

# CITY OF SANTA BARBARA



## REQUEST FOR PROPOSALS RFP No. 4037

### General Plan Supplemental Program Environmental Impact Report and Development Review CEQA Analysis and Thresholds Report

- Issue Date: April 15, 2021

# REQUEST FOR PROPOSAL

The City of Santa Barbara is inviting proposals from qualified environmental consultant firms to prepare a General Plan Supplemental Program Environmental Impact Report and Development Review CEQA Analysis and Thresholds Report. **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 <https://www.planetbids.com/portal/portal.cfm?CompanyID=29959>. 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.

Proposals will be received until **3:00 P.M., May 12, 2021**. If further information is needed, submit questions through Q&A tab in the PlanetBids Portal or contact Melissa Hetrick, Project Planner at 805-564-5470 ext. 4556. **Please submit questions by 5:00 p.m., April 28, 2021.** Any questions the City feels are pertinent to all interested proposers will be answered to all participating proposers as addenda to this RFP.

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

Planet Bids Technical Support: In the event of technical difficulties during the uploading process, please contact the Planet Bids, Online system team (M-F, except holidays, from 5 a.m. to 5 p.m., Pacific Time) at 818-992-1771.

## FAIR EMPLOYMENT PRACTICE ACT

Contractor agrees in accordance with Section 1735 and 1777.6 of California Labor Code, and the California Fair Employment Practice Act (Sections 1410-1433) that in the hiring of common or skilled labor for the performance of any work under this contract or any subcontract hereunder, no contractor, material supplier or vendor shall, by reason of age (over 40), ancestry, color, mental or physical disability, sex, gender identity and expression, marital status, medical condition (cancer or genetic characteristics), national origin, race, religious belief, or sexual orientation, discriminate against any person who is qualified and available to perform the work to which such employment relates. The Contractor further agrees to be in compliance with the City of Santa Barbara's Nondiscriminatory Employment Provisions as set forth in Chapter 9 of the Santa Barbara Municipal Code.

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# I. PROJECT DESCRIPTION/SPECIFICATIONS

## A. INTRODUCTION

The Planning Division of the City of Santa Barbara Community Development Department is requesting proposals from qualified consultants to prepare a General Plan Supplemental Program Environmental Impact Report (Supplemental PEIR) consistent with the California Environmental Quality Act (CEQA) and a Development Review CEQA Analysis and Thresholds Report. Preparation of these reports are partially funded through the California Department of Housing and Community Development SB 2 Planning Grants Program and the chosen consultant will need to adhere to the conditions contained in the grant (Attachment 3).

The City is updating the 2011 General Plan PEIR with a Supplemental PEIR that can be used to streamline CEQA compliance for development projects, plans, and ordinance amendments. Currently most development projects undertaken in the City are exempt from CEQA through CEQA Guidelines Section 15332 (Infill Development Projects) or do not require additional environmental review pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning). Many plans and ordinance amendments also utilize the PEIR as a base for CEQA compliance. Given that the PEIR is now ten years old, the City would like to update the PEIR to continue to use Section 15332 and 15138 to streamline CEQA compliance for most development projects and as a base for CEQA review for upcoming ordinance amendments. In addition, the City would like to have clear thresholds and updated background analysis when the occasional mitigated negative declaration or environmental impact report are needed for project-specific environmental review.

In addition to providing a general update to the analysis in the PEIR, the Supplemental PEIR will analyze the environmental impacts from: increased residential housing production in the City from that envisioned in the original PEIR; and residential and non-residential development out to the year 2035 (instead of 2030 as analyzed in the original PEIR); and an updated Climate Action Plan.

The City has undertaken a number of amendments to its multi-housing unit program (also known as Average Unit Density Program) to increase housing production in the City. In addition, since 2011, changes at the State and local level to requirements for accessory dwelling units have dramatically increased the number of accessory dwelling unit built in the City. The City also anticipates another set of upcoming ordinance and general plan amendments that could increase allowed number of housing units in areas zoned for multi-unit residential development. The City has new projections for housing production based upon the Regional Growth Forecast that are higher than those originally projected in the 2011 PEIR.

The City has also begun a comprehensive update to its Climate Action Plan with a new planning horizon to 2035. The new Climate Action Plan includes a policy goal of reaching carbon neutrality by 2035 that will require significant additional greenhouse gas reduction measures than those currently required by the 2012 Climate Action Plan. City staff are preparing the updated Climate Action Plan and developing a variety of greenhouse gas emissions reduction measures. The Supplemental PEIR will evaluate the environmental impacts and benefits of the updated Climate Action Plan.

## B. 2011 PROGRAM ENVIRONMENTAL IMPACT REPORT

The [Program Environmental Impact Report \(PEIR\)](#) for the 2011 General Plan update was certified by the Planning Commission in September 2010 and by City Council in December 2011. The PEIR evaluated citywide effects on the environment from incremental growth to the year 2030 under General Plan

policies and programs. The General Plan includes various land use and development policies, including policies incentivizing multi-unit housing in the City's urban core. The General Plan adopted in 2011 assumed a growth to the year 2030 of up to 1.85 million square feet of additional nonresidential development and 2,795 additional residential units. Several other alternatives were analyzed in the PEIR, including development ranging from 1 million to 2 million square feet of net additional nonresidential development and between 2,000 and 4,360 additional housing units.

Since certification in 2011, several [addenda](#) have been prepared for the PEIR for specific ordinance amendments and plans including the Climate Action Plan, Seismic Safety Element, a new zoning ordinance, amendments to the Historic Resources Element, and amendments to multi-housing unit regulations.

### ***Class 1 (Significant, Unavoidable) Impacts***

In 2011 the PEIR identified significant traffic and climate change impacts that could not be fully mitigated (Class 1 impacts) from General Plan policies and citywide incremental growth to the year 2030. The PEIR projected that the General Plan could increase congestion at roadway intersections, with a number of intersections exceeding the City's level of service thresholds. Citywide greenhouse gas emissions were also projected to increase over the 20-year period and, therefore, potentially not meet State AB 32 emission reduction targets for 2020 and then-undefined SB 375 regional targets.

The PEIR also identified that these traffic and climate change impacts could be reduced with expanded transportation demand management measures and intersection improvements. While such mitigation measures were included in the General Plan, City Council found that it was not feasible at that time (in 2011) to develop details of the mitigation measures to the extent necessary to ensure their effectiveness. As such, full mitigation credit was not given for the purpose of CEQA impact analysis and the impact levels remained Class 1 (Significant, Unavoidable). In adopting the General Plan, the City Council adopted findings of overriding consideration that the benefits of the General Plan outweighed these potential significant impacts.

In 2012, the City approved a Climate Action Plan. An Addendum to the 2011 General Plan PEIR was prepared for the City Climate Action Plan that documented further analysis of climate change impacts and demonstrated that, with implementation of the Climate Action Plan, citywide greenhouse gas emissions would be less than significant. This analysis was based on targets developed based on AB 32.

In 2013, the California legislature enacted SB 743, which required that the California Office of Planning and Research (OPR) adopt new guidelines for assessing transportation impacts using vehicle miles traveled. SB 743 stated that when new guidelines are enacted, traffic congestion shall no longer be considered in assessing a significant impact under CEQA. The purpose of SB 743 was to better align transportation impacts analysis under CEQA with the state's goals of reducing greenhouse gas emissions and traffic-related air pollution and promoting multimodal transportation networks and a diversity of land uses. In January 2019, the OPR issued new CEQA Guidelines for analyzing transportation impacts pursuant to SB 743. Amended Public Resources Code Section 21099 and CEQA Guidelines Section 15064.5 now state that effective July 1, 2020, traffic delay, as measured by level of service or similar measures of vehicular capacity, and traffic congestion shall not be considered significant impacts on the environment pursuant to CEQA. Due to SB 743, all of the Class I significant impacts previously identified in the 2011 PEIR related to traffic congestion and level of service are no longer considered significant environmental impacts pursuant to CEQA.

Although traffic congestion level of service may no longer be used for evaluating the environmental impact of a project under CEQA, SB 743 allows cities to use traffic congestion for purposes of

congestion management under planning and land use laws and policies. On June 23, 2020, City Council amended the City's Traffic Management Strategy to eliminate conflicts with the new CEQA Guidelines and kept the City's existing traffic congestion standards in place as a growth management policy.

The purpose of the City's Traffic Management Strategy is to ensure that no one land development project use a disproportionate share of the limited remaining traffic capacity at impacted intersections. The impacted intersections are primarily at freeway interchanges which carry the greatest amounts of traffic each day. The June 2020 amendment to the Traffic Management Strategy revises the language regarding traffic to delete CEQA terminology and added provisions for policy-related level of service traffic analysis for land development projects. Project related traffic effects continue to be analyzed outside of the realm of CEQA analysis using the same LOS process, methodology, and congestion standards, as a part of the land use permitting process.

### ***Class 2 (Potentially Significant, but Avoidable) Impacts***

The PEIR analysis identified the following potentially significant impacts that could be mitigated to less than significant levels (Class 2 impacts): air quality (*diesel emissions*); biological resources (*upland and creek/riparian habitats and species*); geological conditions (*sea cliff retreat*); heritage resources (*effects of development on historic resources*); hydrology (*extended range sea level rise*); noise (*transportation noise*); open space (*loss or fragmentation of open space*); public utilities (*solid waste management*); and transportation (*intersections with roadway improvement mitigation; roadway corridor congestion*). Identified mitigation measures associated with these impacts were incorporated into the General Plan as policies and programs.

### ***Class 3 (Less than Significant) Impacts***

The PEIR analysis concluded that, with policies and programs already in place, the following other impacts would be less than significant (Class 3 impacts): air quality (*consistency with Clean Air Plan for air quality standards; construction emissions*); biological resources (*grasslands; coastal resources; individual specimen trees*); geological conditions (*seismic, geologic, soil hazards*); hazards (*accident risks, wildfire; hazardous materials*); heritage resources (*archeological and paleontological resources*); hydrology and water quality (*development in floodplains and near creeks; storm water runoff; water quality of creeks, groundwater, coastal and marine water*); noise (*noise guidelines; mixed use nuisance noise; construction noise*); open space and visual resources (*scenic views; community character; lighting*); public services (*police; fire protection; parks and recreation; schools*); public utilities (*water supply, wastewater treatment*); and transportation (*reduction in per capita vehicle commute trips - Class 4 beneficial*).

### ***Additional Environmental Analysis***

The PEIR also included a detailed analysis of impacts associated with energy, climate change (both greenhouse gas emissions contributing to climate change, and climate change effects on the City), population and jobs/housing balance, and socioeconomic issues.

## **C. CONSULTANT SCOPE OF WORK**

### **Supplemental Program Environmental Impact Report**

The chosen consultant will prepare a Supplemental Program Environmental Impact Report (Supplemental PEIR) for the General Plan that will evaluate the new Climate Action Plan and increased residential and non-residential development to the year 2035. It is likely that information from many sections of the

original 2011 PEIR can remain relatively unchanged. However, updates in the following areas are known to be needed:

#### *Project Description*

Edits are needed to address an increased rate of multi-unit housing development in the City from that originally envisioned in the 2011 PEIR; residential and non-residential development to the year 2035 (as opposed to 2030), and to cover the Climate Action Plan update.

#### *Cumulative Impacts*

In 2011 only a portion of the Highway 101 high occupancy vehicle freeway widening project was analyzed when considering cumulative impacts in the PEIR. The current South Coast 101 HOV Lanes Project (101 in Motion) and associated EIR will need to be considered when updating the traffic, noise, and air quality sections of the PEIR.

#### *Transportation and Vehicle Miles Travelled*

The original 2011 PEIR analysis of traffic included some information on vehicle miles travelled (VMT) but was predominantly focused on level of service and traffic congestion, which are no longer a part of State requirements for CEQA. The City is in the process of hiring a separate transportation consultant to: update the City's traffic model; reevaluate projections for level of service and congestion for the City's policy driven traffic management program; develop a vehicle miles travelled screening analysis and threshold for the City that satisfies new CEQA requirement; and provide information on impacts to vehicle miles travelled and transportation for the Supplemental PEIR. The chosen consultant will work with the traffic consultant to update the analysis of transportation and VMT impacts in the PEIR.

#### *Greenhouse Gas Emissions*

The Supplemental PEIR will include a new analysis of greenhouse gas emission impacts including quantification of baseline emissions and comparison against a threshold developed by the chosen consultant (see below). The potential greenhouse gas reductions of various measures identified in the new Climate Action Plan will also be evaluated.

#### *Air Quality*

The Santa Barbara Air Pollution Control District Clean Air Plan and Environmental Review Guidelines and Thresholds has been updated since 2011 and the air quality analysis in the PEIR needs to be updated accordingly. In addition, the Supplemental PEIR will include reevaluation of buffers from Highway 101 for sensitive land uses given updated guidance from the California Air Resource Board.

#### *Water, Wastewater, and Other Public Services*

For the last year the City has been in the process of updating its Urban Water Management Plan and Long-Term Water Supply Plan (LTWSP) through an effort called [Water Vision Santa Barbara](#) that will result in an Enhanced Urban Water Management Plan (EUWMP). The LTWSP, was last updated in 2011. In 2012, the City began experiencing an unprecedented drought, in both duration and severity, which exceeded the historical drought of record that was used as the design basis for the 2011 LTWSP. The EUWMP, developed pursuant to section 10610 et seq. of the California Water Code, updates and replaces the 2011 LTWSP by reassessing the adequacy, reliability, resiliency, and sustainability of the City's water resources portfolio, including evaluation of both available supply and anticipated demand. While not complete, water demand and supply adequacy analysis has been completed that accounts for the increased residential housing production that will be evaluated in the Supplemental PEIR. This analysis has shown

the City to contain adequate permitted water supplies, but does recommend different management measures for these supplies over time and other resilience measures. The chosen consultant for the Supplemental PEIR will update the water supply analysis in the PEIR to reflect the new information developed for the EUWMP. Given that changes in water use also affect wastewater capacity, the wastewater and other public services sections of the PEIR also need to be updated.

### *Hazards*

City Council has just adopted a new [Community Wildfire Protection Plan](#) (CWPP) and associated EIR. The CWPP includes new fire hazard zones and other wildfire protection measures for the City that need to be incorporated into the PEIR.

City Council also just adopted a [Sea-Level Rise Adaptation Plan](#). While not required by CEQA, the City would like to incorporate information from the Adaptation Plan into the Supplemental PEIR for informational purposes.

### *Other Changes*

The Supplemental PEIR will address updates to the CEQA Guidelines Checklist and other legislative changes that have occurred since 2011. This includes changes to analysis required for Tribal Cultural Resources, although City staff will initiate the tribal outreach process.

## **Development Review CEQA Analysis and Thresholds Report**

### GHG Threshold and Guidance Memorandum

As part of the development of the Supplemental PEIR and as a first step toward development of a Development Review CEQA Analysis and Thresholds Report, the chosen consultant will prepare a GHG Threshold and Guidance Memorandum. This memorandum will be used by City planning staff and applicants in preparing greenhouse gas (GHG) analyses for CEQA environmental documents for development projects. The City has set an aspirational goal of carbon neutrality by 2035 for the updated Climate Action Plan. The City would like to develop a separate CEQA-specific GHG emission threshold of significance for development projects. The guidance memorandum will clearly detail how the GHG threshold was developed and substantiate the linkage between a specific project and state and local GHG reduction targets. The memorandum will also include a simple screening process for projects to be used in the course of environmental review to determine which projects clearly fall below the threshold of significance and do not require additional analysis and which projects require detailed project-specific impact analysis.

### Development Review CEQA Analysis and Thresholds Report

The chosen consultant will prepare a brief report presenting a simple checklist, analysis, and maps to be used during the environmental review process for development projects to easily determine whether the project is exempt pursuant to either CEQA Guidelines Section 15332 (Infill Development Projects) or CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning). In addition, the report will summarize the current relevant project-specific screening criteria, thresholds of significance, and methods of analysis to be used by the City for CEQA review of development projects. The report will utilize the information in the GHG Threshold and Guidance Memorandum, Supplemental PEIR, the 2011 PEIR, and related technical documents to substantiate the proposed thresholds.



## **D. SUMMARY OF CONSULTANT DELIVERABLES**

The following deliverables will be provided by the chosen consultant:

- Draft and Final GHG Threshold and Guidance Memorandum;
- Draft (two rounds of internal review), Public Draft, and Final Supplemental Program Environmental Impact Report (including consultant prepared response to comments); and
- Draft and Final Development Review CEQA Analysis and Thresholds Report.

All draft deliverables shall be reviewed and edited by a technical editor on the consultant's team prior to submittal to the City for review and comments. All deliverables shall be submitted in electronic format (no hard copies needed). Final reports shall be formatted to be ADA accessible per current state requirements.

The City will issue the Notice of Preparation, Notice of Availability, and Notice of Determination; conduct scoping and comment hearings; conduct public outreach; write all staff reports necessary; print any hard copies of deliverables; and conduct any necessary mailings and public notices.

The consultant shall assume that attendance and presentation at two public hearings may be required.

## **E. CONSULTANT QUALIFICATIONS**

The following abilities and skills are desired from the consultant(s):

- Project management from a consultant with an understanding of CEQA compliance and long-range planning at the local level;
- Experience with Climate Action Plans, greenhouse gas emission analysis, and the development of legally adequate CEQA thresholds;
- Experience with General Plan level CEQA analysis;
- Experience streamlining and simplifying CEQA review of development projects;
- Ability to convey technical and complex concepts in a simple, user friendly manner that is easily understood by the public;
- Experience in technical editing;
- Knowledge of relevant local, state, and federal planning and housing;
- Knowledge of recent updates to CEQA and relevant case law; and
- Knowledge of local conditions and issues.

## II. RESPONSE FORMAT, ORGANIZATION AND SUBMITTAL

### A. PROPOSAL FORMAT

All proposals must be submitted in the PlanetBids System and include the following information:

#### 1. Letter of Transmittal

- a. Identify the submitting organization;
- b. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization;
- c. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
- d. Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
- e. Be signed by the person authorized to contractually obligate the organization;
- f. Acknowledge receipt of any and all amendments to this RFP.

#### 2. Key Personnel

Describe the project team composition and include resumes of key personnel. Proposed members should be available for ninety (90) days from the proposal due date. The City must be promptly notified of any changes in personnel prior to award.

#### 3. Experience and Qualifications.

Provide general information concerning the Consultant's qualifications and descriptions of up to three (3) similar projects that have been successfully completed. Identify the proposed team and project manager.

#### 4. Scope of Work.

Provide a description of the approach and tasks proposed to complete the project. The scope can include suggestions or supplemental tasks which may enhance the project or streamline the scope of services and improve cost effectiveness. The scope of work should be clear about who will do what tasks (City versus consultant and which consultant) and what information or resources the consultant will need from the City. The scope of work and budget proposed by consultant(s) should be a preliminary, first order scope of work and budget. Following selection of consultant(s), the chosen consultant(s) will need to provide a more detailed and refined scope of work and budget for contracting purposes based on discussions with the City.

#### 5. Project Schedule.

Present a preliminary proposed schedule showing the timing of each task in the scope of service.

**6. Budget.**

Provide a preliminary budget with costs divided by scope of work tasks. Provide an hourly rate sheet for consultant team.

**7. References.**

List at least three (3) clients with contact information for whom the Consultant has performed services similar to those required by this RFP.

**B. 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 <https://www.planetbids.com/portal/portal.cfm?CompanyID=29959>. 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 3:00 P.M., May 12, 2021.**
- 3. INQUIRIES/CLARIFICATIONS:** If further information is needed, submit questions through Q&A tab in the PlanetBids Portal or contact Melissa Hetrick, Project Planner at 805-564-5470 ext. 4556. **Please submit questions by 5:00 p.m., April 28, 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.

### **III. EVALUATION**

#### **A. EVALUATION FACTORS**

While the preliminary scope of work and budget will be evaluated to assess the general approach proposed, the primary focus of consultant selection will be on consultant qualifications as the scope of work is likely to be modified upon further discussions with the City.

The City's will use the following factors to evaluate the submittals received in response to this RFP:

1. Experience and background of the firm and key personnel, with emphasis on participation in similar or related projects with local government.
2. Proposal demonstrates knowledge of issues associated with issues relevant to CEQA review at the general plan level, GHG analysis, and streamlined CEQA review of development projects.
3. Responsiveness of the preliminary scope of work, budget, and schedule to the objectives of the project.
4. Proposed performance schedule for deliverable work product.
5. Overall quality, completeness and clarity in the proposal.
6. Information gained through contact of consultant references.
7. Billing rates and overall cost of proposal.

#### **B. EVALUATION PROCESS:**

1. All proposals will be reviewed for compliance with the mandatory requirements as stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The City may contact the proposer for clarification of their response.
3. The City may use other sources of information to perform the evaluation.
4. Proposals will be evaluated on the factors in Paragraph A above, and assigned a point value. 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 may be scheduled with finalists. The proposal most advantageous to the City, taking into consideration the evaluation factors in Paragraph A above, will be selected. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

## IV. CONDITIONS GOVERNING THE PROCUREMENT

### 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. **Acceptance of Conditions Governing the Procurement**

Offerors must indicate their acceptance of the Conditions Governing the procurement in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

3. **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.

4. **Prime Contractor Responsibility**

Any contract that may result from the RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the City. The City will make contract payments only to the prime contractor.

5. **Offeror's Rights to Withdraw Proposal**

Offeror's 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.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

6. **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.

7. **Best and Final Offer**

The City reserves the right to request Best and Final Offers from any or all proposers. This will be the only opportunity to amend or modify proposals based on feedback from the City. Information from competing proposals will not be disclosed.

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 negotiations completed, 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. No Obligation**

The request in no manner obligates the CITY to the eventual rental, lease, purchase, etc., of any equipment, software, or services offered until a valid written contract is awarded and approved by appropriate authorities.

**10. 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.

**11. Sufficient Appropriation**

Any contract awarded, for multiple years, as a result of the RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The City's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

**12. Governing Law**

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

**13. 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.

**14. Contract Terms and Conditions**

The contract between the City and a contractor will follow the format specified by the City and contain the terms and conditions set forth in Appendix A, "Contract Terms and Conditions."

However, **the City reserves the right to negotiate with a successful proposer the final provisions or provisions in addition to those contained in this RFP.** The contents of this RFP, as revised and/or supplemented, and the successful proposal will be incorporated into and become part of the contract.

Should a proposer object to any of the City's terms and conditions, as contained in this Section or in Appendix A, that proposer must propose specific alternative language. The City may or may not accept the alternative language. General references to the proposer's terms and conditions or attempts at complete substitutions are not acceptable to the City and may result in disqualification of the proposer.

Proposer must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

**15. Proposer's Terms and Conditions**

Proposers must submit with the proposal a complete set of any additional terms and conditions that they expect to have included in a contract negotiated with the City.

**16. Right To Waive Minor Irregularities**

The City reserves the right to waive minor irregularities and the right to waive mandatory requirements provided that all of the otherwise responsive proposals fail to meet the same mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the City.

**17. Change in Contractor Representatives**

The City reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the City, meeting its needs adequately.

**18. Right To Publish**

Throughout the duration of this procurement process and contract term, potential proposers, proposers, and contractors must secure from the City written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the proposer or termination of the contract.

**19. Ownership of Proposals**

All documents submitted in response to the RFP shall become the property of the City of Santa Barbara and are subject to public records request.

**20. 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.

This contract shall be awarded to the proposer or proposers whose proposal received the most points. Proposers will be notified when the award is being made.

**21. Records and Audits**

The CONTRACTOR shall maintain such detailed records as may be necessary to demonstrate its performance of the duties required by this Contract, including the date, time and nature of services rendered. These records shall be maintained for a period of three years from the date of the final payment under this Contract and shall be subject to inspection by CITY. The CITY shall have the right to audit any billings or examine any records maintained pursuant to this Contract both before

and after payment. Payment under this Contract shall not foreclose the right of CITY to recover excessive and/or illegal payments.

**22. Enforcement of Contract/Waiver**

A party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Contract shall be effective unless expressed in writing and signed by the party alleged to have granted the waiver. A waiver by a party of any of its rights shall not be effective to waive any other rights.

**23. Clarification**

The City may contact the proposer for clarification of their response.



## ATTACHMENT 1 - NON-COLLUSION DECLARATION

This declaration is submitted with a proposal (**City RFP No. 4037**) to the City of Santa Barbara. I declare under penalty of perjury, as follows:

That any statement of fact in such proposal is true, without reservation;

That such proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company association or corporation;

That such proposal is genuine and not collusion or sham;

That I have not, directly or indirectly, by agreement, communication or conference with anyone, attempted to induce action prejudicial to the interest of the City of Santa Barbara, or any other bidder or proposer or anyone else interested in the proposed contract; and further,

That prior to the public opening and reading of this proposal,

- a. I did not, directly or indirectly, induce or solicit anyone else to submit a false or sham proposal;
- b. I did not, directly or indirectly, collude, conspire, connive or agree with anyone else that I or anyone else would submit a false or sham proposal, or that anyone should refrain from bidding or withdraw this proposal;
- c. I did not, in any manner, directly or indirectly, seek by agreements, communications, or conference with anyone to raise or fix any overhead, profit, or cost element of this proposal price, or that of anyone else; and
- d. I did not, directly or indirectly, submit the proposal price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any other corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any individual or group of individuals, except to the City of Santa Barbara (and to persons who are not bidders separately and who have a partnership or other financial interest with me in my business).

I declare under penalty of perjury that the foregoing is true and correct.

---

(Date and Place)

---

Signature

---

Name of Proposer

## ATTACHMENT 2 – SAMPLE CONTRACT

SAMPLE

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 XXXX 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 \$Error! Reference source not found. unless an amendment to this contract has been approved by the City.

b. Consultant will be paid a fixed lump sum fee for each task according to the lump sum amount stated for that task in the Rates and Payment Schedule, or at the hourly rates specified in the Rate and Payment Schedule for work performed on tasks for which a fixed lump sum fee is not stated. Payments will subject to City approval of completed deliverables associated with each task and upon a determination of the Department Head that the work has been performed in accordance with this contract. Upon completion of all deliverables or other work for a task, Contractor will submit and invoice for that task, including proof of actual reimbursable costs when authorized by the Rates and Payment Schedule, in accordance with the standard billing format issued by the City. 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. When compensation for a task is based on hourly rates the invoices must state the number of hours work, 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 \_\_\_\_\_ (“Completion Date”). Each task will be completed according to the Performance Schedule contained in Exhibit A. Time is of the essence in the performance of this contract. Consultant will adhere to the performance schedule shown in Exhibit A.

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, Consultant must obtain a business tax certificate from the City at Consultant's expense. Consultant 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. The individuals executing this contract



represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

#### 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.

#### 25. MUTUAL AGREEMENT

This contract represents the mutual agreement of the City and Consultant. This contract constitutes the entire agreement. The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this contract, and that the decision of whether or not to seek the advice of counsel with respect to this contract is a decision which is the sole responsibility of each of the parties hereto. This contract shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of the contract. Each party hereto declares and represents that in entering this contract it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this contract is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent, or attorney of any other party.

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 Consultant/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. The scope of services should be broken up by task. The person or persons performing the task may be stated here or in the Rates and Payment Schedule.]

### **Performance Schedule**

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

### **Rates and Payments Schedule**

[Insert the fixed fee for each task. Also, if applicable, 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.]

## 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.

# ATTACHMENT 3 - CITY OF SANTA BARBARA AND CALIFORNIA DEPARTMENT OF HOUSING SB2 GRANT AGREEMENT

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT  
STD 213 (Rev. 03/2019)

AGREEMENT NUMBER  
19-PGP-13581

PURCHASING AUTHORITY NUMBER (if applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME  
City of Santa Barbara

2. The term of this Agreement is:

START DATE  
Upon HCD Approval  
THROUGH END DATE  
12/31/2022

3. The maximum amount of this Agreement is:  
\$310,000.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

EXHIBITS	TITLE	PAGES
Exhibit A	Authority, Purpose and Scope of Work	2
Exhibit B	Budget Detail and Payment Provisions	5
Exhibit C	State of California General Terms and Conditions	GTC - 04/2017
Exhibit D	PGP Terms and Conditions	8
Exhibit E	Special Conditions	0
TOTAL NUMBER OF PAGES ATTACHED		15

Items shown with an asterisk (\*) are hereby incorporated by reference and made part of this agreement as if attached hereto.  
These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

### CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

City of Santa Barbara

CONTRACTOR BUSINESS ADDRESS  
P.O. Box 1990

CITY  
Santa Barbara

STATE  
CA  
ZIP  
93102

PRINTED NAME OF PERSON SIGNING  
George Buell

TITLE  
Community Development Director

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED  
5/11/2020

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME  
Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS  
2020 W. El Camino Ave., Suite 130

CITY  
Sacramento

STATE  
CA  
ZIP  
95833

PRINTED NAME OF PERSON SIGNING  
Synthia Rhinehart

TITLE  
Contracts Manager,  
Business & Contract Services Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE

Synthia Rhinehart  
California Department of General Services Approval (or exemption, if applicable)

DATE SIGNED  
5/22/2020

Exempt per; SCM Vol. 1 4.04.A.3 (DGS memo dated 6/12/1981)

**EXHIBIT A**

**AUTHORITY, PURPOSE AND SCOPE OF WORK**

**1. Authority**

Pursuant to Health and Safety Code section 50470, subdivision (b)(1)(A), the State of California Department of Housing and Community Development (the "Department" or "State") has established the Planning Grants Program ("PGP," or the "Program" as defined in Section 102 of the Guidelines) for Local Governments and Localities. This Standard Agreement, along with all its exhibits (the "Agreement"), is entered into under the authority of, and in furtherance of, the purpose of the Program. Pursuant to Health and Safety Code Section 50470, subdivision (d), the Department has issued the Senate Bill 2 Planning Grants Program Year 1 Guidelines (the "Guidelines") dated December 2018 governing the Program, and a Notice of Funding Availability ("NOFA") dated March 28, 2019.

**2. Purpose**

In accordance with the authority cited above, the Grantee has been awarded financial assistance in the form of a grant from the Program. The Department has agreed to make the grant to provide financial assistance for the preparation, adoption and implementation of a plan for Accelerating Housing Production and Streamlined Housing Production (as defined in Section 102 of the Guidelines) pursuant to the terms of the Guidelines, the NOFA, and this Agreement. By entering into this Agreement and thereby accepting the award of the Program funds, the Grantee agrees to comply with the terms and conditions of the Guidelines, the NOFA, this Agreement, the representations contained in the application, and the requirements of the authority cited above. Based on the representations made by the Grantee, the State shall provide a grant in the amount shown in Exhibit B, Section 2.

**3. Definitions**

Terms herein shall have the same meaning as definitions in Section 102 of the Guidelines.

**4. Scope of Work**

Update planning documents, entitlement processes or zoning ordinances in accordance with the Grantee's Schedule F: Project Timeline and Budget, as provided by the Grantee in the SB 2 Planning Grant Program application used for subsequent approval by the Department.

**5. Department Contract Coordinator**

The Contract Coordinator of this Agreement for the Department is the Housing Policy Development Manager, or the Manager's designee. Unless otherwise informed, any

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**EXHIBIT A**

notice, report, or other communication required by this Agreement shall be mailed by first class mail to the Department Contract Coordinator at the following address:

Department of Housing and Community Development  
Housing Policy Development  
Land Use Planning Unit  
Attention: PGP Program Manager  
2020 West El Camino Avenue, Suite 500  
Sacramento, CA 95833  
P. O. Box 952050  
Sacramento, CA 94252-2050

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**EXHIBIT B**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. Application for Funds**

- A. The Department is entering into this Agreement on the basis of, and in reliance on facts, information, assertions and representations contained in the Application and any subsequent modifications or additions thereto approved by the Department. The Application and any approved modifications and additions thereto are hereby incorporated into this Agreement.
- B. The Grantee warrants that all information, facts, assertions and representations contained in the Application and approved modifications and additions thereto are true, correct, and complete to the best of the Grantee's knowledge. In the event that any part of the Application and any approved modification and addition thereto is untrue, incorrect, incomplete, or misleading in such a manner that would substantially affect the Department's approval, disbursement, or monitoring of the funding and the grant or activities governed by this Agreement, the Department may declare a breach hereof and take such action or pursue such remedies as are provided for breach hereof.

**2. Grant and Reimbursement Limit**

The maximum total amount granted and reimbursable to the Grantee pursuant to this Agreement shall not exceed \$310,000.

**3. Grant Timelines**

- A. This Agreement is effective upon approval by all parties and the Department, which is evidenced by the date signed by the Department on page one, Standard Agreement, STD 213 (the "Effective Date").
- B. All Grant funds must be expended by June 30, 2022.
- C. The Grantee shall deliver to the Department all final invoices for reimbursement on or before February 28, 2022, to ensure meeting the June 30, 2022 deadline. Under special circumstances, as determined by the Department, the Department may modify the February 28, 2022 deadline.
- D. It is the responsibility of the Grantee to monitor the project and timeliness of draws within the specified dates.

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**4. Allowable Uses of Grant Funds**

- A. The Department shall not award or disburse funds unless it determines that the grant funds shall be expended in compliance with the terms and provisions of the Guidelines, the NOFA, and this Agreement.
- B. Grant funds shall only be used by the Grantee for project activities approved by the State that involve the preparation and adoption of project activities as stated in the scope of work, project description, project timeline and other parts of the application, and eligible activities and uses pursuant to Article III of the Guidelines.
- C. Grant funds may not be used for administrative costs of persons employed by the Grantee for activities not directly related to the preparation and adoption of the proposed activity.
- D. The Grantee shall use no more than 5 percent of the total grant amount for costs related to administration of the project.
- E. A Grantee that receives funds under this Program may use a subcontractor. The subcontract shall provide for compliance with all the requirements of the Program. The subcontract shall not relieve the Grantee of its responsibilities under the Program.
- F. After the contract has been executed by the Department and all parties, approved and eligible costs for eligible activities may be reimbursed for the project(s) upon completion of deliverables in accordance with Schedule F: Project Timeline and Budget and the Statement of Work and subject to the terms and conditions of this Agreement.
- G. Only approved and eligible costs incurred for work after the NOFA date, continued past the date of execution and acceptance of the Standard Agreement and completed during the grant term will be reimbursable.
- H. Approved and eligible costs incurred prior to the NOFA date are ineligible.

**5. Performance**

The Grantee shall take such actions, pay such expenses, and do all things necessary to complete the scope of work specified in Exhibit A and as incorporated by the SB 2 Program application in accordance with the schedule for completion set forth therein and within the terms and conditions of this Agreement.

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**6. Fiscal Administration**

- A. The Grantee is responsible for maintaining records which fully disclose the activities funded by the PGP grant. Adequate documentation for each reimbursable transaction shall be maintained to permit the determination, through an audit if requested by the State, of the accuracy of the records and the allowability of expenditures charged to PGP grant funds. If the allowability of expenditure cannot be determined because records or documentation are inadequate, the expenditure may be disallowed, and the State shall determine the reimbursement method for the amount disallowed. The State's determination of the allowability of any expense shall be final, absent fraud, mistake or arbitrariness.
- B. Work must be completed prior to requesting reimbursement. The Department may make exceptions to this provision on a case by case basis. In unusual circumstances, the Department may consider alternative arrangements to reimbursement and payment methods based on documentation demonstrating cost burdens, including the inability to pay for work.
- C. Prior to receiving reimbursement, the Grantee shall submit the following documentation:
- 1) Government Agency Taxpayer ID Form (GovTIN; Fi\$cal form);
  - 2) A Request for Funds on a form provided by the Department; and
  - 3) Any and all documentation requested by the Department in the form and manner as outlined in the following subsection D.
- D. Grantee shall submit all required reimbursement documentation to the following address:
- Department of Housing and Community Development  
Housing Policy Development  
Land Use Planning Unit  
Attention: PGP Program Manager  
2020 West El Camino Avenue, Suite 500  
Sacramento, CA 95833  
P. O. Box 952050  
Sacramento, CA 94252-2050
- E. The Grantee shall submit invoices for reimbursement to the Department according to the following schedule:

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- 1) At maximum, once per quarter; or
- 2) Upon completion of a deliverable, subject to the Department's approval; and
- 3) At minimum, one invoice for reimbursement annually.

The Department will use the 2019 calendar year beginning with January, with first requests for reimbursement accepted on or after September 30, 2019.

- F. The request for reimbursement must be for a minimum of 15 percent of the maximum grant amount awarded. The Department may consider exceptions to the minimum amount requested on a case-by-case basis. All invoices shall reference the contract number and shall be signed and submitted to the Department's Program Manager at the address provided above in Section 6, item D of Exhibit B. Invoices shall include at a minimum the following information:
- 1) Names of the Grantee's personnel performing work;
  - 2) Dates and times of project work;
  - 3) Itemized costs in accordance with the Schedule F: Project Timeline and Budget and Statement of Work, including identification of each employee, contractor, subcontractor staff who provided services during the period of the invoice, the number of hours and hourly rates for each of the Grantee's employees, contractor(s), sub-recipient(s) or subcontractor's staff member(s), authorized expenses with receipts, and contractor, sub-recipient and subcontractor invoices; and
  - 4) Any other documents, certifications, or evidence deemed necessary by the Department prior to disbursement of grant funds.
- G. The Department will reimburse the Grantee directly for all allowable project costs as promptly as the Department's fiscal procedures permit upon receipt of an itemized signed invoice.
- H. The Department recognizes that budgeted deliverable amounts are based upon estimates. Grantees may request, in writing, a budget adjustment across deliverables subject to written approval by the Department, as long as the total budget does not exceed the maximum amount awarded to the Grantee.
- I. Grant funds cannot be disbursed until this Standard Agreement has been fully executed.

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- J. Grant fund payments will be made on a reimbursement basis; advance payments are not allowed. The Grantee, its subcontractors and all partners, must have adequate cash flow to pay all grant-related expenses prior to requesting reimbursement from the Department. The Department may consider alternative arrangements to reimbursement and payment methods based on documentation demonstrating cost burdens, including the inability to pay for work pursuant to Section 601(f) of the Guidelines.
- K. The Grantee will be responsible for compiling and submitting all invoices, supporting documentation and reporting documents. Invoices must be accompanied by reporting materials where appropriate. Invoices without the appropriate reporting materials will not be paid.
  - 1) Supporting documentation may include, but is not limited to; purchase orders, receipts, progress payments, subcontractor invoices, timecards, or any other documentation as deemed necessary by the Department to support the reimbursement to the Grantee for expenditures incurred.
- L. The Grantee will submit for reimbursements to the Department based on actual costs incurred, and must bill the State based on clear and completed objectives and deliverables as outlined in the application, in Schedule F: Project Timeline and Budget, the Statement of Work, and/or any and all documentation incorporated into this Standard Agreement and made a part thereof.
- M. The Department may withhold 10 percent of the grant until grant terms have been fulfilled to the satisfaction of the Department.

**EXHIBIT D**

**PGP TERMS AND CONDITIONS**

**1. Reporting**

- A. During the term of the Standard Agreement the Grantee shall submit, upon request of the Department, a performance report that demonstrates satisfaction of all requirements identified in this Standard Agreement.
- B. Upon completion of all objectives and deliverables required to fulfill this contract pursuant to Schedule F: Project Timeline and Budget and the Scope of Work, Exhibit A, Section 4, and as referred to in Exhibit B, Section 6, subsection K. within this Standard Agreement, the Grantee shall submit a final close out report in accordance with Section 604, subsection (b), and as instructed in Attachment 3 of the December 2018 Planning Grants Program Guidelines. The close out report shall be submitted with the final invoice by the end of the grant term as listed in Exhibit B, Section 3, subsection C.

**2. Accounting Records**

- A. The Grantee, its staff, contractors and subcontractors shall establish and maintain an accounting system and reports that properly accumulate incurred project costs by line. The accounting system shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.
- B. The Grantee must establish a separate ledger account for receipts and expenditures of grant funds and maintain expenditure details in accordance with the scope of work, project timeline and budget. Separate bank accounts are not required.
- C. The Grantee shall maintain documentation of its normal procurement policy and competitive bid process (including the use of sole source purchasing), and financial records of expenditures incurred during the course of the project in accordance with GAAP.
- D. The Grantee agrees that the state or designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Standard Agreement.
- E. Subcontractors employed by the Grantee and paid with moneys under the terms of this Standard Agreement shall be responsible for maintaining accounting records as specified above.

**3. Audits**

- A. At any time during the term of the Standard Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the award. At the

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Department's request, the Grantee shall provide, at its own expense, a financial audit prepared by a certified public accountant. The State of California has the right to review project documents and conduct audits during and over the project life.

- 1) The Grantee agrees that the Department or the Department's designee shall have the right to review, obtain, and copy all records and supporting documentation pertaining to performance of this Agreement.
  - 2) The Grantee agrees to provide the Department or the Department's designee, with any relevant information requested.
  - 3) The Grantee agrees to permit the Department or the Department's designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees who might reasonably have information related to such records and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with statutes, Program guidelines, and this Agreement.
- B. If a financial audit is required by the Department, the audit shall be performed by an independent certified public accountant. Selection of an independent audit firm shall be consistent with procurement standards contained in Exhibit D, Section 8 subsection A. of this Standard Agreement.
- 1) The Grantee shall notify the Department of the auditor's name and address immediately after the selection has been made. The contract for the audit shall allow access by the Department to the independent auditor's working papers.
  - 2) The Grantee is responsible for the completion of audits and all costs of preparing audits.
  - 3) If there are audit findings, the Grantee must submit a detailed response acceptable to the Department for each audit finding within 90 days from the date of the audit finding report.
- C. The Grantee agrees to maintain such records for possible audit after final payment pursuant to Exhibit D, Section 3, subsection E. below, unless a longer period of records retention is stipulated.
- 1) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, all records must be retained by the Grantee, contractors and sub-contractors until completion of the action and resolution of all issues which arise from it. The Grantee shall include in any contract that it enters into in an amount exceeding \$10,000, the Department's right to audit the contractor's records and interview their employees.

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2) The Grantee shall comply with the caveats and be aware of the penalties for violation of fraud and for obstruction of investigation as set forth in California Public Contracts Code Section 10115.10.

D. The determination by the Department of the eligibility of any expenditure shall be final.

E. The Grantee shall retain all books and records relevant to this Agreement for a minimum of (3) three years after the end of the term of this Agreement. Records relating to any and all audits or litigation relevant to this Agreement shall be retained for five years after the conclusion or resolution of the matter.

**4. Remedies of Non-performance**

A. Any dispute concerning a question of fact arising under this Standard Agreement that is not disposed of by agreement shall be decided by the Department's Housing Policy Development Manager, or the Manager's designee, who may consider any written or verbal evidence submitted by the Grantee. The decision of the Department's Housing Policy Development Manager or Designee shall be the Department's final decision regarding the dispute.

B. Neither the pendency of a dispute nor its consideration by the Department will excuse the Grantee from full and timely performance in accordance with the terms of this Standard Agreement.

C. In the event that it is determined, at the sole discretion of the Department, that the Grantee is not meeting the terms and conditions of the Standard Agreement, immediately upon receiving a written notice from the Department to stop work, the Grantee shall cease all work under the Standard Agreement. The Department has the sole discretion to determine that the Grantee meets the terms and conditions after a stop work order, and to deliver a written notice to the grantee to resume work under the Standard Agreement.

D. Both the Grantee and the Department have the right to terminate the Standard Agreement at any time upon 30 days written notice. The notice shall specify the reason for early termination and may permit the grantee or the Department to rectify any deficiency(ies) prior to the early termination date. The Grantee will submit any requested documents to the Department within 30 days of the early termination notice.

E. There must be a strong implementation component for the funded activity through this Program, including, where appropriate, agreement by the locality to formally adopt the completed planning document. Localities that do not formally adopt the funded activity could be subject to repayment of the grant.

F. The following shall each constitute a breach of this Agreement:

1) Grantee's failure to comply with any of the terms and conditions of this Agreement.

2) Use of, or permitting the use of, grant funds provided under this Agreement for any

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ineligible costs or for any activity not approved under this Agreement.

- 3) Any failure to comply with the deadlines set forth in this Agreement unless approved by the Program Manager.

G. In addition to any other remedies that may be available to the Department in law or equity for breach of this Agreement, the Department may at its discretion, exercise the following remedies:

- 1) Disqualify the Grantee from applying for future PGP Funds or other Department administered grant programs;
- 2) Revoke existing PGP award(s) to the Grantee;
- 3) Require the return of unexpended PGP funds disbursed under this Agreement;
- 4) Require repayment of PGP Funds disbursed and expended under this agreement;
- 5) Seek a court order for specific performance of the obligation defaulted upon, or the appointment of a receiver to complete the obligations in accordance with the PGP Program requirements; and
- 6) Other remedies available at law, or by and through this agreement. All remedies available to the Department are cumulative and not exclusive.
- 7) The Department may give written notice to the Grantee to cure the breach or violation within a period of not less than 15 days.

**5. Indemnification**

Neither the Department nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by the Grantee, its officers, employees, agents, its contractors, its sub-recipients or its subcontractors under or in connection with any work, authority or jurisdiction conferred upon the Grantee under this Standard Agreement. It is understood and agreed that the Grantee shall fully defend, indemnify and save harmless the Department and all of the Department's staff from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by the Grantee, its officers, employees, agents contractors, sub-recipients, or subcontractors under this Standard Agreement.

**6. Waivers**

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement, or to require at any time, performance by the Grantee of these provisions, shall in no way be

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construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

**7. Relationship of Parties**

It is expressly understood that this Standard Agreement is an agreement executed by and between two independent governmental entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.

**8. Third-Party Contracts**

- A. All state-government funded procurements must be conducted using a fair and competitive procurement process. The Grantee may use its own procurement procedures as long as the procedures comply with all City/County laws, rules and ordinances governing procurement, and all applicable provisions of California state law.
- B. Any contract entered into as a result of this Agreement shall contain all the provisions stipulated in the Agreement to be applicable to the Grantee's sub-recipients, contractors, and subcontractors. Copies of all agreements with sub-recipients, contracts, and subcontractors must be submitted to the Department's program manager.
- C. The Department does not have a contractual relationship with the Grantee's sub-recipients, contractors, or subcontractors, and the Grantee shall be fully responsible for all work performed by its sub-recipients, contractors, or subcontractors.
- D. In the event the Grantee is partnering with another jurisdiction or forming a collaborative effort between the Grantee and other jurisdictions who are grantees of the SB 2 Planning Grants Program, the Grantee acknowledges that each partner and/or all entities forming the SB 2 Planning Grants Program collaborative are in mutual written agreement with each other but are contractually bound to the Department under separate, enforceable contracts.
- E. In the event the Grantee is partnering with another jurisdiction or forming a collaborative effort with other entities that are not grantees of the SB 2 Planning Grants Program, the Department shall defer to the provisions as noted in subsections 8(B) and 8(C) of this part.

**9. Compliance with State and Federal Laws, Rules, Guidelines and Regulations**

- A. The Grantee agrees to comply with all state and federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the grant, the Grantee, its contractors or subcontractors, and any other grant activity.
- B. During the performance of this Agreement, the Grantee assures that no otherwise qualified person shall be excluded from participation or employment, denied program

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benefits, or be subjected to discrimination based on race, color, ancestry, national origin, sex, gender, gender identity, gender expression, genetic information, age, disability, handicap, familial status, religion, or belief, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 USC 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975 and all implementing regulations.

- C. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all agreements with its sub-recipients, contractors, and subcontractors, and shall include a requirement in all agreements with all of same that each of them in turn include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts they enter into to perform work under the PGP.
- D. The Grantee shall, in the course of performing project work, fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
- E. The Grantee shall adopt and implement affirmative processes and procedures that provide information, outreach and promotion of opportunities in the PGP project to encourage participation of all persons regardless of race, color, national origin, sex, religion, familial status, or disability. This includes, but is not limited to, a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, as required by 24 CFR 92.351.

**10. Litigation**

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Grantee shall notify the Department immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

**11. Changes in Terms/Amendments**

This Agreement may only be amended or modified by mutual written agreement of both parties.

**12. State-Owned Data**

- A. Definitions

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1) Work:

The work to be directly or indirectly produced by the Grantee, its employees, or by and of the Grantee's contractor's, subcontractor's and/or sub-recipient's employees under this Agreement.

2) Work Product:

All deliverables created or produced from Work under this Agreement including, but not limited to, all Work and Deliverable conceived or made, or made hereafter conceived or made, either solely or jointly with others during the term of this Agreement and during a period of six months after the termination thereof, which relates to the Work commissioned or performed under this Agreement. Work Product includes all deliverables, inventions, innovations, improvements, or other works of authorship Grantee and/or Grantee's contractor subcontractor and/or sub-recipient may conceive of or develop in the course of this Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret or other legal protection.

3) Inventions:

Any ideas, methodologies, designs, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by the Grantee or jointly with the Grantee's contractor, subcontractor and/or sub-recipient and/or Grantee's contractor, subcontractor, and/or sub-recipient's employees with one or more employees of the Department during the term of this Agreement and in performance of any Work under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in performance of Work issued under this Agreement.

B. Ownership of Work Product and Rights

- 1) All work Product derived by the Work performed by the Grantee, its employees or by and of the Grantee's contractor's, subcontractor's and/or sub-recipient's employees under this Agreement, shall be owned by the Department and shall be considered to be works made for hire by the Grantee and the Grantee's contractor, subcontractor and/or subrecipient for the Department. The Department shall own all copyrights in the work product.
- 2) Grantee, its employees and all of Grantee's contractor's, subcontractor's and sub-recipient's employees agree to perpetually assign, and upon creation of each Work Product automatically assigns, to the Department, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Grantee's contractor, subcontractor and/or subrecipient from the Department. From time to time upon the Department's request, the Grantee's contractor, subcontractor and/or subrecipients, and/or its employees, shall confirm such

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Prep. Date: February 28, 2020

**EXHIBIT D**

assignments by execution and delivery of such assignment, confirmations or assignment or other written instruments as the Department may request. The Department shall have the right to obtain and hold in its name all copyright registrations and other evidence of rights that may be available for Work Product under this Agreement. Grantee hereby waives all rights relating to identification of authorship restriction or limitation on use or subsequent modification of the Work.

- 3) Grantee, its employees and all Grantee's contractors, subcontractors and sub-recipients hereby agrees to assign to the Department all Inventions, together with the right to seek protection by obtaining patent rights therefore and to claim all rights or priority thereunder and the same shall become and remain the Department's property regardless of whether such protection is sought. The Grantee, its employees and Grantee's contractor, subcontractor and /or subrecipient shall promptly make a complete written disclosure to the Department of each Invention not otherwise clearly disclosed to the Department in the pertinent Work Product, specifically noting features or concepts that the Grantee, its employees and/or Grantee's contractor, subcontractor and/or subrecipient believes to be new or different.
- 4) Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications and estimates, produced as part of this Agreement will automatically be vested in Department and no further agreement will be necessary to transfer ownership to Department.

**13. Special Conditions**

The State reserves the right to add any special conditions to this Agreement it deems necessary to assure that the policy and goals of the Program are achieved.