

# CITY OF SANTA BARBARA



## REQUEST FOR PROPOSALS

RFP#4035

Santa Barbara Design Standards

Issue Date: April 7, 2021

Due Date: April 30, 2021

## **A. INTRODUCTION**

The City of Santa Barbara (City) Community Development Department, Planning Division, is requesting proposals from firms or individuals with the experience and skillset necessary to prepare objective design standards (Design Standards) for multi-unit and mixed-use housing projects that respect and further the unique heritage and architectural character for which Santa Barbara is known worldwide. The Design Standards should streamline the design review process by providing clear and consistent expectations of high quality design to architects, developers, and the City's decision makers.

This project is funded by a grant from the California Department of Housing and Community Development (HCD), with up to \$285,000 budgeted for consultant services. Responses to this request should be streamlined as a combination of a Statement of Qualification (SOQ) and a brief narrative that describes how the Scope of Work will be achieved within the required timeline and budget.

Proposals will be received electronically until **4:00 P.M. Pacific Daylight Time, April 30, 2021**. See Proposal Submittal Section H. for more information.

## **B. DESIGN STANDARDS PROJECT GOALS**

- Facilitate and streamline production of multi-unit housing;
- Provide clear guidance and design expectations to applicants, staff, and decision makers;
- Ensure new multi-unit housing development is designed to be sensitive and compatible with existing adjacent emblematic architecture, historic resources, streetscapes, and neighborhoods; and
- Use an open and inclusive public process to draft design standards for the City's diverse multi-unit neighborhoods.

## **C. BACKGROUND**

The City of Santa Barbara has a long tradition of architectural excellence and, in many areas of the City, a unifying Spanish Colonial Revival architectural style. Santa Barbara was one of the first communities in the United States to conceive of historic preservation and architectural control as an integral element in the planning process. Accordingly, preserving existing historic buildings and integrating new development into historic districts is an important goal of the City. In particular, new development in and around the Downtown core, known as the El Pueblo Viejo (EPV) Landmark District, is required by ordinance to use either the California Adobe, Monterey Revival, or Spanish Colonial Revival architectural style. In addition to the distinct styles mandated within the EPV district, the City has adopted multiple design guidelines for specific types of development, for specific areas of the City, and for specific features. Attachment 1 lists and describes the existing guidelines.

In 2018, the City initiated a targeted work program to draft Objective Design Standards for projects proposed under State Senate Bill 35 (SB 35). For that effort, a Work Group was formed and staff used the EPV Guidelines as the template for objective design and mandated the Spanish Colonial Revival architectural style. The SB 35 Objective Design Standards and related Zoning Ordinance amendments are planned for final adoption by City Council in May 2021. To date, no applicants have requested project review under SB 35.

While developing the SB 35 Objective Design Standards, it became clear that establishing design standards for a broader range of architectural styles and building types could facilitate additional housing production. This next phase of objective design standards would apply city-wide and include a palette of different architectural styles suitable for the diverse neighborhoods in the City and address specific

features (e.g., outdoor lighting, landscaping) and different housing types. To that end, in 2020, the City applied for and was awarded a Local Early Action Planning (LEAP) grant from HCD to fund objective Santa Barbara Design Standards.

## **D. SCOPE OF WORK**

The following tasks follow the City's preliminary work scope outlined in the LEAP grant application. The consultant selection process has been streamlined to allow interested firms or individuals to submit a statement of qualifications and a brief proposal outlining the general approach (scope and methodology) addressing the City's initial work scope outlined below, followed by an interview with the City. The City welcomes any additions or refinements to the scope of work that may be recommended by the consultant, provided they meet the intent of the grant agreement and the total grant budget is not exceeded. Please note that video-conferencing may be available for the meetings outlined below.

### **Task 1. Project Kickoff**

The selected Consultant will meet with the City staff team assisted to this project to review and agree on:

- Project scope, goals, and objectives;
- Project timeline;
- Project team roles and responsibilities;
- Public outreach strategy; and
- Next steps.

### **Task 2. Stakeholder Work Group or Subcommittee**

We plan to convene a Work Group or Subcommittee of stakeholders and/or decision makers to work with staff and the Consultant throughout this process. The Consultant will work with us to determine the composition, scope, and purpose of the group. Once formed, the Consultant will help facilitate meetings and prepare materials to help those involved understand design concepts and standards. It is anticipated that these meetings will occur approximately once a month from summer 2021 through fall 2022. The Consultant will facilitate and attend a minimum of six (6) stakeholder group meetings.

### **Task 3. Public Outreach**

City staff will lead public outreach on the Design Standards in consultation with the Consultant. The public outreach will leverage a variety of techniques, formats, and tools to ensure that citizens, local architects and developers, and other interested parties are engaged in the process. We have recently transitioned to using Bang The Table / EngagementHQ for digital outreach and feedback. It is anticipated the Consultant will facilitate and attend a minimum of two (2) community meetings, one of which may be held via a video conferencing platform.

### **Task 4. Research**

The Consultant will conduct background research on existing design guidelines, design review processes and outcomes, and existing architectural styles in the City to provide the basis for the new Design Standards. We will provide existing design guidelines, regulations, and permit procedures and can provide representative sets of project plans currently under review for multi-unit and mixed-use development to show how standards and guidelines are currently being interpreted and applied during the permit review process.

The City's Zoning Ordinance contains objective development standards for multi-unit housing projects and we do not anticipate or intend significant amendments to the Zoning Ordinance as part of this project.

We do however anticipate that some of our existing design guidelines should be amended as objective standards for inclusion in the Zoning Ordinance (e.g., Outdoor Lighting, Equipment Screening, or other similar topics). Accordingly, the Consultant will prepare a recommendation on proposed Zoning Ordinance amendments. If Zoning Ordinance amendments are recommended, City staff will prepare the amendments with input from the Consultant.

The Consultant will be expected to identify and document characteristics of various neighborhoods in the City including prominent architectural styles, building types, streetscape pattern, building materials and articulation, landscaping, and other characteristics.

### **Task 5. Design Standards and Workbooks**

The Consultant will prepare illustrated Design Standards for multi-family and mixed-use development. The Design Standards will reflect the variety of building types (e.g., garden apartment, courtyard bungalows, townhome, multi-story apartment building) and architectural styles appropriate in Santa Barbara and address topics such as site planning, building massing, building frontages, entrances, exterior materials, landscaping, outdoor lighting, mechanical equipment, screening, parking structures, and surface parking design.

In addition to the topics listed above, the Design Standards must accommodate or include standards to specifically address:

- Site placement, screening, or other standards to accommodate solar energy systems, EV charging facilities, and other sustainable/green building architectural design elements.
- Accommodations and site planning for housing for seniors and persons with disabilities.
- Allowed exceptions to some standards for projects that include a high percentage of deed restricted affordable housing units.

The Design Standards will include graphic examples of what they will generate, incorporated into the Design Standards or as a separate graphic simulation workbook/user's guide.

### **Task 6. California Environmental Quality Act (CEQA) Recommendations**

City staff will conduct the necessary CEQA compliance process, which is anticipated to be a Notice of Exemption.

### **Task 7. Decision Maker Hearings**

City staff will prepare staff reports and presentations for decision maker hearings. The Consultant will provide data, graphics, and other support as needed. At a minimum, the Consultant should budget attendance or participation at four (4) meetings/hearings; one each before the Architectural Board of Review, Historic Landmarks Commission, Planning Commission, and City Council. The following hearings are anticipated:

Review and Input on the Draft Design Standards

- Architectural Board of Review (2)
- Historic Landmarks Commission (2)

Recommendation to City Council on the Draft Design Standards and Zoning Ordinance Amendments (if applicable)

- Planning Commission (2)

- City Council Ordinance Committee (1)
- City Council Introduction (1)

### **Task 8. Applicant Forms and Website Materials**

City staff will prepare online applicant forms and update the City website using the City's templates. The Consultant will provide graphics and text recommendations for those forms and webpages.

### **Anticipated Deliverables**

- Graphics and text for public outreach campaigns, public hearing presentations, applicant forms, and webpages.
- Zoning Ordinance amendments recommendation.
- Administrative Draft Design Standards and Graphic Workbook.
- Public Draft and Final Design Standards and Graphic Workbook.

## **E. BUDGET AND SCHEDULE**

The Design Standards and associated grant-funded consultant tasks are budgeted for up to \$285,000. To meet grant-established deadlines, this effort will need to conclude by **August 31, 2023**. However, there is flexibility with the timeline of individual tasks. City staff are currently working within the following general schedule. However, the consultant may propose an alternative timeline.

	<b>Task</b>	<b>Schedule</b>
1	Project Kickoff	May 2021
2	Research	June – September 2021
3	Design Standards, Workbooks, and Public Outreach	September 2021 – November 2022
4	Decision Maker Hearings	January 2023 – August 2023

## **F. QUALIFICATION AND SUBMITTAL REQUIREMENTS**

Firms responding shall submit one electronic copy of the proposal, which shall include the items listed below. Note that clear, organized, and concise proposals prepared by the Program Manager are highly desirable:

1. Description of recent projects underway or completed similar in nature to the proposed project.
2. A minimum of three (3) references for whom comparable services were provided to in the last five (5) years. Include the name of the firm, name of the contact, telephone number and email address of the contact, and a brief description of the services provided.
3. Description of the Consultant team for the project, including names, title, and qualifications of all personnel and sub-consultants (if proposed), and an organization chart showing how the team will work together.
4. A brief statement of the proposed approach to the scope of work, broken down by tasks and subtasks.
5. A list of anticipated key deliverables and milestones.

6. A budget table or spreadsheet showing estimated staff hours for all consultants assigned per task, hourly billing rate, and materials cost by task.
7. The successful Consultant will be required to sign an agreement that includes indemnification and hold harmless language as set forth in the sample City Professional Services Agreement (Attachment 3). Please identify any issues related to the Professional Services Agreement in your proposal.

## **G. SELECTION PROCESS AND CRITERIA**

All proposals will be reviewed for compliance with the requirements as stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration. The City may contact the proposer for clarification of their response and the City may use other sources of information to perform the evaluation. The City will evaluate submittals and score proposals on a 100 point scale based on the following factors:

1. Experience and background of the firm, with emphasis on successful completion of local government projects that are similar in scope and nature (40 points maximum).
2. Responsiveness to the objectives of the requested services (30 points maximum).
3. Creative approach in recommending additions and refinements to the scope of work that achieve the goals of the project (10 points maximum).
4. Demonstrated ability to meet schedules, deadlines, and complete projects within the budget representative of the defined scope of work (10 points maximum).
5. Overall quality, completeness, and clarity in the proposal (10 points maximum).

The proposers with the highest scores may be selected as finalists based upon their initial proposals or the City may proceed with the proposer receiving the highest score. Finalists who are asked or who choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. Interviews will be scheduled with finalists.

## **H. PROPOSAL SUBMITTAL**

1. Proposers must be registered on the City of Santa Barbara's PlanetBids portal in order to receive addendum notifications and to submit a proposal. The portal is located at [City of Santa Barbara PlanetBids Portal](#). **If any Addendum issued by the City is not acknowledged online by the Proposer, the PlanetBids System will prevent the Proposer from submitting a proposal.** Proposers are responsible for obtaining all addenda from the City's PlanetBids portal.
2. Proposals will be received until **4:00 P.M., April 30, 2021**. At this date and time all proposals received will be electronically forwarded to the City.
3. If further information is needed, submit questions through Q&A tab in the PlanetBids Portal. **Please submit questions by April 26, 2021.** The City will not be bound by or be responsible for any interpretations or conclusions drawn from this RFP. Any questions the City feels are pertinent to all interested proposers will be answered to all participating proposers as addenda to this RFP.

## **ATTACHMENTS**

1. Summary of Existing Design Guidelines.
2. General Proposal Terms and Conditions.
3. City of Santa Barbara Professional Services Consultant Agreement.

# **ATTACHMENT 1: SUMMARY OF CITY OF SANTA BARBARA DESIGN GUIDELINES AND RELATED DOCUMENTS**

The following information is provided to assist with preparation of proposals and will be used to inform the project.

## **[Objective Design Standards for Affordable Streamlined Housing Projects](#)**

These standards will be recommended for adoption by City Council on April 27, 2021. They are the City's first objective design standards, prepared for projects seeking streamlined ministerial approval under SB 35.

## **[Historic Resource Design Guidelines](#)**

These guidelines were prepared in 2015 and are pending adoption by City Council. They are intended to assist property owners, developers, architects and contractors in designing a project that will be appropriate, compatible, and beneficial to the City's historic resources and historic districts.

## **[El Pueblo Viejo Design Guidelines](#)**

These updated guidelines were adopted in 2009 and they provide the design criteria for projects within the El Pueblo Viejo Landmark District. These guidelines were the template for development of the City's first Objective Design Standards for Streamlined Housing Projects.

## **[Upper State Street Guidelines](#)**

These guidelines were adopted in 2009 for the Upper State Street area to carry forward the results of City Council's Upper State Street Study recommendations and provide direction for property owners making improvements to their properties, with an emphasis on design and streetscape development.

## **[Outdoor Lighting Design Guidelines](#)**

These guidelines were adopted in 2009 to supplement and be used in conjunction with the City's Outdoor Lighting Ordinance.

## **[Lower Riviera Special Design District Guidelines](#)**

These guidelines adopted in 2006 serve as design guidelines for the Lower Riviera Special Design District and are intended to guide all development to ensure continuing compatibility with the existing traditional architecture and development patterns in the neighborhood.

## **[Solar Design Guidelines](#)**

These were adopted in 2006 and include techniques for designing solar energy systems.

## **[Passive Solar Building Design Guidelines](#)**

These were adopted in 2006 and include techniques for designing passive solar buildings.

## **[Urban Design Guidelines](#)**



These guidelines were adopted in 1999 to provide guidance for the City grid area known for its historic character, pedestrian access, and exemplary architecture.

#### [Haley-Milpas Design Manual](#)

This design manual dates to 1982. The purpose is to assist property owners in the Haley-Milpas area in improving the appearance of their properties.

#### **Other**

#### [Architectural Board of Review Guidelines](#)

These were most recently revised in 2017. They include architectural design guidelines with sections on multi-unit buildings and infill development.

#### [Historic Landmarks Commission Guidelines](#)

These were most recently revised in 2017. They include guidelines specific to the El Pueblo Viejo Landmark District and guidelines for infill development.

#### [Santa Barbara Colors: A Guide to Painting Buildings](#)

This was developed by the Historic Landmarks Commission to streamline the review process for paint colors for Spanish Colonial Revival and Mediterranean style buildings. Applicants selecting colors from this guide can receive administrative approval.

## **ATTACHMENT 2: PROPOSAL TERMS AND CONDITIONS**

### **A. GENERAL REQUIREMENTS**

This procurement will be conducted in accordance with the City of Santa Barbara procurement codes and procedures.

**1. Receiving Time/Late Proposals**

It is the responsibility of the proposer to submit their proposal with sufficient time to be received by PlanetBids prior to the opening date and time. Late or incomplete proposals will not be accepted.

**2. Incurring Cost**

Any cost incurred by the offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the offeror.

Any cost incurred by the offeror for set up and demonstration or for interviews shall be borne solely by the offeror.

**3. Subcontractors**

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name.

**4. Substitution of Personnel**

Proposers must provide resumes of key personnel that would be assigned to the City's project. Key personnel identified in your proposal should be available for ninety (90) days from the proposal due date. However, the City understands that between the time a proposal has been submitted and the time an agreement is awarded, proposal key personnel may have been assigned to other projects. If key personnel become unavailable after your proposal has been submitted, the City shall be immediately notified and resumes shall be provided for the substitute personnel.

The substitute personnel must have substantially similar qualifications and experience to the personnel being replaced. The City reserves the right to reject proposed substitute personnel if in its sole opinion that the proposed substitute personnel qualifications and experience are not substantially comparable to that of the personnel being replaced. If satisfactorily substitute personnel cannot be provided, the City reserves the right to negotiate with and award to the next highest ranked proposer.

**5. Amended Proposals**

An offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter.

**6. Offeror's Rights To Withdraw Proposal**

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The offeror must submit a written withdrawal request signed by the offeror's duly authorized representative addressed to the City's Contact.

**7. Proposal Offer Firm**

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after receipt of a best and final offer if one is requested.

**8. Disclosure of Proposal Contents**

All proposals submitted in response to this RFP will become the property of the City of Santa Barbara and may be a matter of public record subject to the State of California Public Records Act (California Government Code Section 6250 et seq.).

All proposals will be treated as confidential documents until the selection process has been completed. Once the selection has been made and the contract approved, all proposals will become a public record. Under the California Public Records Act, any information submitted with a response is a public record subject to disclosure unless a specific exemption applies. The City assumes no responsibility for protecting the confidentiality of materials submitted by vendors as part of their proposals. In the event a vendor desires to keep portions of its proposal confidential, the confidential information so claimed must be identified in writing at the time the proposal is submitted. The vendor must clearly identify those portions with the word "Confidential" printed on the top right hand corner of the page.

If the City receives a request from a third party for a copy of the vendor's proposal pursuant to the California Public Records Act or another applicable public disclosure law and the vendor has identified material within the proposal as confidential in accordance with the preceding paragraph, the City will provide the vendor with prompt notice of the request in order to allow the vendor an opportunity to seek a protective order or other appropriate remedy in order to prevent the disclosure of the material identified as confidential. It is the vendor's responsibility to advise the City of the vendor's intent to seek a protective order or to advise the City of the vendor's decision to waive the opportunity to seek a protective order in a timely fashion in order to allow the City an opportunity to comply with any applicable deadlines for disclosure. If a protective order or other remedy is not obtained by the vendor in a timely fashion or the vendor waives the opportunity to seek a protective order, the City may disclose the vendor's entire proposal in accordance with the California Public Records Act or other applicable law.

The City assumes no responsibility for disclosure or use of unmarked data for any purpose. If the City receives a request from a third party for a copy of the vendor's proposal pursuant to the California Public Records Act or another applicable public disclosure law and the vendor has not identified any material within the proposal as confidential, the City will treat the entire proposal as a public record subject to disclosure. Ultimately, it is the proposer's obligation and expense to protect information that the vendor claims is confidential.

**9. Termination**

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the City determines such action to be in the best interest of the City of Santa Barbara.

**10. Governing Law**

This procurement and any Contract with proposer that may result shall be governed by the laws of the State of California.

**11. Oral Changes and Basis for Proposal**

Do not rely upon oral explanations. Changes and addenda will be issued in writing. Only information supplied by the City in writing through the Purchasing Department, the City's Contact, or in this RFP should be used as the basis for the preparation of proposals.

**12. Proposer Qualifications**

The City may make such investigations as necessary to determine the ability of the proposer to adhere to the requirements specified within this RFP. The City will reject the proposal of any proposer who is not a responsible proposer or fails to submit a responsive offer.

**13. Contract Award**

Proposal will be evaluated by Committee comprised of City staff and may include outside consultants. The Evaluation Committee will make an award recommendation and/or direct staff to negotiate the final terms.

This contract shall be awarded to the proposer or proposers whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not be the lowest cost proposal. Proposers will be notified after the contract has been executed.

## **ATTACHMENT 3: SAMPLE CONTRACT**

**SANTA BARBARA CITY AGREEMENT NO. \_\_\_\_\_**

**with**

**Name of Consultant/Firm for Project Name**

This contract is entered into on \_\_\_\_\_ by and between:

**The City of Santa Barbara**, a Municipal Corporation, referred to herein as the "City,"

and,

**Name of Consultant/Firm**, a \_\_\_\_\_, referred to herein as the "**Consultant**,"

This contract includes the following attached exhibits:

- Exhibit A – scope of services; personnel; rates and schedule of payments; time and schedule of performance;
- Exhibit B – Insurance Requirements;

**1. CONTRACT ADMINISTRATION**

a. The City's [Insert title of department head] ("Department Head") is the City's authorized representative for administration of this contract. The Department Head may delegate administrative responsibilities under this contract. References in this contract to Department Head include references to a person exercising authority delegated by the Department Head.

b. [Name of Project Manager for Consultant] ("Project Manager") is the Consultant's representative for administration of this contract. The Project Manager is also the professional responsible to provide the services under this contract except as otherwise expressly stated in Exhibit A. Consultant may not change the Project Manager without the written consent of the Department Head, which consent may be withheld at the discretion of the Department Head. An unauthorized substitution of the Project Manager is a material breach of this contract.

**2. SCOPE OF CONSULTANT SERVICES**

a. Consultant agrees to [[[SAMPLE LANGUAGE provide construction management services to the City for the construction of a 574-space parking structure located in the City's Lot No. 6 Parking Lot. NOTE: If you need to enter more text, you will have to come back and enter this manually.]] as described in scope of services included in the attached Exhibit A.

b. Consultant's services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar conditions and with all applicable federal, state, and local laws relating to this scope of work. Delivery of work by Consultant includes Consultant's affirmative representation that the work conforms to the requirements of this contract, all applicable federal, state and local laws, and the professional standard of care and skill applicable to the scope of services.

c. Consultant's responsibilities under this section may not be delegated or assigned. Consultant is responsible to the City for acts, errors, or omissions of Consultant's subcontractors.

d. Whenever the scope of services requires or permits review, approval, conditional approval or disapproval by the City, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this contract and determining whether the Consultant is entitled to payment for work performed, and will not be construed as a waiver of any

breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and will not relieve the Consultant of responsibility for complying with the professional standard of care, or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Consultant.

e. Consultant is an independent contractor. Neither Consultant nor any of Consultant's officers, employees, agents or subcontractors, if any, is an employee of the City by virtue of this contract or performance of any work under this contract. Consultant retains the right to pay and supervise its employees and subcontractors as it sees fit. The City has no right to supervise Consultant's employees or subcontractors. If any issues arise with Consultant's employees or subcontractors as to their performance, the City may contact the Consultant directly so that Consultant may address any issues.

### 3. COMPENSATION

a. This contract provides the exclusive means of payment for services and reimbursement for costs to Consultant. The payment for services includes all expenses incurred in the performance of this contract, including materials, travel, lodging, overhead, and similar costs, unless expense reimbursement is expressly authorized in Exhibit A. The maximum payment to Consultant under this contract, including compensation for services and reimbursement of authorized expenses, will not exceed the sum of **\$XXXXXXX** unless an amendment to this contract has been approved by the City.

b. Payment for services performed will be at the hourly rates stated in the rates and payment schedule included in Exhibit A. Changes in personnel or hourly rates stated in Exhibit A may be made only after written notice to and written approval by the Department Head. Automatic increases to hourly rates are not permitted.

c. Consultant may be reimbursed for actual and necessary costs, without markup, as specified in Exhibit A. Where travel costs are included in Exhibit A, reimbursement will be made for actual travel costs (at fare, rate per mile or lump sum approved), and actual expenses consistent with guidelines approved by the City Finance Director for travel by City employees. Work performed by authorized subcontractors will be billed as reimbursable costs, subject to a mark-up not to exceed ten percent, according the subcontractor's scope of work and payment contained in Exhibit A

d. Consultant will be paid as promptly as City's fiscal procedures will permit upon receipt by the Department Head of itemized invoices. Itemized invoices must state the number of hours work performed by task, the person performing the work, the hourly rate for that person, and an itemized list of costs for which reimbursement is sought. If the Department Head has established a standard billing format, then invoices must be submitted in the standard billing format established by the Department Head. Consultant must keep records concerning payment items on a generally recognized accounting basis and maintain the records for three years following the Completion Date. Consultant must make records available for copying, inspection or audit by City employees or independent agents upon reasonable notice during reasonable business hours.

e. Consultant will submit invoices on a monthly basis unless otherwise authorized in writing by the Department Head.

f. If this contract exceeds \$10,000, the performance and payments under it, and the parties to it may be subject to examination and audit by the California State Auditor pursuant to California Government Code § 8546.7 for three years following final payment under the contract.

### 4. TIME OF BEGINNING AND COMPLETION

a. Consultant will complete all services by [REDACTED] ("Completion Date"). Time is of the essence in the performance of this contract. Consultant will adhere to the performance schedule shown in Exhibit A, or otherwise established by the Department Head.

b. If the performance schedule calls for the services to be performed in phases or discrete increments, Consultant shall not proceed from one phase or increment to the next without written authorization from the Department Head.

c. City may withhold payments if work is not performed in accordance with the performance schedule. Consultant's failure to perform in accordance with the performance schedule, or complete the scope of services within the time specified, due to avoidable delays, may at the City's discretion be considered a material breach of this contract. Consultant shall review the remaining work and schedule of performance at least monthly and shall confirm that completion may be expected within the schedule approved, or in the alternative, give immediate notice when it shall first appear that the approved schedule will not be sufficient, together with an explanation for any projected delays in the schedule. No extension of time to complete any portion of the services called for in the contract will be allowed except upon the written approval of the Department Head.

d. If Consultant is unable to meet the Completion Date or performance schedule due to circumstances beyond Consultant's reasonable control, such as war, riots, natural disaster, epidemic, strikes, lockouts, work slow-down or stoppage, except strikes, lockouts, or work slow-down or stoppage of Consultant's employees or subcontractors, Consultant may request an extension of time. The request must be made within a reasonable time and must state the duration and justification for the delay. The Department Head will not unreasonably withhold consent to a schedule change.

## 5. CHANGES IN SCOPE OF WORK

No payment for changed or additional work will be made unless the changed or additional work has first been approved in writing by the Department Head and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The Department Head may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Consultant or ordered by the Department Head, the parties will negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved change or addition, along with the payment adjustment, if any, will be effective upon execution of a change order signed by the Consultant and the Department Head. Changes in work that increase the amount of payment are subject to approval in accordance with the City's municipal code.

## 6. OWNERSHIP OF DOCUMENTS

All documents, computer programs, plans, renderings, charts, designs, drafts, surveys and other intellectual property which is originally developed by Consultant pursuant to this contract shall become the property of City upon payment to Consultant for the services performed. Consultant will take such steps as are necessary to perfect or to protect the ownership interest of the City in such property. Consultant may retain copies of said documents for Consultant's file. Consultant agrees that all copyrights which arise from creation of the work pursuant to this contract shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Consultant makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

## 7. ASSIGNMENT OF CONTRACT

Consultant shall not assign, sublet or transfer any right, privilege or interest in this contract, or any part thereof, without prior written consent of City. Consultant shall not substitute personnel designated in the proposal of Consultant without the written consent of City.

## 8. NOTICES



a. When notice is required by law to be delivered by personal delivery or by mail, notices to either party may be provided by personal delivery or by depositing them in the United States mail, first class postage prepaid, and addressed as identified at the signature page of this contract. A party may change mailing address for all purposes under this contract, by written notice.

b. Reference in this contract to a writing includes paper documents and documents in an electronic format. Writings may be delivered via delivery of an original or duplicate in person or by mail, or in an electronic format, including transmission by electronic mail, secure Internet drop-box, facsimile, or similar other standard interchange format capable of reproduction and storage, as agreed to by the Department Head and Project Manager. This paragraph does not apply to deliverables identified in Exhibit A, such as drawing, plans, maps, photographs, which must be delivered in the manner specified in Exhibit A.

## 9. DEFENSE, INDEMNITY AND HOLD HARMLESS

a. To the fullest extent permitted by law, the Consultant will defend and indemnify the City, and its council, officers, and employees from and against all liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant or Consultant's officers, employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Consultant's obligation to indemnify applies unless it is adjudicated that its liability was caused by the active negligence or willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the active negligence or willful misconduct of an indemnified party, the Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

b. The Consultant will defend the City and its council, officers, and employees, immediately upon tender to the Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. The defense obligation includes an obligation to provide independent defense counsel approved by the City if the Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of an indemnified party.

c. The direction, review, acceptance, or approval of the Consultant's work or work product by any indemnified party shall not affect, relieve or reduce the Consultant's indemnification or defense obligations.

d. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

## 10. INSURANCE REQUIREMENTS

a. Consultant will provide insurance as specified in Exhibit B.

b. Consultant will immediately report (as soon as feasible, but not more than 24 hours) to the City's Risk Manager any accident or other occurrence causing injury to persons or property during the performance of this contract. If required by the City's Risk Manager, the report will be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses and telephone numbers of any known witnesses, (c) the date, time and description of the accident or other occurrence.

## 11. TERMINATION

a. The City may terminate or abandon any portion or all of the work by giving ten days written notice to Consultant. Upon receipt of a notice of termination, Consultant shall perform no further work except as specified in the notice. Before the date of termination, Consultant shall deliver to City all work product, whether completed or not, as of the date of termination and not

otherwise previously delivered. The City will pay Consultant for services performed in accordance with this contract before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by the City and Consultant for the portion of work completed in conformance with this contract before the date of termination. In addition, the City will reimburse Consultant for authorized expenses incurred and not previously reimbursed. The City will not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

b. Consultant, if Consultant is not in default or breach, may terminate Consultant's obligation to provide further services under this contract upon thirty (30) days' written notice only in the event of a material default by the City, which default has not been cured within thirty days following the written notice to the City of the default.

## 12. RIGHT TO PERFORM SIMILAR SERVICES

Nothing in this contract shall restrict the City from providing the same or similar services through City employees, other contractors, other resources, or by arrangements with other agencies. Consultant may engage in similar activities to the extent that such work does not conflict with the proper performance of services under this contract.

## 13. CONFLICT OF INTERESTS

a. Consultant warrants by execution of this contract that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage or contingent fee, and that Consultant maintains no agreement, employment, or position which would be in conflict with the duties to be performed for City under this contract. Consultant further agrees that during the term of this contract, Consultant will not obtain, engage in, or undertake any interests, obligations or duty that would be in conflict with, or interfere with, the services or duties to be performed under the provisions of this contract.

b. Consultant will not make or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a direct or indirect financial interest other than the compensation promised by this contract. Consultant will not have such interest during the term of this contract. Consultant will immediately advise the City if Consultant learns of such a financial interest of Consultant's during the term of this contract. If Consultant's participation in another City project would create an actual or potential conflict of interest, in the opinion of the City, the City may disqualify Consultant from participation in such other project.

## 14. ADMINISTRATION OF EMPLOYMENT

Consultant shall obtain and administer the employment of personnel having the background, training, experience, licenses and registration necessary for the work assigned, including all coordination, the withholding of proper taxes and benefits, the payment of wages, employer's contributions for FICA, and Federal and State unemployment payments, and the review and maintenance of any necessary licenses, certificates, memberships and other qualifications necessary for the services to be provided. Consultant is an independent contractor and shall not be considered an agent or employee of the City for any purpose. Consultant and its employees and agents are not entitled to any of the benefits or privileges that the City provides its employees.

## 15. BUSINESS TAX CERTIFICATE

Not later than 10 days after execution of the contract, Professional must obtain a business tax certificate from the City at Professional's expense. Professional must maintain a business tax certificate as required by the City Finance Director during the term of this contract. Payment under this contract may be withheld for violation of this section.

## 16. NO WAIVER OF PROVISIONS

No waiver of a breach of any provision of this contract shall be construed to be a continuing waiver of that provision, nor a waiver of any breach of another provision of this contract.

## 17. APPLICABLE LAWS, PARTIAL INVALIDITY

This contract shall be subject to the Santa Barbara City Charter, and the laws, rules, regulations and ordinances in effect within the City of Santa Barbara, County of Santa Barbara, California, and any interpretation of the law that may be necessary shall be pursuant to the laws applicable within that jurisdiction. If any provision of this contract is determined to be invalid, illegal or unenforceable for any reason, that provision shall be deleted from this contract and such deletion shall in no way affect, impair, or invalidate any other provision of this contract, unless it was material to the consideration for the performance required. If a provision is deleted which is not material to such consideration, the remaining provisions shall be given the force and effect originally intended.

## 18. NON-DISCRIMINATION ORDINANCE

Consultant shall perform all work pursuant to this contract in compliance with Santa Barbara Municipal Code § 9.126.020, which is an indispensable and integral provision of this contract pursuant to Santa Barbara Municipal Code § 9.126.010.

## 19. CONSULTANT EMPLOYEES AND SUBCONTRACTORS

a. Consultant will perform the work personally or through Consultant's employees, except as otherwise specifically stated in Exhibit A. If subcontracting of work is permitted, Consultant shall pay subcontractor within ten days of receipt of payment by City for work performed by a subcontractor and billed by the Consultant. Use of the term subcontractor in any other provision of this contract shall not be construed to imply authorization for Consultant to use subcontractors for performance of any service under this contract.

b. The City is an intended beneficiary of any work performed by a subcontractor for purposes of establishing a duty of care between the subcontractor and the City.

## 20. WORKPLACE CONDUCT

Consultant and Consultant's officers, employees, agents and subcontractors, while on City property or interacting with City officers, employees, contractors, or agents, will comply with the City's policies, rules, and regulations governing work place safety, conduct, and behavior, including without limitation policies prohibiting discrimination or sexual harassment. City will provide Consultant a copy of the applicable policies.

## 21. PROTECTION OF CITY INFORMATION

Consultant will treat all information obtained from the City in the performance of this contract as confidential and proprietary to the City. Consultant shall treat all records and work product prepared or maintained by Consultant in the performance of this contract as confidential. Consultant will not use any information obtained as a consequence of the performance of work for any purpose

other than fulfillment of Consultant's scope of work. Consultant will not disclose any information prepared for the City, or obtained from the City, or obtained as a consequence of the performance of work, to any person other than the City, or its own employees, agents or subcontractors who have a need for the information for the performance of work under this contract unless such disclosure is specifically authorized in writing by the City. Consultant will immediately advise the City of any request for disclosure of information or of any actual or potential unauthorized disclosure of confidential or personal information. Consultant will identify reasonably foreseeable internal and external risks to the privacy and security of personal information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of the information. Consultant shall regularly assess the sufficiency of any safeguards and information security awareness training in place to control reasonably foreseeable internal and external risks, and evaluate and adjust those safeguards in light of the assessment. Consultant will promptly comply with any written instructions by the City to provide any public records of the City required to be disclosed by the City pursuant to a request made pursuant to the California Public Records Act. Consultant's obligations under this paragraph shall survive the termination of this contract.

## 22. NONAPPROPRIATIONS OF FUNDS

Notwithstanding any other provision of this contract, in the event that no funds or insufficient funds are appropriated or budgeted by the City, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this contract, then City will notify Consultant of such occurrence and City may terminate or suspend this contract in whole or in part, with or without a prior notice period. Subsequent to termination of this contract under this provision, City shall have no obligation to make payments with regard to the remainder of the term.

## 23. EXECUTION

This contract may be executed in any number of original counterparts. The contract will be effective when all parties have executed the same counterpart, or each party has executed separate counterparts and has delivered a copy of the signature page of the counterpart to the other party. Upon execution by all of the parties, the counterparts shall constitute one and the same contract. Counterparts or signature pages may be delivered via delivery of an original or duplicate in person or by mail, or a duplicate, including scanned copy, in an electronic format, including transmission by electronic mail, secure Internet drop-box, facsimile, or similar other standard interchange format capable of reproduction and storage.

## 24. VENUE – CHOICE OF LAWS

This contract and disputes arising out of or relating to it or the parties' relationship are governed by the laws of the State of California. Any action or proceeding arising out of or relating to the contract or the parties' relationship must be brought in a state court situated in the County of Santa Barbara, State of California or a federal court in the district that includes the County of Santa Barbara.

IN WITNESS WHEREOF, the parties have executed this contract as of the date and year first written above.

CITY OF SANTA BARBARA, a municipal NAME OF PROFESSIONAL/FIRM  
corporation

By: \_\_\_\_\_  
Dept. Head Name  
& Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone Number

APPROVED AS TO FORM:

Ariel Pierre Calonne, City Attorney

By: \_\_\_\_\_  
Attorney Name  
Assistant City Attorney

## EXHIBIT A

### **Scope of Services and Personnel**

[Insert detailed scope of services. The description of the scope of work provided by the Consultant in response to an RFP may be used if it adequately describes the services to be provided and the deliverables. This section should also identify the Project Manager and other personnel who will be performing work.]

### **Rates and Payments Schedule**

[Insert the hourly rate schedule, including a list of all persons who will be providing services and the hourly billing rate for that person. Persons may be listed by name or by job description. If there are reimbursable expenses, they should be identified separately in this section by category. Subcontractors should be listed as reimbursable expenses.]

### **Performance Schedule**

[Include the schedule of performance here. The schedule of performance should correlate to the deliverables identified in the scope of services.]

## EXHIBIT B

### Insurance Requirements

As part of the consideration of this contract, Consultant agrees to purchase and maintain at its sole cost and expense during the life of this agreement, and for five years thereafter, insurance coverage 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, its agents, representatives, or employees.

#### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- A. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.
- B. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and Code 9 (non-owned), with limits of no less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- C. **Workers' Compensation:** In accordance with the provisions of the California Labor Code, Consultant is required to be insured against liability for Workers' Compensation or to undertake self-insurance. Statutory Workers' Compensation and Employers' Liability of at least \$1,000,000 shall cover all Consultant's staff while performing any work incidental to the performance of this agreement.
- D. **Professional Liability:** Professional Liability (Errors and Omission) Insurance appropriate to the Consultant's profession, with limit no less than One Million Dollars (\$1,000,000) per occurrence or claim and Two Million Dollars (\$2,000,000) aggregate to cover all services rendered by the Consultant pursuant to this contract.

If the Consultant maintains higher coverage limits than the amounts shown above, then the City requires and shall be entitled to coverage for the higher coverage limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

#### OTHER INSURANCE PROVISIONS

Each insurance policy shall contain, or be endorsed to contain, the following five (5) provisions:

##### 1. **Additional Insured Status**

The City of Santa Barbara, its officers, employees, and agents, shall be covered as additional insureds on the Commercial General Liability and the Automobile Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Consultant. Additional Insured coverage shall be provided in the form of an endorsement to the Consultant's insurance (at least as broad as Insurance Services Office Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used). A copy of the

endorsement evidencing that the City of Santa Barbara has been added as an additional insured on the policy, must be attached to the certificate of insurance.

**2. Subcontractors**

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that the City is an additional insured on insurance required from subcontractors. For Commercial General Liability coverage subcontractors shall provide coverage with a format at least as broad as Insurance Services Office form CG 20 38 04 13.

**3. Notice of Cancellation**

A provision that coverage will not be cancelled or subject to reduction without written notice given to the City Clerk, addressed to P.O. Box 1990, Santa Barbara, California 93102-1990.

**4. Primary Coverage**

For any claims related to this contract, 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 shall be excess of the Consultant's insurance and shall not contribute with it.

**5. Waiver of Subrogation**

Consultant hereby agrees to waive rights of subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors.

**ACCEPTABILITY OF INSURERS**

All insurance coverage shall be placed with insurers that have a current rating from AM Best of no less than A: VII; and are admitted insurance companies in the State of California. All other insurers require prior approval of the City.

**CLAIMS MADE POLICIES**

If the required Professional Liability (Errors and Omissions) policy provides coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must



purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

### **COVERAGE LIMITS SPECIFICATIONS**

Approval of the insurance by City or acceptance of the certificate of insurance by City shall not relieve or decrease the extent to which the Consultant may be held responsible for payment of damages resulting from Consultant's services or operation pursuant to this contract, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.

If, for any reason, Consultant fails to maintain insurance coverage which is required pursuant to this contract, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this contract and obtain damages from the Consultant resulting from said breach. Alternately, City may purchase such required insurance coverage, and without further notice to Consultant, City may deduct from sums due to Consultant any premium costs advanced by City for such insurance.

### **SELF-INSURED RETENTIONS**

Any self-insured retentions must be declared to and approved by the City. At the option of the City, either: the Consultant shall cause the insurer to reduce or eliminate such self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

### **EVIDENCE OF COVERAGE**

Consultant must provide evidence that it has secured the required insurance coverage before execution of this agreement. A Certificate of Insurance supplied by the City or the appropriate ACORD and Insurance Services Office forms evidencing the above shall be completed by Consultant's insurer or its agent and submitted to the City prior to execution of this contract by the City.

Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.