



***REQUEST FOR PROPOSAL
FOR
TOTAL COMPENSATION STUDY***

DEADLINE FOR PROPOSALS: JULY 8, 2022

INTRODUCTION

The City of Arroyo Grande is committed to providing competitive and equitable compensation for City employees. The City's compensation policy is to structure wage rates, benefits, and salary administration systems that are competitive, equitable, and adequate.

The last comprehensive compensation review was conducted in 2017. The City seeks to review current compensation to ensure alignment with the City's compensation policy, ensuring equitable and competitive wages, and to enable continued retention and attraction of well qualified staff.

Study results will provide the necessary data for objective information for analysis by the City for compensation planning, future budget forecasting, and provide the data needed to facilitate fair discussions with employee groups regarding compensation and benefits.

Additionally, The City of Arroyo Grande is a member of the Five Cities Fire Authority, a three-member Joint Powers Agreement to provide fire services to the communities of Arroyo Grande, Grover Beach, and Oceano. The Five Cities Fire Authority (FCFA) is seeking similar professional consulting services and may be included in this study as an additive alternative proposal.

SCOPE OF WORK

The consultant will work with staff to determine the necessary number of benchmark classifications for the City, data points (at a minimum, top step salary, specialty pay, employer contributions to health insurance, retirement formulas and employee contributions), and comparison agencies. Paid time off benefits and anticipated cost of living adjustments shall be gathered and included in the evaluation. Consultant will gather data using an active method of pulling data and verifying accuracy as necessary based on substantive job matches and provide data in a written report, with visual aids, calculating the market median and identifying the distance from the median for City benchmark data. Consultant will assist in at least two meetings with a staff advisory committee. The report should be delivered in final form, following preliminary review by City staff, no later than December 19, 2022.

PROJECT SCHEDULE

Preliminary Schedule	Tasks
June 15, 2022	<ul style="list-style-type: none">• Release of RFP
July 8, 2022	<ul style="list-style-type: none">• Proposals Due
July 15, 2022	<ul style="list-style-type: none">• Complete proposal evaluations
July 22, 2022	<ul style="list-style-type: none">• Conduct finalist interviews and finalize recommendation
August 23, 2022	<ul style="list-style-type: none">• Execute Contract
August 30, 2022	<ul style="list-style-type: none">• Start Work
September 12, 2022	<ul style="list-style-type: none">• Meet with City staff to determine benchmark classifications, data points, and comparison agencies
October	<ul style="list-style-type: none">• Review classifications and gather data
November	<ul style="list-style-type: none">• Develop preliminary report and allow time for staff to validate
December	<ul style="list-style-type: none">• Deliver final report

PROJECT BUDGET

Up to \$30,000 based on projected time and resources and dependent on number of required visits to Arroyo Grande.

GENERAL TERMS AND CONDITIONS

PROPOSAL REQUIREMENTS

1. **Requirement to Meet All Provisions.** Each individual or firm submitting a proposal (bidder) shall meet all the terms, and conditions of the Request for Proposals (RFP) project package. By virtue of its proposal submittal, the bidder acknowledges agreement with and acceptance of all provisions of the RFP specifications.
2. **Proposal Submittal.** Each proposal must be submitted on the form(s) provided in the specifications and accompanied by any other required submittals or supplemental materials. Proposal documents shall be sent either electronically to hr@arroyogrande.org or a paper copy can be enclosed in an envelope that shall be sealed and addressed to the City of Arroyo Grande Attn: Tashina Ureno, HR Officer, 300 E. Branch Street, Arroyo Grande, CA 93420. To guard against premature opening, the proposal should be clearly labeled with the proposal title, name of bidder, and date and time of proposal opening.
3. **Insurance Certificate.** Each proposal must include a certificate of insurance showing:
 - a. The insurance carrier and its A.M. Best rating.
 - b. Scope of coverage and limits.
 - c. Deductibles and self-insured retention.

The purpose of this submittal is to generally assess the adequacy of the bidder's insurance coverage during proposal evaluation; as discussed under paragraph 12 below, endorsements are not required until contract award. The City's insurance requirements are detailed in Exhibit C.

4. **Proposal Quotes and Unit Price Extension.** The extension of unit prices for the quantities indicated and the lump sum prices quoted by the bidder must be entered in figures in the spaces provided on the Proposal Submittal Form(s). Any lump sum bid shall be stated in figures. The Proposal Submittal Form(s) must be totally completed. If the unit price and the total amount stated by any bidder for any item are not in agreement, the unit price alone will be considered as representing the bidder's intention and the proposal total will be corrected to conform to the specified unit price.
5. **Proposal Withdrawal and Opening.** A bidder may withdraw its proposal, without prejudice prior to the time specified for the proposal opening, by submitting a written request to the Human Resources Officer for its withdrawal, in which event the proposal will be returned to the bidder unopened. No proposal received after the time specified or at any place other than that stated in the "Notice Inviting Bids/Requesting Proposals" will be considered. All proposals will be opened

and declared publicly. Bidders or their representatives are invited to be present at the opening of the proposals.

6. **Submittal of One Proposal Only.** No individual or business entity of any kind shall be allowed to make or file, or to be interested as the primary submitter in more than one proposal, except an alternative proposal when specifically requested; however, an individual or business entity that has submitted a sub-proposal to a bidder submitting a proposal, or who has quoted prices on materials to such bidder, is not thereby disqualified from submitting a sub-proposal or from quoting prices to other bidders submitting proposals.
7. **Communications.** All timely requests for information submitted in writing will receive a written response from the City. Telephone communications with City staff are not encouraged but will be permitted. However, any such oral communication shall not be binding on the City.

CONTRACT AWARD AND EXECUTION

8. **Proposal Retention and Award.** The City reserves the right to retain all proposals for a period of 60 days for examination and comparison. The City also reserves the right to waive non-substantial irregularities in any proposal, to reject any or all proposals, to reject or delete one part of a proposal and accept the other, except to the extent that proposals are qualified by specific limitations. See the "special terms and conditions" in Section C of these specifications for proposal evaluation and contract award criteria.
9. **Competency and Responsibility of Bidder.** The City reserves full discretion to determine the competence and responsibility, professionally and/or financially, of bidders. Bidders will provide, in a timely manner, all information that the City deems necessary to make such a decision.
10. **Contract Requirement.** The bidder to whom award is made (Contractor) shall execute a written contract with the City within ten (10) calendar days after notice of the award has been sent by mail to it at the address given in its proposal. The contract shall be made in the form adopted by the City and incorporated in these specifications.

CONTRACT PERFORMANCE

11. **Insurance Requirements.** The Contractor shall provide proof of insurance in the form, coverages and amounts specified in Section E of these specifications within 10 (ten) calendar days after notice of contract award as a precondition to contract execution.
12. **Business License & Tax.** The Contractor must have a valid City of Arroyo Grande business license & tax certificate before execution of the contract. Additional information regarding the City's business tax program may be obtained by calling (805) 473-5400.
13. **Ability to Perform.** The Contractor warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with all federal, state, county, city, and special district laws, ordinances, and regulations.

14. **Laws to be Observed.** The Contractor shall keep itself fully informed of and shall observe and comply with all applicable county, state, and federal laws, and City of Arroyo Grande ordinances, regulations, and adopted codes during its performance of the work.
15. **Safety Provisions.** The Contractor shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.
16. **Immigration Act of 1986.** The Contractor warrants on behalf of itself and all subcontractors engaged for the performance of this work that only persons authorized to work in the United State pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.
17. **Contractor Non-Discrimination.** In the performance of this work, the Contractor agrees that it will not engage in, nor permit such subcontractors as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, sexual orientation, or religion of such persons.
18. **Work Delays.** Should the Contractor be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of the City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at the City's sole option, be extended for such periods as may be agreed upon by the City and the Contractor. In the event that there is insufficient time to grant such extensions prior to the completion date of the contract, the City may, at the time of acceptance of the work, waive liquidated damages that may have accrued for failure to complete on time, due to any of the above, after hearing evidence as to the reasons for such delay, and making a finding as to the causes of same.
19. **Payment Terms.** The City's payment terms are 30 days from the receipt of an original invoice and acceptance by the City of the materials, supplies, equipment, or services provided by the Contractor.
20. **Inspection.** The Contractor shall furnish City with every reasonable opportunity for City to ascertain that the services of the Contractor are being performed in accordance with the requirements and intentions of this contract. All work done, and all materials furnished, if any, shall be subject to the City's inspection and approval. The inspection of such work shall not relieve Contractor of any of its obligations to fulfill its contract requirements.
21. **Audit.** The City shall have the option of inspecting and/or auditing all records and other written materials used by Contractor in preparing its invoices to City as a condition precedent to any payment to Contractor.
22. **Interests of Contractor.** The Contractor covenants that it presently has no interest, and shall not acquire any interest—direct, indirect or otherwise—that would conflict in any manner or degree with the performance of the work hereunder. The Contractor further covenants that, in the performance of this work, no subcontractor or person having such an interest shall be employed. The Contractor certifies that no one who has or will have any financial interest in performing this work is an officer or employee of the City. It is hereby expressly agreed that, in the performance

of the work hereunder, the Contractor shall at all times be deemed an independent contractor and not an agent or employee of the City.

23. **Hold Harmless and Indemnification.**

(a) **Non-design, non-construction Professional Services:** To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), Consultant shall indemnify, defend, and hold harmless the City, and its elected officials, officers, employees, volunteers, and agents (“City Indemnitees”), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels’ fees and costs of litigation (“claims”), arising out of the Consultant’s performance or Consultant’s failure to perform its obligations under this Agreement or out of the operations conducted by Consultant, including the City’s active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant’s performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City’s option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

(b) **Non-design, construction Professional Services:** To the extent the Scope of Services involve a “construction contract” as that phrase is used in Civil Code Section 2783, this paragraph shall apply in place of paragraph A. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), Consultant shall indemnify, defend, and hold harmless the City, and its elected officials, officers, employees, volunteers, and agents (“City Indemnitees”), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels’ fees and costs of litigation (“claims”), arising out of the Consultant’s performance or Consultant’s failure to perform its obligations under this Agreement or out of the operations conducted by Consultant, except for such loss or damage arising from the active negligence, sole negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant’s performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City’s option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

(c) **Design Professional Services:** In the event Consultant is a “design professional”, and the Scope of Services require Consultant to provide “design professional services” as those phrases are used in Civil Code Section 2782.8, this paragraph shall apply in place of paragraphs A or B. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8) Consultant shall indemnify, defend and hold harmless the City and its elected officials, officers, employees, volunteers and agents (“City Indemnitees”), from and against all claims, damages, injuries, losses, and expenses including costs, attorney fees, expert consultant and expert witness fees arising out of, pertaining to or relating to, the negligence, recklessness or willful misconduct of Consultant, except to the extent caused by the sole negligence, active negligence or willful misconduct of the City. Negligence, recklessness or willful misconduct of any subcontractor employed by Consultant shall be conclusively deemed to be the negligence, recklessness or willful misconduct of Consultant unless adequately corrected by Consultant. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant’s performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City’s option, reimburse the City Indemnitees their

costs of defense, including reasonable legal fees, incurred in defense of such claims. In no event shall the cost to defend charged to Consultant under this paragraph exceed Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs.

(d) The review, acceptance or approval of the Consultant's work or work product by any indemnified party shall not affect, relieve or reduce the Consultant's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

24. **Contract Assignment.** The Contractor shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City.
25. **Termination for Convenience.** The City may terminate all or part of this Agreement for any or no reason at any time by giving 30 days written notice to Contractor. Should the City terminate this Agreement for convenience, the City shall be liable as follows: (a) for standard or off-the-shelf products, a reasonable restocking charge not to exceed ten (10) percent of the total purchase price; (b) for custom products, the less of a reasonable price for the raw materials, components work in progress and any finished units on hand or the price per unit reflected on this Agreement. For termination of any services pursuant to this Agreement, the City's liability will be the lesser of a reasonable price for the services rendered prior to termination, or the price for the services reflected on this Agreement. Upon termination notice from the City, Contractor must, unless otherwise directed, cease work and follow the City's directions as to work in progress and finished goods.
26. **Termination.** If, during the term of the contract, the City determines that the Contractor is not faithfully abiding by any term or condition contained herein, the City may notify the Contractor in writing of such defect or failure to perform. This notice must give the Contractor a 10 (ten) calendar day notice of time thereafter in which to perform said work or cure the deficiency.

If the Contractor has not performed the work or cured the deficiency within the ten days specified in the notice, such shall constitute a breach of the contract and the City may terminate the contract immediately by written notice to the Contractor to said effect. Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under the contract except, however, any and all obligations of the Contractor's surety shall remain in full force and effect, and shall not be extinguished, reduced, or in any manner waived by the terminations thereof.

In said event, the Contractor shall be entitled to the reasonable value of its services performed from the beginning date in which the breach occurs up to the day it received the City's Notice of Termination, minus any offset from such payment representing the City's damages from such breach. "Reasonable value" includes fees or charges for goods or services as of the last milestone or task satisfactorily delivered or completed by the Contractor as may be set forth in the Agreement payment schedule; compensation for any other work, services or goods performed or

provided by the Contractor shall be based solely on the City's assessment of the value of the work-in-progress in completing the overall work scope.

The City reserves the right to delay any such payment until completion or confirmed abandonment of the project, as may be determined in the City's sole discretion, so as to permit a full and complete accounting of costs. In no event, however, shall the Contractor be entitled to receive in excess of the compensation quoted in its proposal.

PROPOSAL CONTENT

Proposal Content. Your proposal must include the following information:

Submittal Forms

- Proposal submittal summary.
- Certificate of insurance.
- References from at least three firms for whom you have provided similar services.
- At least two sample benchmark compensation reports you have produced for a public sector client in the past five years.
- Assurance that data and information regarding the required services can be provided and collaborated on digitally.

Qualifications

- Experience of your firm and those of sub-consultants in performing work and projects relevant to the Scope of Services outlined and described in the request.
- Resumes of the individuals who would be assigned to this project, including any sub-consultants, with their corollary experience highlighted and specific roles in this project clearly described.
- Standard hourly billing rates for the assigned staff, including any sub-consultants.
- Statement and explanation of any instances where your firm or sub-consultant has been removed from a project or disqualified from proposing on a project.

Work Program

- Detailed description of your approach to completing the work.
- Detailed schedule by task and sub-task for completing the work.
- Estimated hours for your staff in performing each phase and task of the work, including sub-consultants, so we can clearly see who will be doing what work, and how much time it will take.
- Detailed budget by task and sub-task for completing the work.
- Services or data to be provided by the City.
- Services and deliverables provided by the Consultant(s).
- Any other information that would assist us in making this contract award decision.
- Description of assumptions critical to development of the response which may impact cost or scope.
- Availability of consultant to present findings to City Council.

Requested Changes to Terms and Conditions

The City desires to begin work soon after selecting the preferred Consultant Team. To expedite the contracting process, each submittal shall include requested redlined changes to terms and conditions, if necessary.

Proposal Length

Proposal length should only be as long as required to be responsive to the RFP, including attachments and supplemental materials.

Proposal Evaluation and Selection. Proposals will be evaluated by a review committee and evaluated on the following criteria:

- Understanding of the work required by the City.
- Quality, clarity and responsiveness of the proposal.
- Demonstrated competence and professional qualifications necessary for successfully performing the work required by the City.
- Recent team experience in successfully performing similar services.
- Creativity of the proposed approach in completing the work.
- Value
- Writing skills.
- References.
- Background and experience of the specific individuals managing and assigned to this project.

As reflected above, contract award will not be based solely on price, but on a combination of factors as determined to be in the best interest of the City. After evaluating the proposals and discussing them further with the finalists or the tentatively selected contractor, the City reserves the right to further negotiate the proposed work and/or method and amount of compensation.

Proposal Review and Award Schedule. The following is an outline of the anticipated schedule for proposal review and contract award:

- | | |
|---|------------|
| ▪ Issue RFP | 06/15/2022 |
| ▪ Receive proposals | 07/08/2022 |
| ▪ Complete proposal evaluations | 07/15/2022 |
| ▪ Conduct finalist interviews and finalize recommendation | 07/22/2022 |
| ▪ Execute contract | 08/23/2022 |
| ▪ Start work | 08/30/2022 |

Ownership of Materials. All original drawings, plan documents and other materials prepared by or in possession of the Contractor as part of the work or services under these specifications shall become the permanent property of the City and shall be delivered to the City upon demand.

Release of Reports and Information. Any reports, information, data, or other material given to, prepared by or assembled by the Contractor as part of the work or services under these specifications shall be the property of the City and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

Copies of Reports and Information. If the City requests additional copies of reports, drawings, specifications, or any other material in addition to what the Contractor is required to furnish in limited quantities as part of the work or services under these specifications, the Contractor shall provide such additional copies as are requested, and City shall compensate the Contractor for the costs of duplicating of such copies at the Contractor's direct expense.

Required Deliverable Products. The Contractor will be required to provide:

- One electronic submission - digital-ready original .pdf of all final documents. If you wish to file a paper copy, please submit in sealed envelope to the address provided in the RFP.
- Corresponding computer files compatible with the following programs whenever possible unless otherwise directed by the project manager:

Word Processing:	MS Word
Spreadsheets:	MS Excel
Desktop Publishing:	InDesign
Virtual Models:	Sketch Up

- City staff will review any documents or materials provided by the Contractor and, where necessary, the Contractor will be required to respond to staff comments and make such changes as deemed appropriate.

ALTERNATIVE PROPOSALS

- **Alternative Proposals.** The proposer may submit an alternative proposal (or proposals) that it believes will also meet the City's project objectives but in a different way. In this case, the proposer must provide an analysis of the advantages and disadvantages of each of the alternative and discuss under what circumstances the City would prefer one alternative to the other(s).

Additionally, as previously mentioned, the City of Arroyo Grande is one of the three partner agencies that comprise the Five Cities Fire Authority (FCFA). The FCFA was formed approximately twelve (12) years ago and employs 26 full-time and 2 part-time employees. There are 6 full-time classifications. While job descriptions are fairly updated, the FCFA is seeking consultant assistance in reviewing classification documents for compliance with the latest regulatory requirements and best practices. The FCFA is also interested in obtaining a total compensation (salary and benefit) survey for all classifications. Comparison agencies for FCFA are identified as: City of Atascadero, City of Morro Bay, City of Paso Robles, City of San Luis Obispo, Cambria Community Services District, City of Santa Maria, City of Lompoc, Carpenteria Summerland Fire District, and CAL FIRE. Proposers should indicate the additional cost to include FCFA classifications in the scope of services, as an additive alternative to the proposal.

- **Attendance at Meetings and Hearings.** As part of the work scope and included in the contract price is attendance by the Contractor at up to one public meeting to present and discuss its findings and recommendations. Contractor shall attend as many "working" meetings with staff as necessary in performing work-scope tasks; such meetings may be telephonic or computer based using standard collaboration tools.

- **Accuracy of Specifications.** The specifications for this project are believed by the City to be accurate and to contain no affirmative misrepresentation or any concealment of fact. Bidders are cautioned to undertake an independent analysis of any test results in the specifications, as City does not guaranty the accuracy of its interpretation of test results contained in the specifications package. In preparing its proposal, the bidder and all subcontractors named in its proposal shall bear sole responsibility for proposal preparation errors resulting from any misstatements or omissions in the plans and specifications that could easily have been ascertained by examining either the project site or accurate test data in the City's possession. Although the effect of ambiguities or defects in the plans and specifications will be as determined by law, any patent ambiguity or defect shall give rise to a duty of bidder to inquire prior to proposal submittal. Failure to so inquire shall cause any such ambiguity or defect to be construed against the bidder. An ambiguity or defect shall be considered patent if it is of such a nature that the bidder, assuming reasonable skill, ability and diligence on its part, knew or should have known of the existence of the ambiguity or defect. Furthermore, failure of the bidder or subcontractors to notify City in writing of specification or plan defects or ambiguities prior to proposal submittal shall waive any right to assert said defects or ambiguities subsequent to submittal of the proposal.

To the extent that these specifications constitute performance specifications, the City shall not be liable for costs incurred by the successful bidder to achieve the project's objective or standard beyond the amounts provided there for in the proposal.

In the event that, after awarding the contract, any dispute arises as a result of any actual or alleged ambiguity or defect in the plans and/or specifications, or any other matter whatsoever, Contractor shall immediately notify the City in writing, and the Contractor and all subcontractors shall continue to perform, irrespective of whether or not the ambiguity or defect is major, material, minor or trivial, and irrespective of whether or not a change order, time extension, or additional compensation has been granted by City. Failure to provide the hereinbefore described written notice within one (1) working day of contractor's becoming aware of the facts giving rise to the dispute shall constitute a waiver of the right to assert the causative role of the defect or ambiguity in the plans or specifications concerning the dispute.

FORM OF AGREEMENT

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT FOR CONSULTANT SERVICES ("Agreement"), is made and effective as of _____ 2022, 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 _____, 2022 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.
OR

[Note 3: this section is optional and should be included only when the project is particularly time sensitive]

City and Consultant agree that time is of the essence in this Agreement. City and Consultant further agree that Consultant's failure to perform on or at the times set forth in this

Agreement will damage and injure City, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, City and Consultant agree that any failure to perform by Consultant at or within the times set forth herein shall result in liquidated damages of _____ dollars (\$_____) per day for each and every day such performance is late. City and Consultant agree that such sum is reasonable and fair. Furthermore, City and Consultant agree that this Agreement is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

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.