordance with the terms of the Agreement dated June \_\_, 2022, and has not been previously paid."