THE CITY OF MONTEREY, CALIFORNIA
REQUEST FOR PROPOSALS

Community Risk Assessment/Standards of Cover Study for the Monterey Fire Department
(CRA/SOC)

Issued: September 10, 2020
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THE CITY OF MONTEREY, CALIFORNIA
REQUEST FOR PROPOSALS
Community Risk Assessment/Standards of Cover Study

I. INTRODUCTION

The City of Monterey (“City”) is seeking proposals from qualified firms or individuals to conduct a Community Risk Assessment/Standards of Cover Study (CRA/SOC) for the Monterey Fire Department. The City is a charter city located in the County of Monterey. The City of Monterey’s Fire Department is an all-risk fire agency that provides services to the residents, businesses, and visitors not only in the City of Monterey but, via contracts for service, to the cities of Pacific Grove, Carmel-by-the-Sea, and Sand City as well as the Monterey Regional Airport, Naval Support Activity Monterey (NSAM), and La Mesa Village military housing. The CRA/SOC will assist the City in ensuring a safe, effective, and appropriately-sized response force for fire suppression, emergency medical services, and specialty response situations. Given fiscal challenges and the evolving needs of our community in recent years, it is timely to collaboratively evaluate current practices and chart a course for future deployment, facilities, staffing and operations.

II. PROJECT DESCRIPTION

The City desires to obtain the services of outside firms or individuals to help the City conduct a Community Risk Assessment/Standards of Cover study for the Fire Department. The selected consultant shall provide a final report that at a minimum will include a critical task analysis, evaluation of service levels, assessment of distribution and concentration measures, and analysis of historical performance to provide policy and operational recommendations. The study shall be completed using recognized industry-standard methodologies for conducting such a study.

III. SCOPE OF WORK

Attached as Appendix A is a list of major work tasks to be accomplished as part of the scope of work. The proposer is asked to define the approach and the specific scope of work and methodology to achieve the objectives presented in this Request for Proposals (“RFP”). The proposer should include a refined scope of work by developing a detailed description of all project tasks, both those suggested in this RFP and any changes, additions or recommendations proposed.

IV. DELIVERABLES

Copies of draft reports are required upon completion of each major part of the project. Following approval by the staff, copies of each final report are required.

One unbound copy of each final document and a computer disk containing all final documents and all information are to be provided. At the outset of the agreement, the consultant will submit a description of the software to be used in preparation of the reports and graphics. The City currently uses Word for word processing and Excel for spreadsheets and graphs. Unless pre-approved by City, the final documents shall be provided in Microsoft Word and Microsoft Excel at a minimum.
V. TIME LIMITS

The Consultant is to complete the Community Risk Assessment/Standard of Cover report prior to March 31, 2021.

VI. PROPOSAL REQUIREMENTS

A. All proposals shall include the following minimum information:

1. Management and Team Members. Provide a description of the team/consultant organization, and a work plan that identifies the personnel to be assigned to each task. The organization description should clearly identify who will be the project manager and the day-to-day contact person for the job. Include relevant experience of the team members who will be assigned to the project. Please include each team member’s year(s) of experience with the team, role/title, and status of employment (full-time, part-time, consultant).

2. A list of subconsultants to be used, if any, and their expertise as called for in Item 1, above.

3. Scope of Work. A description of methodology, techniques, and procedures for each of the scope of work items with an explanation of how the proposer plans to approach the tasks and the steps that will be taken to complete the task including analytical methods and tools. Proposers must demonstrate that they understand the magnitude and importance of each individual task. If appropriate, tasks should be organized into measurable deliverables.

4. Organization Qualifications. Provide an outline of the organization qualifications indicating relevant background experience and capabilities for this work. A list of major projects, both ongoing and planned, to which the organization is committed during the time frame of this project should also be provided. Include the staff resources devoted to those projects and the status of the projects.

5. Proposed Schedule. Time is of the essence for this agreement. The proposal shall include a schedule to undertake the work program. The project is anticipated to start as soon as feasible and completed by March 31, 2021.

6. References. Provide at least three (3) client references with phone numbers for relevant work. Specify the client, location, consultant firm members and participating individuals and their roles on team (principal, project director, etc.), type of work, implementation results or status, examples of work, and other relevant information as needed. On a separate document, please list the most recent ten (10) projects in reverse chronological order and include the project scope, project delivery date, client name, and client contact information.

B. Fee Schedule

Proposals shall include a fee schedule indicating the costs and hours for the scope of the project, as outlined in Appendix A, on a lump sum basis, inclusive of reimbursables. Include an hourly rate for each category of employee (i.e., Principal, Technician, etc.) and fees for applicable direct costs (printing, reproduction, etc.). No “mark-up” will be allowed for direct costs. Prices quoted must be binding for a minimum of three (3) months. If applicable, per diem shall be billed at a maximum of the GSA rate and mileage shall be billed at the IRS mileage rate in place at the time of billing. No “mark-up” will be allowed for per diem or mileage. Sub-consultant
services are to be billed at cost plus ten percent (10%) maximum. Please indicate where each consultant will be traveling from, if in-person travel is necessary.

VII. SUBMISSION OF PROPOSALS

Please submit sealed copies, plus one electronic copy, of the proposal clearly marked with the project name on the outside of the envelope. Proposals must be submitted no later than 3:00 p.m., October 6, 2020. Proposals will not be accepted after this time.

Proposals should be submitted to:
City Manager’s Office
580 Pacific St. Room 1,
Monterey, CA 93940

The City highly recommends the mailing of proposals due to the COVID-19 emergency situation. In addition, proposals can be emailed to the following address: panholzer@monterey.org. E-mailed proposals shall include in the subject line the name of the RFP and the proposer’s name. If submitting via e-mail, no printed copies are required.

VIII. PROCEDURES AND EVALUATION OF PROPOSALS

A. Evaluation Criteria. An evaluation committee of City staff personnel and members of other stakeholder groups will review and evaluate all timely, responsive proposals based on the following criteria:

1. Ability to Design an Approach and Work Plan to Meet the Project Requirements. An assessment of the overall quality of the proposal. Qualities and indicators that will receive consideration include the proposer’s performance in converting the Scope of Work into a work plan; the detail and clarity of the discussion as to the proposer’s approach to undertaking the project; the proposer’s performance in identifying any special problems or concerns which may be associated with the project and preliminary ideas about how these obstacles should be addressed; the inclusion of any unique approaches which are designed to save time and money or increase the benefits or effectiveness of the proposed work; the demonstrated ability to work with governmental bodies; and a full understanding of applicable laws or regulations that relate to the project. (20 points)

2. Ability of the Proposer to Carry Out and Manage the Proposed Project. An assessment of the past experience of the organization in general. Qualities and indicators that will receive consideration include the number and types of projects the organization or its employees have completed; the variety of projects completed and a demonstration of the organization’s ability to undertake this project; the general level of experience in the areas of supervision, observing and monitoring projects; the organization’s ability to realize timetables and quality control objectives; and the demonstrated general ability to bring about a successful completion of the projects under the proposer’s direction. (25 points)

3. Staff: An assessment of the perceived ability of each organization to devote the necessary human resources and management attention to the project. Do the
qualifications of key personnel to be assigned to the project coincide with the project's requirements? Do assigned personnel and subconsultant personnel have requisite education, experience, and professional qualifications and licenses? (15 points)

4. Familiarity with Locality: Does the firm have familiarity with the City required to successfully complete the project? How close are the firm’s permanent offices to the Monterey Peninsula? (10 points)

5. Willingness to Comply with the Proposed Agreement Terms. A sample agreement is attached as Appendix B. Proposals will be rated based on any exceptions taken to the proposed agreement. (10 points)

6. Reputation: Are the firm’s references from past clients and associates favorable; and, does the firm show financial and operational stability? (10 points)

7. Cost of Proposal: Cost, while not determinative, may be considered in the selection process. (10 points)

B. Procedures

1. At the completion of the review process, proposers will be ranked based on the Evaluation Criteria described in section VIII.A above. The City will select the highest ranked firm or, at City’s option, the most highly qualified firms will form a “shortlist.”

2. Should the City elect to establish a “short list,” firms on the short list may be asked to formally present their proposal in Monterey or via video conference and respond to interviewer questions. The interview panel will be the evaluation committee. The presentation and interview session will not exceed one hour per proposer. Following presentations/interviews, the evaluation committee will complete its ranking.

3. Upon completion of the rankings, fee negotiations will commence with the highest ranked firm. If the fees are mutually agreed upon after negotiations, an agreement will be placed on a City Council agenda for approval consideration. If fee negotiations are unsuccessful with the highest ranked firm, that firm will be excused and the fee schedule of the next highest ranked firm will be negotiated.

4. It is anticipated that any award of an agreement for services will be made by the Monterey City Council at their October 20, 2020 meeting.

IX. GENERAL CONDITIONS

The City of Monterey reserves the right to enter into agreements with multiple firms as a result of this solicitation. Further, the City makes no representations that any agreement will be awarded to any organization submitting a proposal. The City reserves the right to reject any and all proposals submitted in response to this request or any addenda thereto and may, in its discretion, reissue its Request for Proposals.
The City also reserves the right to reject any sub-consultant or individual working on a consultant team and to replace the sub-consultant or individual with a mutually acceptable replacement.

Any changes to the proposal requirements will be made by written addendum.

X. LIABILITY OF COSTS AND RESPONSIBILITY.

The City shall not be liable for any costs incurred in response to this Request for Proposals. All costs shall be borne by the person or organization responding to the request. The person or organization responding to the request shall hold the City harmless from any and all liability, claim or expense whatsoever incurred by or on behalf of that person or organization. All submitted material becomes the property of the City of Monterey.

The selected lead consultant will be required to assume responsibility for all services offered in the proposal whether or not they possess them within their organization. The selected lead consultant will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

XI. PUBLIC NATURE OF PROPOSAL MATERIAL.

Responses to this Request for Proposals become the exclusive property of the City. At such times as a formal recommendation to award an agreement to one proposer is made to the awarding authority, all submittals received in response to this Request for Proposal become a matter of public record and shall be regarded as public records, with the exception of those elements in each submittal which are business or trade secrets and plainly marked as “Confidential,” “Trade Secret,” or “Proprietary” or if disclosure is not required under the California Public Records Act. Any submittal which contains language purporting to render all or significant portions of the proposal “Confidential,” “Trade Secret,” or “Proprietary,” shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a proposer submits is a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” the City will provide the proposer who submitted the information with reasonable notice to allow the proposer to seek protection from disclosure by a court of competent jurisdiction.

XII. VALIDITY.

The proposer agrees to be bound by its proposal for a period of ninety (90) days commencing from the date proposals are due, during which time the City may request clarification or correction of the proposal for the purpose of evaluation. Amendments or clarifications shall not affect the remainder of the proposal, but only the portion so amended or clarified.

XIII. STANDARD AGREEMENT.

A sample agreement has been provided as Appendix B for the proposer’s review and comment. If a proposer wishes to take exception to any of the terms and conditions
Failure to identify contractual issues of dispute can later be the basis for the City disqualifying a proposer. Any exceptions to terms, conditions, or other requirements must be clearly stated. Otherwise, the City will consider that all items offered are in strict compliance with the RFP, and the successful proposer will be responsible for compliance. The City will consider such exceptions as part of the evaluation process, which may constitute grounds for rejection of the proposal. The agreement will not be executed by the City without first being signed by the proposer.

XIV. PERMITS AND LICENSES.

Proposer, and all of proposer’s sub consultants, at its and/or their sole expense, shall obtain and maintain during the term of any agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License, which will be required in connection with the performance of services hereunder.

XV. ORAL AND WRITTEN EXPLANATIONS.

Written responses to question(s) asked by one proposer will be provided to all proposers who received this Request for Proposal. All questions or requests for interpretations must be submitted ninety-six (96) hours before the proposal submission deadline. If found necessary, interpretation or correction will be made by written addendum, a copy of which will be sent to each proposer who received this Request for Proposal. Such addenda are to be considered as part of this Request for Proposal and shall be binding on all proposers.

The City will not be bound by oral explanations or instructions given at any time during the review process or after the award. Oral explanations given during the review process and after award become binding only when confirmed in writing by an authorized City official.

XVI. PROPOSER’S REPRESENTATIVE.

The person signing the proposal must be a legal representative of the firm authorized to bind the firm to an agreement in the event of the award.

XVII. INSURANCE.

General liability, automobile, professional liability, and worker’s compensation insurance are required in the amount set forth in Appendix C: “Summary of Indemnity and Insurance Requirements.” Proposers should consider the costs of carrying the insurance required.

Appendices:

A. Scope of Work
B. Standard Contract
C. Summary of Indemnity and Insurance Requirements
APPENDIX A – SCOPE OF WORK
COMMUNITY RISK ASSESSMENT/STANDARDS OF COVER STUDY

The scope of work will include the development of a Community Risk Assessment/Standard of Cover (CRA/SOC) report for the Monterey Fire Department. The CRA/SOC document will be based on a data-driven examination of Department performance, workflow efficiencies, staffing levels and an overall evaluation of risk in the community. The research, evaluation, and analysis will result in a thorough assessment of the findings and be supported by nationally recognized industry guidelines and criteria; any federal, state, and local mandates relative to the fire service; and generally accepted practices within the fire service.

The CRA/SOC development process shall begin with an initial stage of stakeholder meetings, which shall include City staff, Fire Department personnel, and labor union representatives. In addition to issues raised during these initial stakeholder meetings, the CRA/SOC shall take into account the following:

1. The communities served by Monterey Fire should be evaluated separately for their risk and the service they receive from Monterey Fire; the study should also look at the entire coverage area as a whole.
2. The cities of Seaside and Marina recently completed CRA/SOC studies and those findings should be evaluated to determine how they may factor into Monterey Fire’s service area. The consultant shall consider how regional approaches may work to meet fire services challenges.
3. The Monterey Regional Airport is considering relocating its fire station to the north side of the airfield and the consultant must consider the impacts such a relocation would have on fire service delivery.
4. The Presidio of Monterey has recently terminated its contract with Monterey for fire services and the Presidio Fire Department has established a fire station staffed with a four-person engine company in the garrison; the impacts of this action should be reflected in the study.

Along with stakeholder interviews, the Consultant shall use a data-based approach to prepare a report that at minimum contains:

1. A description of the community served.
   a. History, formation, and general description of the Monterey Fire Department and distinct communities it serves.
2. A description of the service provided.
   a. A review of current service delivery compared to industry benchmarks.
   b. A review of current staffing model compared to industry benchmarks.
   c. An analysis of current staffing to include:
      i. A review of firefighter/EMT/paramedic staff distribution and assignment.
      ii. A review and evaluation of administration and support staffing levels.
      iii. A review and evaluation of operational staffing levels.
      iv. Review of staff scheduling methodology.
3. Historical Performance and Deployment
b. Concentration. An analysis of response time capability to achieve an effective response force.
c. Reliability. An analysis of current workload, including unit-hour-utilization and the estimated percentage of reliability.
d. Recommendations for optimal station placement and staffing models to address current and future growth in emergency response.

4. An all-hazards risk assessment of the community.
   a. Identify community risks including, but not limited to, fire, emergency medical services demand, technical rescue, hazardous materials, transportation, and natural hazards.
   b. Establish an occupancy vulnerability risk profile for all buildings in the response area.
   c. Population age, density, and day-time population estimates.
   d. Anticipated population growth estimates and the corresponding demographic changes in population.

5. Analysis and Recommendations.
   a. Best long-range strategy for service delivery.
   b. Recommended performance objectives.
   c. Recommended optimal station locations to include potential future fire stations.
   d. Recommended deployment of operational personnel.
   e. Summary of the benefits gained through the implementation of the recommendations.

DELIVERABLES

1. Development and Review of Draft Project Report: The consultant shall provide a draft version of the written report for review by the client and client representatives. Client feedback is a critical part of this project and adequate opportunity will be provided for review and discussion of the draft report prior to finalization. The report will include:
   a. An executive summary describing the nature of the report, the methods of analysis, the primary findings, and critical recommendations.
   b. Detailed narrative analysis of each report structured in easy-to-read sections and accompanied by explanatory support to encourage understanding by both staff and civilian readers.
   c. Clearly designated recommendations highlighted for easy reference and cataloged as necessary in a report.

2. Delivery of Final Community Risk Assessment/Standards of Cover Document: The consultant shall complete any necessary revisions of the draft and produce publication-quality bound, final versions of the written report, as well as an electronic version of the report.

3. Summary Presentation of Report: The consultant shall make a formal presentation of the findings to stakeholders including staff, elected officials, and union leadership.
APPENDIX B:
CONTRACT FOR PROFESSIONAL SERVICES

City of Monterey’s
Community Risk Assessment/Standards of Cover Study (CRA/SOC) Agreement

THIS AGREEMENT is executed this ____ day of ______________, 20__, by and between the City of Monterey, a municipal corporation, (hereinafter “City”) and [Name of Consultant], [Legal form of entity and state of formation, e.g., California corporation, limited partnership, limited liability company] (hereinafter called “Consultant”).

IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

1. **Scope.** Consultant hereby agrees to provide to the City of Monterey, as the scope of services under this Agreement, the following services including: a critical task analysis, evaluation of agency service levels and an assessment of distribution and concentration measures as further described on the following attachments: City’s Request for Proposal which outlines the scope of services and work under this contract (attached hereto as Exhibit “A”), and the approved Consultant’s Proposal dated October 21, 2020 (attached hereto as Exhibit “B”). In case of any conflicting terms it is the express intent of the parties hereto that the order of precedence and controlling language shall be as follows: No. 1 this Agreement; No. 2 City’s Request for Proposal (Exhibit “A”); No. 3 Consultant’s proposal (Exhibit “B”).

2. **Timely Work.** Consultant shall perform all tasks in a timely fashion. Failure to so perform is hereby deemed a material breach of this Agreement, and City may terminate this Agreement with no further liability hereunder.

3. **Term.** The work under this Agreement shall commence October 21, 2020 and shall be completed by March 31, 2021 unless City grants a written extension of time.

4. **Compensation.** City agrees to pay and Consultant agrees to accept as full and fair consideration for the performance of this Agreement, an hourly fee as set forth in Consultant’s Proposal (Exhibit B), in a total amount not to exceed _______ Thousand Dollars ($______.00). Compensation under this Agreement shall become due and payable 30 days after City’s approval of Consultant’s submission of monthly written invoices to the Monterey Fire Department Fire Chief Gaudenz Panholzer. Written invoices shall clearly show the account numbers for each project and shall include a copy of timesheets or invoices from sub-consultants. The payment of any compensation to Consultant hereunder shall be contingent upon performance of the terms and conditions of this Agreement to the satisfaction of the City. If City determines that the work set forth in the written invoice has not been performed in accordance with the terms of this Agreement, City shall not be responsible for payment until such time as the work has been satisfactorily performed.

5. **Additional Services.** In the event that City should request additional services not covered by the terms of this Agreement, said services will be provided by Consultant and paid for by City only after a fee for said services has been agreed upon between Consultant and City project manager and the project manager provides written authorization for the additional work.
6. **Staffing Plan.** Consultant shall provide City with the names of the key professional personnel assigned to perform the services under this Agreement as well as a general description of the services they will be assigned to perform in Exhibit “D” Consultant’s Staffing Plan. The plan shall also identify the names and contact information of Consultant’s representative(s) authorized to act on their behalf with respect to this Agreement.

7. **Subconsultant Plan.** If Consultant intends to utilize the services of any subconsultants to perform the services under this Agreement, the names of those subconsultants and a general description of the services they will be assigned to perform shall be attached hereto as Exhibit “E” Subconsultant Plan.

8. **Meet and Confer.** Consultant agrees to meet and confer with City or its agents or employees with regard to services as set forth herein as may be required by City to insure timely and adequate performance of this Agreement.

9. **Indemnification.**

   A. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, indemnify, and hold harmless the City of Monterey and its officers, designated agents, departments, officials, representatives, and employees (collectively “Indemnitees”) from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys’ fees) (collectively “Liabilities”) arising out of or in any way relating to the acts or omissions of Consultant, its officers, agents, or employees in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees’ choice, and shall pay all costs and expenses, including all attorneys’ fees and experts’ costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

   B. City shall give Consultant prompt written notice of any such claim of loss or damage and shall cooperate with Consultant, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City’s interests.

   C. Notwithstanding the foregoing, City shall have the right if Consultant fails or refuses to defend City with legal counsel acceptable to City to engage its own legal counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due to Consultant in the amount of anticipated defense costs plus additional reasonable amounts as security for Consultant’s obligations under this Section 10. In no event shall Consultant agree to the settlement of any claim described herein without the prior written consent of City.
D. Consultant acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any such action or claim which potentially falls within the indemnification provision, which obligation shall arise at the same time thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Consultant’s liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.

E. All of Consultant’s obligations under this Section are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.

F. The indemnity set forth in this Section 9 shall not be limited to by the City’s insurance requirements contained in Section 10 hereof, or by any other provision of this Agreement. City’s liability under this Agreement shall be limited to payment of Consultant in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

10. Insurance. Without altering or limiting Consultant’s duty to indemnify, Consultant shall procure and maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including operations, products and completed operations, as applicable, for property damage, bodily injury and personal and advertising injury with limits no less than $1,000,000 and $2,000,000 in the aggregate.

- **Commercial Automobile Liability**: Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than $1,000,000 per accident for bodily injury and property damage.

- **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. A waiver can be signed if Consultant has no employees

- **Professional Liability** (Errors and Omissions) Insurance appropriate to the Consultant’s profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate. Consultant will either maintain or cause to be maintained professional liability coverage in full force or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following City’s acceptance of the work.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader
coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Other Insurance Requirements

A. All insurance required under this Agreement must be written by an insurance company either:

- admitted to do business in California with a current A.M. Best rating of no less than A:VI; or

- with a current A.M. Best rating of no less than A: VII.

Exception may be made for the State Compensation Insurance Fund when not specifically rated.

B. Each insurance policy required by this agreement shall be endorsed to state that City of Monterey shall be given notice in writing at least thirty days in advance of any cancellation thereof, except 10-day notice for nonpayment of the premium.

C. The general liability and auto policies shall:

- Provide an endorsement naming the City of Monterey, its officers, officials, employees and volunteers as additional insureds under an endorsement (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

- Provide that such insurance is primary and non-contributing insurance to any insurance or self-insurance maintained by the City.

- Contain a "Separation of Insureds" provision substantially equivalent to that used in the ISO form CG 00 01 10 01 or their equivalent.

- Provide for a waiver of any subrogation rights against the City via an ISO CG 24 01 10 93 or its equivalent.

D. Prior to the start of work under this Agreement, Consultant shall file certificates of insurance and endorsements evidencing the coverage required by this agreement with the City of Monterey Risk Management Office. Consultant shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.

E. Neither the insurance requirements hereunder, nor acceptance or approval of Consultant's insurance, nor whether any claims are covered under any insurance, shall in any way modify or change
Consultant’s obligations under the indemnification clause in this Agreement, which shall continue in full force and effect. Notwithstanding the insurance requirements contained herein, Consultant is financially liable for its indemnity obligations under this Agreement.

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

G. If any of the required policies provide coverage on a claims-made basis:

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

- Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.

- If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase “extended reporting” coverage for a minimum of three (3) years after completion of contract work.

11. Ownership of Work and Copyrights. Upon completion of the work under this Agreement, ownership, title and copyrights to all materials and deliverables produced as part of this Agreement will automatically be vested in the City and no further agreement will be necessary to transfer ownership to City.

12. Licensing – Standard of Care. Consultant represents as follows: that it is experienced in the professional services and a specialist in the work performed under this Agreement; is duly organized, existing and in good standing under applicable state law; and is properly licensed and/or certified to perform the work specified under this Agreement, including but not limited to possession of a current City business license, and will only employ persons and subconsultants with all required licenses and certifications.

13. Substitution of Consultant Personnel. The key personnel of Consultant or any subconsultants listed in Consultant’s proposal and assigned to perform the work under this Agreement may not be substituted with or replaced by other personnel or subconsultants without the advance written consent of City. If, at any time, the City reasonably objects to the performance, experience, qualifications or suitability of any of Consultant’s employees or subconsultants, then Consultant shall, on written
request from the City, replace such employee or subconsultant. Consultant shall replace the individual with a qualified individual acceptable to the City.

14. Non-Discrimination. No discrimination shall be made by Consultant or any subconsultant in the hiring and employment of persons for the work under this Agreement or any other City project because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person. Every person in violation of this section is subject to the penalties in accordance with the provisions of Section 1735 of the Labor Code.

15. Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing fifteen days’ written notice to Consultant. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. All City data, documents, objects, materials, or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

16. Agency. In performing the services specified under this Agreement, Consultant is hereby deemed to be an independent contractor and not an agent or employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

17. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or 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 the City, Consultant shall 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. Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

18. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto and supersedes any and all prior agreements, whether oral or written, relating to the subject matter thereof. Any modification of this Agreement will be effective only if it is in writing signed by both parties hereto.

19. **Validity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.

20. **Waiver.** The waiver by City or Consultant of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant, or condition herein contained. No term, covenant, or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

21. **Assignment of Interest.** The duties under this Agreement shall not be assignable, delegable, or transferable without the prior written consent of City. Any such purported assignment, delegation, or transfer shall constitute a material breach of this Agreement upon which City may terminate this Agreement and be entitled to damages.

22. **Conflict of Interest.** Consultant hereby certifies that it does not now have, nor shall it acquire, any financial or business interest that would conflict with the performance of services under this Agreement.

23. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, California’s Uniform Electronic Transactions Act, or other applicable law) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

24. **Laws.** Consultant agrees that in the performance of this Agreement it will reasonably comply with all applicable State, Federal and local laws and regulations.
This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City of Monterey.

25. Corporate. Each party represents and warrants to the other that (i) it is duly organized and validly existing and in good standing under the laws of the state of its incorporation or organization, (ii) it has full corporate power and authority to enter into this Agreement and to carry out its obligations hereunder; (iii) it is duly authorized to execute and deliver this Agreement and duly authorized to perform the obligations hereunder; (iv) this Agreement is a legal and valid obligation of such party, binding and enforceable in accordance with its terms, (v) the execution, delivery and performance of this Agreement does not conflict with any agreement, instrument, or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law, regulation or order of any court, governmental body or administrative or other agency having jurisdiction over it.

IN WITNESS WHEREOF, this Agreement is entered into by the parties hereto on the day and year first above written in Monterey, California.

CITY OF MONTEREY

__________________________   __________________________
City Manager     Authorized Signature

[CONSULTANT NAME]

__________________________   __________________________
Print Name & Title
APPENDIX C:

SUMMARY OF INDEMNITY AND INSURANCE REQUIREMENTS
For Design Professionals

Please provide a copy of these indemnity and insurance requirements to your insurance broker or insurer to confirm compliance.

INDEMNIFICATION AND HOLD HARMLESS
To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Consultant shall defend (with legal counsel reasonably acceptable to the City of Monterey), indemnify and hold harmless the City of Monterey and its officers, designated agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury expense and liability (including incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Consultant (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the negligence, or willful misconduct of such Indemnitee.

Notwithstanding the provisions of the above paragraph, Consultant agrees to indemnify and hold harmless the City from and against any and all claims, demands, defense costs, liability, expense, or damages arising out of or in connection with damage to or loss of any property belonging to Consultant or Consultant's employees, contractors, representatives, patrons, guests or invitees, if such claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

Consultant further agrees to indemnify City for damage to or loss of City of Monterey property to the proportionate extent they arise out of Consultant's negligent performance of the work associated with this agreement or to the proportionate extent they arise out of any negligent act or omission of Consultant or any of Consultant's employees, agents, contractors, representatives, patrons, guests or invitees; if such claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and excepting such damage or loss arising out of the negligence of the City.

INSURANCE.
Without altering or limiting Consultant's duty to indemnify, Consultant shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance including but not limited to premises, personal injuries, bodily injuries, products, and completed operations, with a
combined single limit of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate.

Professional Liability Insurance. Consultant shall maintain in effect throughout the term of this Agreement professional liability insurance with limits of not less than $1,000,000 per claim and $2,000,000 in the aggregate. Consultant will either maintain or cause to be maintained professional liability coverage in full force or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following City's acceptance of the work.

Commercial automobile liability insurance covering all automobiles, including owned, leased, non-owned, and hired automobiles, used in providing services under this Agreement, with a combined single limit of not less than $1,000,000 per occurrence.

Workers' Compensation Insurance. If Consultant employs others in the performance of this Agreement, Consultant shall maintain workers' compensation insurance in accordance with California Labor Code section 3700 and with a minimum of $1,000,000 per occurrence for employer's liability.

Other Insurance Requirements:

A. All insurance required under this Agreement must be written by an insurance company either:
   - admitted to do business in California with a current A.M. Best rating of no less than A:VI;
   - an insurance company with a current A.M. Best rating of no less than A: VII.

Exception may be made for the State Compensation Insurance Fund when not specifically rated.

B. Each insurance policy required by this agreement shall be endorsed to state that City of Monterey shall be given notice in writing at least thirty days in advance of any cancellation thereof, except 10-day notice for nonpayment of the premium.

C. The general liability and auto policies shall:
   - Provide an endorsement naming the City of Monterey, its officers, officials, and employees as additional insureds under an ISO CG 20 10 07 04 or ISO 20 37 07 04 or their equivalent.
   - Provide that such insurance is primary and non-contributing insurance to any insurance or self-insurance maintained by the City.
• Contain a "Separation of Insureds" provision substantially equivalent to that used in the ISO form CG 00 01 10 01 or their equivalent.
• Provide for a waiver of any subrogation rights against the City via an ISO CG 24 01 10 93 or its equivalent.

D. Prior to the start of work under this Agreement, Consultant shall file certificates of insurance and endorsements evidencing the coverage required by this agreement with the City of Monterey Risk Management Office. Consultant shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.

E. Neither the insurance requirements hereunder, nor acceptance or approval of Consultant's insurance, nor whether any claims are covered under any insurance, shall in any way modify or change Consultant's obligations under the indemnification clause in this Agreement, which shall continue in full force and effect. Notwithstanding the insurance requirements contained herein, Consultant is financially liable for its indemnity obligations under this Agreement.

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