



MEMORANDUM

TO: CITY COUNCIL

FROM: BILL ROBESON, ASSISTANT CITY MANAGER/PW DIRECTOR
BRIAN PEDROTTI, DIRECTOR OF COMMUNITY DEVELOPMENT

BY: ROBIN DICKERSON, PE, CITY ENGINEER

SUBJECT: CONSIDERATION OF APPROVAL OF ON-CALL CONSULTANT SERVICES AGREEMENTS IN SIXTEEN DISCIPLINES FOR SUPPORT FOR THE COMMUNITY DEVELOPMENT AND PUBLIC WORKS DEPARTMENTS

DATE: JULY 27, 2021

SUMMARY OF ACTION:

Approval of on-call agreements for consultant services in sixteen disciplines to assist Engineering, Planning, and Public Works staff in the delivery of future City projects and services.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

No costs are associated with contract awards. Costs will be incurred for specific project and services in compliance with the approved budget.

RECOMMENDATION:

It is recommended the City Council: 1) Approve and authorize the Mayor to execute the On-Call Consultant Services Agreements for the sixteen disciplines as listed in Table 2 through Table 17, subject to minor modifications determined to be necessary and appropriate by the City Attorney; and 2) Authorize staff to issue purchase orders for consultant services if the proposal cost is within the approved project or service budget.

BACKGROUND:

The use of on-call consultants has been found to be an effective tool in the delivery of City projects and services. The current list of on-call services for engineering, planning and public works consultants was established in 2015. With the exception of five agreements that Council previously extended for the completion of ongoing projects, the current on-call agreements expired on February 28, 2020. The last Council-approved extension for ongoing projects was on June 22, 2021 which included the contract with GHD for services related to the Circulation Element Update and the Local Roadway Safety Plan projects, which allows the City to complete these projects during the interim period before approval of new on-call consultant service agreements.

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ANALYSIS OF ISSUES:

Qualifications Received and Evaluation Process

On March 12, 2021, a Request for Qualifications (“RFQs”) for On-Call Professional Consulting Services was issued. This RFQ included 16 disciplines as shown in Table 1 below for engineering, planning, and public works projects.

Table 1 – Disciplines

1. Architectural	9. Landscape Architecture
2. Civil Engineering	10. Material Testing/Evaluation
3. Construction Management/Inspection	11. Planning
4. Environmental Consulting & Permitting	12. Right of Way
5. Geotechnical Engineering	13. Structural Engineering
6. Geographic Information Systems (GIS)	14. Surveying
7. Grant Administration	15. Traffic Engineering
8. Hydrology and Stormwater	16. Water/Wastewater Engineering

On April 29, 2021, the City received 57 qualified Statement of Qualifications (SOQs). Most firms proposed on more than one discipline from Table 1 above, which totaled 158 individual disciplines. The number of SOQs received and the qualifications of the consultants were substantial and wide-ranging. Each of the proposals were ranked by City staff based on the following publically advertised criteria:

1. Understanding of the work involved in completing the specific discipline services. (30%)
2. Demonstrated competence, professional qualifications and availability of proposed staff to be assigned. (30%)
3. Recent experience in successfully performing similar services. (30%)
4. Overall proposal completeness, quality, clarity, responsiveness and methodology. (10%)

Based on staff’s review, the following tables describe the consultant’s average ranking, area of work, and staff’s award recommendation. The firms highlighted in bold are recommended for award of On-Call Consultant Service Agreements for each discipline.

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**Table 2 – Architectural
 (4 Firms proposed/3 Firms awarded)**

Company	Ranking	Award Recommended
Harris Architecture & Design	1	Yes
Ravatt, Albrecht & Associates, Inc. (RA)	2	Yes
IBI Group	3	Yes
Bureau Veritas	4	No

**Table 3 – Civil Engineering
 (20 Firms proposed/12 Firms awarded)**

Company	Ranking	Award Recommended
Garing, Taylor and Associates (GTA)	1	Yes
Stantec	1	Yes
Wallace Group	1	Yes
GHD	2	Yes
North Coast Engineering, Inc. (NCE)	3	Yes
Quincy Engineering	3	Yes
Tetra Tech	3	Yes
Rick Engineering Company	4	Yes
Dewberry	5	Yes
Dudek	5	Yes
Eikhof Design Group	6	Yes
Pavement Engineering Inc. (PEI)*	6	Yes
BKF Engineers	7	No
TDThorton **	7	No
Cannon	8	No
Wood Rodgers	9	No
Diversified Project Services International (DPSI)	10	No
Water Systems Consulting, Inc. (WSC)	11	No
Bureau Veritas	12	No
Geosyntec Consultants	13	No

* Pavement Engineering Inc. was rated regarding pavement design only

** TDThorton was rated for Project Management only

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**Table 4 – Construction Management/Inspection
 (14 Firms proposed/10 Firms awarded)**

Company	Ranking	Award Recommended
Filippin Engineering	1	Yes
MNS Engineers, Inc.	2	Yes
Kitchell	3	Yes
Pavement Engineering Inc. (PEI)*	3	Yes
Water System Consulting, Inc. (WSC)	4	Yes
Cannon	5	Yes
Diversified Project Services International (DPSI)	5	Yes
North Coast Engineering, Inc. (NCE)	6	Yes
Quincy Engineering	6	Yes
Michael K. Nunley and Associates (MKN)	7	Yes
Garing, Taylor and Associates (GTA)	8	No
GHD	8	No
Eikhof	9	No
Wallace Group	9	No

* Pavement Engineering was rated regarding pavement construction only

**Table 5 – Environmental Consulting & Permitting
 (15 Firms proposed/8 Firms awarded)**

Company	Ranking	Award Recommended
LSA Associates, Inc.	1	Yes
Rincon Consultants, Inc.	2	Yes
Stantec	2	Yes
SWCA Environmental Consultants	3	Yes
Albion Environmental, Inc.	4	Yes
Dudek	4	Yes
Tetra Tech	5	Yes
Padre	6	Yes
Denise Duffy & Associates	7	No

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Company	Ranking	Award Recommended
(DD&A)		
Dewberry	8	No
Firma Consultants, Inc.	9	No
Terra Verde Environmental Consulting	10	No
Althouse and Meade, Inc.	11	No
GHD	12	No
Trihydro Corporation	13	No

**Table 6 – Geotechnical Engineering
 (6 Firms proposed/6 Firms awarded)**

Company	Ranking	Award Recommended
Earth Systems	1	Yes
Geo Solutions, Inc.	1	Yes
Yeh and Associates, Inc	1	Yes
EnGEO Incorporated	2	Yes
Tetra Tech	2	Yes
Achievement Engineering Corp.	3	Yes

**Table 7 – Geographic Information Systems (GIS)
 (14 Firms proposed/6 Firms awarded)**

Company	Ranking	Award Recommended
GHD	1	Yes
Stantec	1	Yes
Wallace Group	1	Yes
Dewberry	2	Yes
Dudek	2	Yes
Tetra Tech	3	Yes
Michael K. Nunley and Associates (MKN)	4	No
Water Systems Consulting, Inc. (WSC)	4	No
Wood Rodgers	4	No
Interwest	5	No
Rincon Consultants, Inc.	6	No

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Company	Ranking	Award Recommended
Althouse and Meade, Inc.	7	No
Geosyntec Consultants	7	No
Trihydro Corporation	7	No

Table 8 – Grant Administration
 (8 Firms proposed/5 Firms awarded)

Company	Ranking	Award Recommended
Evan Brooks Associates	1	Yes
GHD	2	Yes
Rick Engineering	3	Yes
Dudek	4	Yes
MNS Engineers, Inc.	5	Yes
Geosyntec Consulting	6	No
Water Systems Consulting, Inc. (WSC)	6	No
Firma Consultants, Inc.	7	No

Table 9 – Hydrology and Stormwater
 (15 Firms proposed/7 Firms awarded)

Company	Ranking	Award Recommended
Stantec	1	Yes
Wallace Group	2	Yes
Rick Engineering Company	3	Yes
Rincon Consultants, Inc.	3	Yes
North Coast Engineering, Inc. (NCE)	4	Yes
Tetra Tech	4	Yes
Garing, Taylor and Associates (GTA)	5	Yes
Geosyntec Consultants	6	No
Dudek	7	No
MNS Engineers, Inc.	7	No
Cannon	8	No
Diversified Project Services International (DPSI)	8	No
GHD	8	No

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Company	Ranking	Award Recommended
BKF Engineering	9	No
Trihydro Corporation	10	No

Table 10 – Landscape Architecture
 (8 Firms proposed/4 Firms awarded)

Company	Ranking	Award Recommended
Stantec	1	Yes
Dudek	2	Yes
Wallace Group	3	Yes
KTUA	4	Yes
Oasis Associates, Inc.	5	No
Jim Burrows Landscape Architecture (JBLA)	6	No
GHD	7	No
Firma Consultants, Inc.	8	No

Table 11 – Material Testing/Evaluation
 (5 Firms proposed/5 Firms awarded)

Company	Ranking	Award Recommended
Earth Systems	1	Yes
EnGEO Incorporated	2	Yes
Geo Solutions, Inc.	2	Yes
Pavement Engineering, Inc.	3	Yes
Achievement Engineering Corp.	4	Yes

Table 12 – Planning
 (8 Firms proposed/4 Firms awarded)

Company	Ranking	Award Recommended
SWCA Environmental Consultants	1	Yes
Gensler	2	Yes
Rincon Consultants, Inc.	3	Yes
Dudek	4	Yes

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Company	Ranking	Award Recommended
Evan Brooks Associates	5	No
KTUA	5	No
Water Systems Consulting, Inc. (WSC)	6	No
Garing, Taylor and Associates (GTA)	7	No

Table 13 – Right of Way
 (2 Firms proposed/2 Firms awarded)

Company	Ranking	Award Recommended
Hamner Jewell & Associates	1	Yes
Del Richardson & Associates, Inc. (DRA)	2	Yes

Table 14 – Structural Engineering
 (11 Firms proposed/5 Firms awarded)

Company	Ranking	Award Recommended
Quincy Engineers	1	Yes
SSG Structural Engineers LLP	1	Yes
Taylor & Syfan Consulting Engineers, Inc.	2	Yes
Wood Rodgers	2	Yes
Stantec	3	Yes
Dewberry	4	No
FTF Engineering, Inc.	4	No
GHD	4	No
Tetra Tech	4	No
Bureau Veritas	5	No
Cannon	5	No

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**Table 15 – Surveying
 (9 Firms proposed/6 Firms awarded)**

Company	Ranking	Award Recommended
North Coast Engineering, Inc. (NCE)	1	Yes
Garing, Taylor and Associates (GTA)	2	Yes
MNS Engineers, Inc.	2	Yes
Tetra Tech	2	Yes
Wallace Group	3	Yes
Stantec	4	Yes
Diversified Project Services International (DPSI)	5	No
BKF Engineers	6	No
Cannon	7	No

**Table 16 – Traffic Engineering
 (9 Firms proposed/5 Firms awarded)**

Company	Ranking	Award Recommended
Central Coast Transportation Consulting (CCTC)	1	Yes
GHD	1	Yes
Rick Engineering Company	1	Yes
Stantec	2	Yes
KTUA	3	Yes
Interwest	4	No
MNS Engineers, Inc.	4	No
Wood Rodgers	5	No
BKF Engineers	6	No

**Table 17 – Water/Wastewater Engineering
 (10 Firms proposed/5 Firms awarded)**

Company	Ranking	Award Recommended
Michael K. Nunley and Associates (MKN)	1	Yes
Wallace Group	2	Yes

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Company	Ranking	Award Recommended
MNS Engineering, Inc.	3	Yes
Water Systems Consulting, Inc. (WSC)	3	Yes
GHD	4	Yes
Dudek	5	No
Quincy Engineers	6	No
BKF Engineers	7	No
Cannon	8	No
Coating Specialists and Inspection Services, Inc. (CSI Services)	9	No

The intent of the award recommendations is to provide the depth and breadth of services needed to the City. Maintaining multiple consultants in a given expertise area provides redundancy of services and increases the likelihood of the City receiving competitive proposals for a specific project. However, the number of consultants selected is also limited to increase the likelihood that all selected consultants will have the opportunity to complete some level of work for the City.

On-Call Use and Duration

Once the on-call agreements are in place and a need arises, staff will prepare a project specific request for proposals from the consultants. The consultants will review the request and provide a proposal for work activities and associated cost. Staff will evaluate the proposed work plan and cost and then select the proposal that meets the City's needs. If the proposal cost is within the City Council approved project or service budget, the City will issue a purchase order for this work and provide direction to the consultant to proceed with work. Once the consultant begins work, the contract period will not expire until the consultant has completed the purchase order work.

The term length of these agreements is three (3) years with the option to allow an additional two (2) year extension with Council approval. While staff is not recommending any greater initial contract term than three (3) years, staff recommends revisiting the contract term length prior to the three (3) year expiration to determine if a two (2) year extension is warranted. If all interested parties are satisfied, staff would recommend extending the agreement term length and return to the Council for consideration prior to the three (3) year term expiration.

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ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Approve staff's recommendations;
2. Modify staff's recommendations;
3. Do not approve staff's recommendations; or
4. Provide other direction to staff.

ADVANTAGES:

Approving the proposed on-call agreements and process will continue to allow the City to provide high quality services and projects within a reasonable time-period at reasonable costs. The on-call consultants will develop a better understanding of the City's procedures, practices, and expectations over time, which will enhance efficiency and product delivery. Cost savings to the City will be generated because staff will realize reduced time and costs to produce and distribute requests for proposals, evaluate submitted proposals, select consultants, and prepare contracts and reports for multiple projects and needs over the term of the on-call services agreements.

Establishment of on-call service agreements does not preclude the City from obtaining consultant services through the formal Request for Proposals (RFP) process for specific project needs, specialty work, or grant requirements.

It is recommended that the motion to approve the on-call agreements include language authorizing the City Attorney to make minor modifications to an agreement when such modifications are requested and determined to be necessary and appropriate, as often times a consultant will request or require a minor modification to insurance and other provisions.

DISADVANTAGES:

No disadvantages have been identified.

ENVIRONMENTAL REVIEW:

Environmental review is not required for the proposed on-call consultant agreements. Each project completed will evaluate environmental impacts on a project-by-project basis.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted in front of City Hall and on the City's website in accordance with Government Code Section 54954.2.

Attachments:

1. Proposed Consultant Services Agreement

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT FOR CONSULTANT SERVICES (“Agreement”), is made and effective as of July 27, 2021, between _____ (“Consultant”), and the **CITY OF ARROYO GRANDE**, a Municipal Corporation (“City”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on July 27, 2021 and shall remain and continue in effect until July 26, 2024 unless sooner terminated pursuant to the provisions of this Agreement. This agreement may be extended for one (1) additional two (2) year period after the initial Term upon written agreement by City and Consultant. All terms and conditions of this Agreement shall apply to any additional two (2) year term.

2. **SERVICES**

Consultant shall perform the tasks described and comply with all terms and provisions set forth in Exhibit “A”, attached hereto and incorporated herein by this reference for the following disciplines _____.

3. **PERFORMANCE**

Consultant shall at all times faithfully, competently and to the best of his/her ability, experience and talent, perform all tasks described herein. Consultant shall employ, at a minimum generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **AGREEMENT ADMINISTRATION**

City’s Community Development Director shall represent City in all matters pertaining to the administration of this Agreement. _____ shall represent Consultant in all matters pertaining to the administration of this Agreement.

5. **PAYMENT**

The City agrees to pay the Consultant in accordance with the payment rates and terms set forth in Exhibit “B”, attached hereto and incorporated herein by this reference.

6. **SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5.

7. TERMINATION ON OCCURRENCE OF STATED EVENTS

This Agreement shall terminate automatically on the occurrence of any of the following events:

- (a) Bankruptcy or insolvency of any party;
- (b) Sale of Consultant's business; or
- (c) Assignment of this Agreement by Consultant without the consent of City.
- (d) End of the Agreement term specified in Section 1.

8. DEFAULT OF CONSULTANT

- (a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.
- (b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

9. LAWS TO BE OBSERVED. Consultant shall:

- (a) Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incidental to the due and lawful prosecution of the services to be performed by Consultant under this Agreement;
- (b) Keep itself fully informed of all existing and proposed federal, state and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this Agreement, any materials used in Consultant's performance under this Agreement, or the conduct of the services under this Agreement;

- (c) At all times observe and comply with, and cause all of its employees to observe and comply with all of said laws, ordinances, regulations, orders, and decrees mentioned above;
- (d) Immediately report to the City's Contract Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this Agreement.
- (e) The City, and its officers, agents and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

10. OWNERSHIP OF DOCUMENTS

- (a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.
- (b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

11. INDEMNIFICATION

- (a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of

Consultant, its officers, agents, employees or subcontractors or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement.

- (b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.
- (c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.
- (d) Indemnification for Design Professional Services. Notwithstanding anything herein to the contrary, to the fullest extent permitted by law for all design professional services arising under this Agreement, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

12. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit "C" attached hereto and incorporated herein as though set forth in full.

13. INDEPENDENT CONSULTANT

- (a) Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall

not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

- (b) No employee benefits shall be available to Consultant in connection with performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

14. UNDUE INFLUENCE

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

15. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

16. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

- (a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subcontractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.
- (b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for

admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

17. NOTICES

Any notice which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City:	City of Arroyo Grande Community Development Director 300 E. Branch Street Arroyo Grande, CA 93420
To Consultant:	_____ _____ _____

18. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, without the prior written consent of the City.

19. GOVERNING LAW

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the superior or federal district court with jurisdiction over the City of Arroyo Grande.

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. TIME

City and Consultant agree that time is of the essence in this Agreement.

OR

22. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

Consultant is bound by the contents of the City's Request for Proposal, Exhibit "D", attached hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Consultant, Exhibit "E", attached hereto and incorporated herein by this reference. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in the Consultant's proposals.

23. CONSTRUCTION

The parties agree that each has had an opportunity to have their counsel review this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto. The captions of the sections are for convenience and reference only, and are not intended to be construed to define or limit the provisions to which they relate.

24. AMENDMENTS

Amendments to this Agreement shall be in writing and shall be made only with the mutual written consent of all of the parties to this Agreement.

25. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF ARROYO GRANDE:

CONSULTANT:

Caren Ray Russom, Mayor

Attest:

Its: _____
(Title)

Jessica Matson, City Clerk

Approved As To Form:

Timothy J. Carmel, City Attorney

EXHIBIT A – SCOPE OF WORK

Insert Copy of City RFQ for
On-Call Professional Consulting Services

Dated March 2021

EXHIBIT B – PAYMENT SCHEDULE

Insert Copy of
Consultant's Proposal with submitted rate sheets

EXHIBIT C – INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office “Commercial General Liability” policy from CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant’s employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits no less than \$1,000,000 per accident or disease.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Consultant, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$_____ per occurrence.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designated to protect against acts, errors or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

Insurance procured pursuant to these requirements shall be written by insurer that are admitted carriers in the state California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and City agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Consultant also agrees to require all Consultants, and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all Consultants and subcontractors to do likewise.
3. All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any Consultant or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.
8. Certificate(s) are to reflect that the insurer will provide 30-day notice to City of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self-insurance available to City.
10. Consultant agrees to ensure that subContractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subContractors and others engaged in the project will be submitted to City for review.
11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any Consultant, subContractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At the time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increase benefit to City.

13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirements in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
15. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.
17. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
19. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
20. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or

Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

22. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

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