



***REQUEST FOR PROPOSAL
FOR
CITY ATTORNEY SERVICES***

DEADLINE FOR PROPOSALS: February 6, 2023

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GENERAL INFORMATION

The City of Arroyo Grande is located on California's central coast, approximately half way between Los Angeles and San Francisco, and has a population of approximately 18,441. The City is a General Law city, operating under the City Council/City Manager form of government. Arroyo Grande is a full-service city, with police, streets, engineering, planning, building, parks, recreation, water, and sewer services. Fire services are provided through the Five Cities Fire Authority, a joint powers authority established between the City of Arroyo Grande, the City of Grover Beach, and the Oceano Community Services District.

The City Attorney is appointed by and serves at the will and pleasure of the City Council. The City Manager, who is also appointed by the City Council, is responsible for the day-to-day operations, as well as establishing and maintaining effective operations.

The City's budget for FY 2022-23 is \$48.3 million, of which \$23.3 million represents the City's General Fund. Actual expenditures for legal services, including special legal services, for FY 2020-21 was \$250,625 and for FY 2021-22 was \$262,145. The City's FY 2022-23 Annual Budget includes an appropriation of \$290,000 for legal services. The City is represented in water law and labor matters, as well as tort defense, by special counsel.

The City of Arroyo Grande is requesting interested full-service law firms with experience advising and representing California municipalities to submit proposals to provide legal services to the City of Arroyo Grande. An individual from the firm will be designated as the City Attorney, with other firm attorneys to be available as appropriate. The firm must possess a broad knowledge of municipal law, including open meetings laws, contracts, planning and land use, real estate, revenue laws, the Public Records Act, and code enforcement. Familiarity with labor law, state and federal court practice, tort defense, workers' compensation, and water law is also expected, although the City retains the right to continue retaining specialized counsel.

The City will select and negotiate with the qualified firm(s) whose competitive proposals are responsive to this RFP and are in the best interest of the City. Any competitive proposal submitted in response to this RFP must provide sufficient detail and information to complete an evaluation of its merits. The instructions contained herein must be followed in order for competitive proposals to be considered responsive to this RFP. The City reserves the right to reject any, or all proposals.

Schedule of Proposal activities *(ALL TIMES PACIFIC)*

Schedule	
Distribution of RFP	January 3, 2023
Deadline for submission of questions to be addressed at the Pre-Proposal Zoom meeting	January 20, 2023
Optional Pre-Proposal Zoom meeting	January 23, 2023 1:00 pm
Proposal submission	February 6, 2023 5:00 pm
Proposal review	February 7 – February 17, 2023
Notification to all proposers	By February 22, 2023
Oral presentations, as needed	Week of February 27, 2023
Contract approval by City Council	March 28, 2023
Services to commence	By April 1, 2023

The City has made every effort to include sufficient information within this Request for Proposal for a firm to prepare a responsive, comprehensive proposal. In order to achieve an equitable dissemination of information, a pre-proposal zoom meeting will be held to allow all interested firms/consultants to ask questions for the mutual benefit of all involved. The timing of the proposal process is subject to change, depending on the needs of the City, but is anticipated as follows:

- a) **Distribution of Request for Proposals:** January 3, 2023
- b) **Optional Pre-proposal Zoom meeting:** City staff will meet collectively with firm/representatives seeking additional information about the proposal process and the RFP. All firms interested in submitting a proposal are encouraged to attend the pre-proposal teleconference. The Zoom is scheduled for **January 23, 2023**, beginning at **1:00 pm (PST)**. Zoom log in information can be obtained by contacting **Aleah Bergam** at **abergam@arroyogrande.org** no later than January 22, 2023. Additionally, any questions to be addressed at the zoom meeting should be submitted via email to **Aleah Bergam** at **abergam@arroyogrande.org** no later than January 20, 2023.
- c) **Proposal Submission:** Proposals must be clearly marked and delivered directly to the City Manager's Office no later than **5:00 pm, February 6, 2023**. Late submissions after the deadline will not be accepted. A total of one (1) hard copy and an electronic version of the identical proposal must be submitted and labeled as follows:

City of Arroyo Grande
Attention: Whitney McDonald, City Manager
City Attorney Services RFP
300 East Branch Street
Arroyo Grande, CA 93420

For the electronic submission, email **Aleah Bergam** at **abergam@arroyogrande.org** no later than February 1, 2023 to receive a Dropbox invitation for the electronic proposal upload.

- d) **Proposal Review:** A review committee will evaluate each proposal submitted. It is anticipated that the review process will be completed by February 17, 2023.
- e) **Notification to all proposers:** We anticipate sending written notification to all firms regarding the outcome of the review and contract award process by February 22, 2023.
- f) **Oral Presentations, as needed:** During the notification to all proposers, finalists will be notified to schedule an oral interview during the week of February 27-March 3, 2023. Oral Interviews will take place either in person or via Zoom.
- g) **Notification to finalists:** All finalists will be notified of final decision by March 28, 2023. Upon written request, we will provide a copy of the successful proposal once the contract is executed.

DISCRETION AND LIABILITY WAIVER

The City reserves the right to exercise discretion, and apply its judgment with respect to all proposals submitted.

The City reserves the right to reject all proposals, either in part or in its entirety, or to request and obtain, from one or more of the consulting firms submitting proposals, supplementary information as may be necessary for City staff to analyze the proposals.

The consultant, by submitting a response to this RFP, waives all right to protest or seek any legal remedies whatsoever regarding any aspect of this RFP. Although, it is the City's intent to choose only a small number of most qualified legal teams to interview with the City, the City reserves the right to choose any number of qualified finalists.

This RFP does not commit the City to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to this RFP, or to procure or contract for work.

All proposals submitted in response to this RFP become the property of the City and public records and, as such, may be subject to public review. The City reserves the right to cancel, in part or in its entirety, this RFP including, but not limited to: selection procedures, submittal date, and submittal requirements. If the City cancels or revises the RFP, all interested firms will be notified using email.

OUTLINE OF SERVICES TO BE PROVIDED

Basic Services

Basic services, for the purpose of this proposal, shall include those legal services generally understood within the field of municipal law to fall within the category of "general counsel" work, and shall include, but not necessarily limited to, the following:

1. Routine legal advice, telephone, and personal consultations with the City Council, City Manager, and department heads, or authorized representatives.
2. Assistance in the preparation and review of ordinances, resolutions, agreements, contracts, forms, notices, certificates, deeds, and other documents required by the City.
3. Attendance at all City Council regular and special meetings, study sessions, and closed sessions. Regular City Council meetings are held on the second and fourth Tuesday of each month, beginning at 6:00 p.m. and may be preceded by a closed session typically beginning at 5:00 p.m.
4. Serve as legal counsel to the Successor Agency and other such bodies as may be created and represented by or for the City Council, and which meet regularly or periodically or on an as-needed basis.
5. Attendance at Planning Commission regular meetings, special meetings, and study sessions, as needed. The Planning Commission meets the first and third Tuesday of each month, beginning at 6:00 p.m.
6. Attendance at all other board, commission, and committee meetings upon request.
7. Attendance at weekly executive staff meetings, and other meetings with City staff upon request.
8. Legal advice and opinions concerning legal matters that affect the City.
9. Guidance on City personnel matters, including employee disciplinary and grievance matters.
10. Legal work pertaining to property acquisitions, property disposals, public improvements, easement dedications, and right-of-way abandonments.
11. Legal advice and opinions concerning municipal revenue issues, including Proposition 218, Mitigation Fee Act, and general and special tax matters.
12. Enforcement of City codes, zoning regulations, and building standards through administrative and judicial actions.

13. Monitoring of pending and current state and federal legislation and court decisions, as appropriate.
14. Perform City prosecutor functions on the Arroyo Grande Municipal Code violations and code enforcement operations.
15. Coordination, monitoring, and reporting of outside legal counsel work, as needed, and as directed by the City Council and City Manager.
16. Provide established regular office hours at City Hall, preferably once a week for approximately three (3) hours.

Special Services

The law firm selected by the City will also be required to furnish special legal services on an “as-needed” basis when directed by the City Manager. The City retains the right to use the services of separate legal counsel for special services as it has historically, including water law and labor counsel.

Special services may include, but are not limited to: research, preparation and follow-through on various matters including public financing, public contracts and construction, law enforcement, including *Pitchess* motions, and matters involving litigation affecting the City, such as California Environmental Quality Act litigation. This may also include collection of performance bonds on construction contracts and pursuing litigation to collect damages due to the City. Additionally, this may include litigation related to general liability and land use decisions.

FORMAT OF PROPOSAL

Transmittal Letter: The letter should provide a summary of the proposal, concisely describing the services provided. The letter should be addressed to **Whitney McDonald**.

Firm Profile: Please respond to the following questions:

- 1) Please describe your firm’s qualifications for providing City legal services. Include in your Response:
 - a) The overall capabilities, qualifications, training, and areas of expertise for each of the partners/principals and associates that may be assigned to work with the City, including but not limited to:
 - i) Name of individual(s) with resumes;
 - ii) Length of employment with firm;
 - iii) Specialization;
 - iv) Legal training;
 - v) Scholastic honors and professional affiliations;
 - vi) Date of admittance to California Bar;
 - vii) Years of practice;
 - viii) Municipal or other local public sector experience;
 - ix) Knowledge of, and experience with California Municipal Law;
 - x) Years and statement of other types of clientele represented;
 - xi) Litigation experience and track record;
 - xii) Knowledge and practice of law relating to land use and planning, California Environmental Quality Act (CEQA), National Environmental Protection Act (NEPA), general plans, real estate, environmental issues, hazardous waste, and other related law;
 - xiii) Experience in the area of personnel, workers’ compensation, general liability, and employee relations;
 - xiv) Experience in the area of contracts and franchises;

- xv) Experience in the area of municipal revenue generation, including Proposition 218, Mitigation Fee Act, and tax mechanisms;
 - xvi) Experience in the preparation and review of ordinances and resolutions;
 - xvii) Experience in the area of the Public Records Act, the Brown Act, Political Reform Act and the Elections Code; and
 - xviii) If the firm, or any of the attorneys employed by the firm, have ever been successfully sued for malpractice, been the subject of complaints filed with the State Bar, or had discipline imposed by the State Bar, please provide information on the nature of the incident, the dates on which the matter began and was concluded, and the results of the situation.
- b) Specify the individual that you propose for appointment as City Attorney and reasons for recommendation.
 - c) Specify the individual(s), if any, that you would propose as Assistant or Deputy City Attorney, and/or who would be designated as competent, substitute/backup legal representation for the City in the event of the absence or unavailability of the City Attorney.
 - d) Describe how you would structure the working relationship between the City Attorney and the City Council, City Manager, Department Heads, and other members of staff.
 - e) Specify intended office location and accessibility to the City's needs, including proposal for hours and day(s) of week for regular established office hours at City Hall.
 - f) Describe systems/mechanisms that would be established to ensure timeliness of response to City Council and City Staff.
 - g) Define the standard time frames for response by the City Attorney to direction and/or inquiry from the City Council/City Manager.
 - h) Describe systems/mechanisms that would be established for monthly reporting of status of projects, requests, and litigation.
 - i) Describe the process for transmittal of requests and other material to City Attorney.
 - j) Describe the staffing of your office. Include any changes you would propose, now or in the future, should you be awarded a contract to provide legal services to the City.
 - k) Describe your preference for method of payment and your procedure for billing of work and expenses and any other accounting requirements.
 - l) It is anticipated that the City will contractually require monthly-itemized statements for all services and will subject these statements to audit at least annually. Describe how you would provide for this reporting.
 - m) Describe the computer resources currently utilized within your office. It will be a requirement that the City Attorney utilize Microsoft Word for word-processing for all documents.
 - n) The City will require the firm with which a contract is established, prior to commencement of work, to provide evidence of appropriate professional liability insurance, errors and omissions insurance, and workers compensation insurance coverage as needed. Describe how you would provide same and in what coverage amounts. Such coverage must be provided by an insurance company(ies) authorized to do business in the State of California. Certificates must name the City as an Additional Insured and shall provide that contractor's policy is primary over any insurance carried by the City and that the policy will not be cancelled or materially changed without thirty (30) days prior notice in writing to the City. The successful firm must agree, if awarded a contract as a result of its proposal, to indemnify and hold harmless the City, its officers, agents, and employees from any and all claims and losses accruing or resulting to persons engaged in the work contemplated by its proposal, or to persons who may be injured or damaged by the firm, or its agents in the performance of the work. Prior to commencement of any work, these and other provisions will be established contractually.

- 2) Additionally, please describe your firm's qualifications and individual(s), if any, which you would propose to provide the following special legal services:
 - a) Code enforcement, including prosecution of Municipal Code citations;
 - b) Labor and employment, including disability law rights and obligations, workers' compensation, employee relations and negotiations and employee discrimination claims;
 - c) Public financing;
 - d) Public contracts and construction.
- 3) Specify the individual(s), if any, that you would propose as serving as a police liability/litigation specialist. This will include Pitchess motions. Please describe your range of experience in these matters.

Current Practices/Conflict of Interest

1. Please list any political contributions of money, in-kind services, or loans made to any member of a City Council within the last three years by the applicant law firm and all of its attorneys (including the attorney being proposed to represent the City of Arroyo Grande).
2. Please list all public clients for which you or your firm currently provide services, or are under retainer.
3. Please list all public clients for which you or your firm previously provided services for over the last five years.
4. Please list all current or former clients residing in, having an interest in a business, or owning an interest in property within the City of Arroyo Grande within the past three years.
5. For the firm, and/or the proposed City Attorney, please specify current or known future professional commitments so the City may evaluate your continuing availability for providing legal services to the City.

Additional Information: Describe any other information not previously mentioned that the consultant believes should be given consideration. This could include any additional tasks not included in the Required Services section above.

References: Please provide three (3) professional and three (3) personal references for the individual recommended for appointment as the City Attorney. Include with each, the name, address, and work telephone number of the reference.

Pricing: Provide a fee schedule for providing legal services within the scope of work as outlined in the proposal and beyond. The fee schedule should include the following:

- i. The proposed hourly rate for Basic Services, which, for the purpose of this proposal, shall include those legal services generally understood within the field of municipal law to fall within the category of "general counsel" work as described in the Basic Services section above.
- ii. The proposed hourly rates for Special Services, which, for the purpose of this proposal, shall include those legal services generally understood within the field of municipal law to fall within the category of special municipal services, also described above under the Special Services section.
- iii. Type and unit rates for reimbursement of expenses; for example, rate for mileage, reproduction of documents or word processing charges.

Addenda

The City may modify, clarify or interpret the Request for Proposals by sending an addendum to each Firm/Individual(s) that has been issued a proposal package. Any such addendum shall become a part of the package and of any contract awarded. The City is not responsible for any other explanation or interpretation.

EVALUATION OF PROPOSALS

Proposals will be evaluated based on the following criteria:

1. Depth and breadth of experience and expertise in the practice of law, most specifically in those areas most often encountered in municipal government operations;
2. Capability to perform legal services promptly and in a manner that permits the City Council and staff to meet established deadlines and to operate in an effective and efficient manner;
3. Degree of availability for quick response to inquiries that arise out of day-to-day operating questions or problems;
4. Degree to which firm and individual attorneys stay current through continued professional development and active communication with practitioners in the municipal law field;
5. Communication skills;
6. Cost of services; and
7. Other qualifications/criteria as deemed appropriate by the City Council.

Proposals will be screened and ranked by the City staff and/or City Council Subcommittee. During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from proposing firms, or to allow corrections of errors or omissions. References and qualifications of the top firms will be verified. The City Council will conduct interviews of the top candidates and make the final selection.

The successful Proposer will be required to enter into a Consultant Services Agreement with the City of Arroyo Grande. Please provide a proposed form of agreement for the services. For reference, the City's currently used Consultant Services Agreement (Attachment A) is included with this RFP. The contract will require that the law firm selected as City Attorney maintain general liability, automobile, workers' compensation and errors and omissions insurance. The contract will also contain provisions requiring the selected law firm to indemnify the City and providing that the City Attorney is an independent contractor serving at the will and pleasure of the City Council. Provisions will also be included in the contract allowing the City Council to terminate the agreement, at its sole and entire discretion, upon the provision of notice.

FINAL COMMENTS

The City reserves the right to reject any and all proposals, cancel all or part of this RFP, waive any minor irregularities and to request additional information from proposing firms. By requesting proposals, the City is in no way obligated to award a contract or pay expenses of the proposing consultant in connection with the preparation or submission of a proposal.

The City's decision to award a contract will be based many factors including but not limited to service, cost, experience, and quality. No single factor, such as cost, will determine the final decision to award.

The City of Arroyo Grande appreciates the efforts all the consultants have put forth in responding to the Request for Proposal.

ATTACHMENT A - SAMPLE CITY CONTRACT

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT FOR CONSULTANT SERVICES ("Agreement"), is made and effective as of _____ 2023, between _____ ("Consultant"), and the **CITY OF ARROYO GRANDE**, a Municipal Corporation ("City"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on _____, 2023 and shall remain and continue in effect until _____, 2023, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform the tasks described and comply with all terms and provisions set forth in Exhibit "A", attached hereto and incorporated herein by this reference.

3. **PERFORMANCE**

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

4. **AGREEMENT ADMINISTRATION**

City's _____ shall represent City in all matters pertaining to the administration of this Agreement. _____ shall represent Consultant in all matters pertaining to the administration of this Agreement.

5. **PAYMENT**

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

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

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at

least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

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

7. TERMINATION ON OCCURRENCE OF STATED EVENTS

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

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

8. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

9. LAWS TO BE OBSERVED. Consultant shall:

(a) Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incidental to the due and lawful prosecution of the services to be performed by Consultant under this Agreement;

(b) Keep itself fully informed of all existing and proposed federal, state and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this Agreement, any materials used in Consultant's performance under this Agreement, or the conduct of the services under this Agreement;

(c) At all times observe and comply with, and cause all of its employees to observe and comply with all of said laws, ordinances, regulations, orders, and decrees mentioned above;

(d) Immediately report to the City's Contract Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this Agreement.

(e) The City, and its officers, agents and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

10. **OWNERSHIP OF DOCUMENTS**

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

11. **INDEMNIFICATION**

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

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subContractors of Consultant.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subContractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.

12. **INSURANCE**

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

13. **INDEPENDENT CONSULTANT**

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

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

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

14. **UNDUE INFLUENCE**

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

15. **NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

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

16. **RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

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

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subContractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

17. **NOTICES**

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

To City:

City of Arroyo Grande
City Manager
300 E. Branch Street
Arroyo Grande, CA 93420

To Consultant:

18. **ASSIGNMENT**

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

19. **GOVERNING LAW**

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

20. **ENTIRE AGREEMENT**

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

21. **TIME**

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

22. **CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL**

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

23. **CONSTRUCTION**

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

24. **AMENDMENTS**

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

25. **AUTHORITY TO EXECUTE THIS AGREEMENT**

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

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

CITY OF ARROYO GRANDE

CONSULTANT

By: _____
Caren Ray Russom, Mayor

By: _____

Attest:

Its: _____
(Title)

Jessica Matson, City Clerk

Approved As To Form:

Timothy J. Carmel, City Attorney

EXHIBIT A

SCOPE OF WORK

EXHIBIT B

PAYMENT SCHEDULE

EXHIBIT C

INSURANCE REQUIREMENTS

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

Consultant shall provide the following types and amounts of insurance:

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

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

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

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one

insured against another. Coverage shall be applicable to City for injury to employees of Consultant, subContractors or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$_____ per occurrence.

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

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

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

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Consultant also agrees to require all Consultants, and subContractors to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all Consultants and subContractors to do likewise.

3. All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

5. No liability policy shall contain any provision or definition that would serve to eliminate so-called “third party action over” claims, including any exclusion for bodily injury to an employee of the insured or of any Consultant or subcontractor.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City’s protection without City’s prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant’s general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.

8. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will “endeavor” (as opposed to being required) to comply with the requirements of the certificate.

9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subContractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to City.

10. Consultant agrees to ensure that subContractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subContractors and others engaged in the project will be submitted to City for review.

11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any Consultant, subContractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant’s existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At the time the City shall review options with the

Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

12. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increase benefit to City.

13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

14. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirements in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

15. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.

16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

17. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.

18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

19. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

20. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

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