



THE CITY OF
HALF MOON BAY
CALIFORNIA

REQUEST FOR PROPOSALS (RFP)

for Preparation of an Environmental Impact Report
for the Dunes at Half Moon Bay Project

Date of Issue: Friday March 30, 2018

Due Date: Monday April 30, 2018

REQUEST FOR INITIAL STUDY PROPOSALS

The City of Half Moon Bay is requesting proposals from qualified professional environmental practitioners to prepare an Environmental Impact Report (EIR) pursuant to the requirements of the California Environmental Quality Act (CEQA) for the Dunes at Half Moon Bay Project proposed to be located in the Surf-Dunes Beach Planned Development in Half Moon Bay.

1.1 PROJECT DESCRIPTION AND SITE INFORMATION

The City of Half Moon Bay is located fully within the California Coastal Zone, and the project site is located within the California Coastal Commission's appeals jurisdiction. The project consists of a hotel and related facilities on approximately 26 acres south of Young Avenue and west of Cabrillo Highway (State Highway 1) along with an approximately 21 acre Recreational Vehicle (RV) park and campground north of Young Avenue. The properties are zoned Planned Unit Development (PUD) and are within the Surf Beach Dunes Beach PUD. These parcels are primarily undeveloped and have limited infrastructure.

The project proposes construction of a hotel with an approximately 15,000 square-foot conference and event space and approximately 200 guestrooms spread throughout the site in clusters of one-and two-story buildings south of Young Avenue. A restaurant and bar are proposed within the hotel. Proposed recreational facilities include a fitness room, outdoor patio, fire pits, landscaped open space and walking trails. A spa facility with treatment rooms is proposed at the northwest portion of the site. A small general store and a five-acre working farm are proposed south of Young Avenue, bordering Highway 1. Car-parking for the hotel and guest room complex is proposed to be primarily provided in a two-level parking structure at the southeasterly portion of the site. Circulation within the hotel grounds is proposed to primarily be by foot or bicycle with electric golf carts available for transporting luggage.

A recreational vehicle (RV) park and campground is proposed north of Young Avenue. The RV park and campground is proposed to consist of approximately 170 RV/campground sites, along with a 5,000 square foot clubhouse with bathrooms, showers, laundry facilities, barbeque areas, an indoor lounge area, bicycle rentals, an outdoor pool and a small retail store. RV spaces vary from 2,100 to 3,675 square feet with full utility hook-ups.

Vehicle access is proposed from Highway 1 via Young Avenue. It is anticipated that significant improvements to Young Avenue at Highway 1 will be required. Walking trails are proposed within the project, connecting to the nearby Coastal Trail as well as the existing State Beach and Highway 1. Young Avenue is identified as a coastal access point and a visual resource area in the Half Moon Bay Local Coastal Program.

The project includes utility undergrounding and on-site stormwater detention green infrastructure. The preliminary project site plans are available at the following website link: <http://www.hmbcity.com/287/Bid-RFP-Center>

As noted, the subject site is two project areas: a primarily vacant approximately 21-acre site located north of the intersection of Highway 1 and Young Avenue and an approximately 26-acre site primarily vacant site located south of Young Avenue (APNs 048-140-100, 048-140-080, 048-140-140, 048-140-150, 048-140-070, 048-140-120 south of Young Avenue and all 200 lots of the unimproved Surf Beach Dunes subdivision north of Young Avenue, 048-134-090 through APN 048-156-280 (100 Young Avenue).

The project site is bounded by the Cabrillo Highway (State Highway 1) on the east with single-family homes and agricultural uses further east, a horse ranch and a few single-family homes to the south, Dunes State Beach to the west, single-family homes to the north and Roosevelt State beach to the northwest. The site is located within the PUD Planned Unit Development Zoning District and the Planned Development District Local Coastal Program Land Use Plan designation.

The project will require approval by the City of a Specific Plan, Coastal Development Permit(s), Use Permit(s), Architectural and Site and Design Review, Tentative Parcel Map, and Tree Removal Permit. The Specific Plan will also require certification by the California Coastal Commission.

1.2 SCOPE OF REQUESTED SERVICES

- a. **Kick-off Meeting.** Attend a project kick-off meeting with City staff.
- b. **Background Information.** Review relevant City ordinances and policy documents, including Municipal Code Chapters 14.37, 18.20, 18.36, 18.37 and 18.38 (available at: <http://www.codepublishing.com/CA/HalfMoonBay/#!/HalfMoonBay18/HalfMoonBay18.html>), the Local Coastal Program (including Chapter 9, Policy 9.3.18 – L.C. Smith), and relevant General Plan Elements (http://www.half-moonbay.ca.us/index.php?option=com_content&view=article&id=72&Itemid=80). Provide a written request for any additional project information needed for the environmental analysis.
- c. **Notice of Preparation.** Prepare an Administrative Draft and Final Notice of Preparation (NOP) with a site location map for circulation to public agencies

and interested members of the public. Revise the Administrative Draft NOP as necessary in response to City comments.

Deliverables:

1. Administrative Draft NOP [one (1) electronic copy]
2. Final NOP [one (1) electronic copy]; and ten (10) hard copies delivered to the State Clearinghouse.

- d. Public Scoping Meeting.** Attend one public scoping meeting. Prepare a public notice and a Power Point presentation for the scoping meeting, submit for review by City staff, and revise as necessary.

Deliverables:

1. Draft Power Point presentation [one (1) electronic copy]
2. Final Power Point presentation [one (1) electronic copy]
3. Scoping Meeting Public Notice [one (1) electronic copy]

- e. Technical Studies.** A Biological Resources Assessment (BRA) has been prepared for the project and is available at the following link:

www.hmbcity.com/287/Bid-RFP-Center

Provide a peer review of the BRA to ensure it includes adequate analysis to support the EIR in conformance with the California Coastal Act, the City's Local Coastal Program, CEQA, and perform any additional required analysis.

Prepare additional technical analyses needed to support the EIR, including but not limited to Traffic, Noise, Air Quality, Greenhouse Gas, Cultural Resources evaluation and Visual/Aesthetic studies including lighting. Due to the project's sensitive coastal location, Visual/Aesthetics is a central issue for the environmental analysis. In assessing potential visual impacts, the consultant shall prepare appropriate visual representations of the project from various vantage points, utilizing such techniques as visual simulations and interactive media.

Deliverables:

1. Administrative and final draft of and peer review of the biological resources evaluation and other studies, identifying any additional required analysis [one (1) electronic copy].

- f. Administrative Draft EIR (ADEIR).** Prepare an ADEIR for review by the City, incorporating appropriate technical studies in conformance with the

California Coastal Act, the Half Moon Bay Local Coastal Program, CEQA and Municipal Code Chapter 18.38 (Coastal Resource Conservation Standards) for review by City staff. Revise the ADEIR as necessary to respond to City comments. Two rounds of ADEIR submittals for staff review are anticipated.

Deliverables:

1. 1st and 2nd ADEIRs [three (3) hard copies and one (1) electronic copy].

- g. Draft EIR.** Prepare a Draft EIR, supported by appropriate technical studies, for distribution to the State Clearinghouse and for public review.

Deliverables:

1. DEIR and supporting technical studies as approved by the City [ten (10) hard copies delivered to the State Clearinghouse, and up to ten (10) hard copies and one (1) electronic copy delivered to the City].

- h. Mitigation Monitoring and Reporting Program (MMRP).** Prepare an Administrative Draft MMRP in conformance with the requirements of CEQA for review by the City, and a Draft MMRP, revised as necessary to respond to City comments, for incorporation into the Draft EIR.

Deliverables:

1. Administrative Draft MMRP [One (1) electronic copy]; and
2. Draft MMRP included in the Draft EIR.

- i. Notices.** Prepare all required notices to support the City's preparation and consideration of the CEQA document, including a Notice of Availability (NOA) and Notice of Determination (NOD).

Deliverables:

1. NOA [one (1) electronic copy]; and
2. NOD [one (1) electronic copy].

- j. Final EIR.** Prepare responses to comments and any necessary revisions to the Draft EIR for inclusion in the Final EIR for review by the City and revise as necessary in response to City direction. In conformance with CEQA Guidelines Section 15088, if the responses to comments make important changes in the information contained in the text of the Draft EIR, highlight the revisions directly in the text of the EIR.

Deliverables:

1. Administrative Final EIR [one (1) electronic copy].
2. Final EIR [one (1) electronic copy and up to fifteen (15) hard copies].

- k. **Public Hearing.** Attend up to three (3) public hearings to respond to questions regarding the environmental document and the impact analysis.
- l. **Final Bound EIR.** When the decision-making process for the project is complete, provide a Final EIR that includes the responses to comments and integrates any text amendments into the document.

Deliverable:

- 1. Final EIR [one (1) electronic copy and one (1) hard copy].

Note that for all document deliverables, the City requires electronic copies to be provided in both Microsoft Word and Adobe PDF format.

1.3. PROPOSAL SUBMITTAL REQUIREMENTS

The proposals shall be no longer than fifteen (15) pages, not counting resumes, schedule and budget. The proposal is an opportunity for the proposing firm to demonstrate their approach to presenting well crafted, to-the-point, documents accessible to Half Moon Bay's interested community members.

- a. Letter, signed by person authorized to bind firm by contract, introducing your firm and summarizing your general qualifications including: firm's name, address, telephone number, contact's e-mail, short synopsis of your proposal and credentials to deliver the services sought under the RFP.
- b. Names of key personnel assigned to this project, their respective titles, experience, and length of experience providing relevant services. Please clearly identify the primary contact for the proposal.
- c. Identify three (3) successfully completed CEQA documents that demonstrate your experience and knowledge to complete the work specified in this RFP. The City is especially interested in firms with recent, relevant experience in coastal communities and with resort projects. Include the following information for each project:
 - Agency or company for which work was performed;
 - General description of the scope of work; and
 - Name of agency or company representative responsible for project review and name, phone, and e-mail of the contact named as a reference.
- d. Provide a minimum of three (3) references from within the past five (5) years, preferably of a local government/city similar in size to Half Moon Bay or with a project similar to the one that is the subject of this RFP. For each reference

provide: entity name, customer contact information (name, title, phone and e-mail), scope of work, project start/end date and website URL.

- e. Include a detailed plan for the services to be provided, along with deliverables to be provided at each step, with a corresponding time line, including meetings with the community and City staff. The work plan should be consistent with the scope of work presented above; however, the Consultant may suggest changes where appropriate.
- f. Provide a fee estimate, on a task-by-task basis, and include a spreadsheet identifying personnel, hourly rates of each staff person, project responsibilities, estimated amount of time expected for each task, any non-personnel costs, and an overall not-to-exceed budget amount.
- g. Proposers are encouraged to describe any special resources that they or their team members would bring to the project that would set them apart as most qualified for this project.
- h. Identify additional information needed to complete the requested work.

1.4 PREPROPOSAL CONFERENCE

The City will host a preproposal conference on Friday April 13, 2018 at 2:00 PM. Proposing firms should contact the project planner to confirm attendance and additional details.

1.5 PROPOSAL PROCESS

All responses to this RFP that meet the submittal requirements will be evaluated by a review panel comprised of City staff. The evaluation committee will identify a short-list of the best qualified consultants. The short-list of consultants may be asked to participate in interviews. Interviews will be conducted in Half Moon Bay.

1.6 EVALUATION CRITERIA

Selection of the environmental consultant will be based upon the following factors:

- Relevant work experience;
- Qualifications of key staff;
- Technical approach and understanding of the work to be performed;
- Cost of services to be performed; and
- Ability to complete the EIR in a timely manner

1.7 SUBMITTAL DATE

Please provide three (3) hard copies and one electronic copy of the information requested no later than April 30, 2018 at 5:00 p.m. to:

Jill Ekas
Community Development Director
City of Half Moon Bay
501 Main Street
Half Moon Bay, CA, 94019

1.8 GENERAL REQUIREMENTS

a. Disclosures

Public Records and Proprietary Information

Proposers' attention is drawn to the fact that all proposal documents submitted are subject to California Code Section 6250 et seq., commonly known as the Public Records Act. Information contained in the proposals may be made public after the review process has been completed, negotiations have concluded, and a recommendation for award has been officially placed on the agenda for City council consideration, and/or following award of contract, if any, by the City Council.

Reference Checks

The City reserves the right to make such reference checks as it deems necessary to determine the ability of the proposer to perform the work. The City reserves the right to reject any proposal if the reference checks fail to satisfy the City that such proposer is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.

b. Stipulations

The City is not responsible for any expenses which proposers may incur in preparing and submitting the proposal. The City will not be liable for any costs incurred by the proposers that are related to the RFP process; this includes production of the proposal, interviews/presentations, travel, or accommodations. The City reserves the right to request or negotiate modifications to the proposals that are deemed appropriate. All proposals received from proposers in response to this RFP will become the property of the City and will not be returned to the proposers. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of the City. The City reserves the right to reject any and all proposals and to waive minor irregularities. The City also reserves the right to seek new proposals.

c. **Agreement**

Proposers should carefully review this RFP and all attachments including but not limited to the City of Half Moon Bay's standard Consulting Services Agreement (Attachment C). The selected vendor will be required to sign the City's agreement. Comments or objections to any terms in the City's agreement must be made in writing and received with the proposal submission.

Attachments:

- A. Standard City of Half Moon Bay Consulting Services Agreement

Attachment A
CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF HALF MOON BAY AND (CONSULTANT)

THIS AGREEMENT for consulting services is made by and between the City of Half Moon Bay ("City") and [Consultant Name] ("Consultant") as of 2016.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant will provide to City the services described in the Scope of Work attached Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement will prevail.

- 1.1 Term of Services.** The term of this Agreement will begin on the date first noted above and will run until or until terminated by either party pursuant to Section 8.
- 1.2 Standard of Performance.** Consultant will perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant will prepare all work products required by this Agreement in accordance with usual and customary professional and will conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 Assignment of Personnel.** Consultant will assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant will, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 Time.** Consultant will devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. Exhibit A to this contract contains the Scope of Work and Estimate of Costs for (CONSULTANT) to be completed by the Consultant and submitted to the City. The City will pay Consultant for services rendered pursuant to the Estimate of Costs at the time and in the manner set forth herein. Consultant will submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant will not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 Invoices.** Consultant will submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed prior to the invoice date. Invoices will contain the following information:
 - Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;

- The beginning and ending dates of the billing period;
- A Task Summary containing for each planning application along with the amount of prior billings, the total due in the current period, and the percentage of completion of processing for the application;
- For each application processed, a copy of the applicable time entries or time sheets will be submitted showing the name of the person doing the work, the hours spent by each person, and a brief description of the work;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours;
- The Consultant's signature.

2.2 Monthly Payment. City will make monthly payments, based on invoices received, for services satisfactorily performed. City will have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Hourly Fees. Fees for work performed by Consultant on an hourly basis will not exceed the amounts shown on the fee schedule shown in Exhibit A, incorporated herein by this reference.

2.4 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.5 Payment upon Termination. In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City will compensate the Consultant for all outstanding costs incurred for work satisfactorily completed as of the date of written notice of termination. Consultant will maintain adequate logs and timesheets in order to verify costs incurred to that date.

2.6 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant will, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement.

Section 4. INSURANCE REQUIREMENTS.

4.1 During the term of this Agreement, Consultant will carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance will be of the types and in the amounts as set forth below:

- Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
- Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
- Worker's Compensation insurance as required by the laws of the State of California.
- Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).

- 4.2 Consultant will require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 4.3 The policy or policies required by this Agreement will be issued by an insurer admitted in the State of California and with a rating of at least A: VII in the latest edition of Best's Insurance Guide.
- 4.4. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay, at Consultant's expense, the premium thereon.
- 4.5. At all times during the term of this Agreement, Consultant will maintain on file with City's Finance Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant will, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- 4.6. Consultant will 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. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 4.7. The general liability and automobile policies of insurance required by this Agreement will contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement will contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 4.8. The insurance provided by Consultant will be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, will be in excess of Consultant's insurance and will not contribute with it.
- 4.9. All insurance coverage provided pursuant to this Agreement will not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 4.10. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant will either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant will procure a bond guaranteeing payment of losses and expenses.
- 4.11. Procurement of insurance by Consultant will not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

Section 5. **INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant will indemnify, defend and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, by the wrongful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held liable.

The foregoing obligation of Consultant will not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its

employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

The total liability in the aggregate of Consultant and its employees, subcontractors or suppliers to the City and anyone claiming through or under the City on all claims of any kind (excluding claims for death or bodily injury) arising out of or in any way related to Consultant's services or from any cause or causes whatsoever will not exceed the limits of insurance identified herein.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant will indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. **STATUS OF CONSULTANT.**

- 6.1** **Independent Contractor.** At all times during the term of this Agreement, Consultant will be an independent contractor and will not be an employee of City. City will have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City will not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement will not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2** **Consultant No Agent.** Except as City may specify in writing, Consultant will have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant will have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. **LEGAL REQUIREMENTS.**

- 7.1** **Governing Law.** The laws of the State of California will govern this Agreement.
- 7.2** **Compliance with Applicable Laws.** Consultant and any subcontractors will comply with all laws applicable to the performance of the work hereunder.
- 7.3** **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors will comply

with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 Licenses and Permits. Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors will, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors will obtain and maintain during the term of this Agreement valid Business Licenses from City.

7.5 Nondiscrimination and Equal Opportunity. Consultant will not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant will comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant will include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon 15 day's written notice to Consultant.

Consultant may cancel this Agreement upon 15 days' written notice to City.

In the event of termination, Consultant will be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contract or prepared by or for Consultant or the City in connection with this Agreement. In the event Consultant is not provided notice of any outstanding materials to be delivered to City, Consultant will be entitled to payment within 30 days.

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension will require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City will have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City will have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of

Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant will not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant will survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies will include, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder will be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. To the extent allowed by law, City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

9.2 Consultant's Books and Records. Consultant will maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain will be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement will be subject to

the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 **MISCELLANEOUS PROVISIONS.**

- 10.1** **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2** **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of San Mateo or in the United States District Court for the Northern District of California.
- 10.3** **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any other provision of this Agreement.
- 10.4** **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5** **Successors and Assigns.** The provisions of this Agreement will inure to the benefit of and will apply to and bind the successors and assigns of the parties.
- 10.6** **Use of Recycled Products.** Consultant will prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7** **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant will not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City will have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

- 10.8** **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9** **Contract Administration.** This Agreement will be administered by Magda Gonzalez, City Manager ("Contract Administrator"). All correspondence will be directed to or through the Contract Administrator or her designee.

10.10 **Notices.**

Any written notice to Consultant will be sent to:

Name

Position

Name of organization

Address

Phone:

Email:

Any written notice to City will be sent to:

Jill Ekas

Community Development Director

501 Main Street

Half Moon Bay, CA 94019

Phone: 650.726. 8252

Email: jekas@hmbcity.com

10.11 Integration. This Agreement, including the Scope of Work and Estimate of Costs, as well as the Fee Schedule attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

IN WITNESS WHEREOF, the Client and the Consultant have executed this Agreement effective as of the date first written above.

“CITY”

CITY OF HALF MOON BAY

Date: _____

By: _____

David Boesch, Interim City Manager

Attest:

By: _____

City Clerk

Date: _____

Approved as to form:

City Attorney

“CONSULTANT”

[NAME OF CONSULTANT]

Date: _____

By: _____

Its: _____

Exhibits:

EXHIBIT A. SCOPE OF SERVICES

EXHIBIT B. APPROVED FEE SCHEDULE