



## Notice Requesting Proposals / Qualifications for Amendments to the Margarita Area Specific Plan

The City of San Luis Obispo is requesting sealed proposals for Amendments to the Margarita Specific Plan.

All firms interested in receiving further correspondence regarding this Request for Proposals (RFP) will be required to complete a free registration using BidSync (<https://www.bidsync.com/bidsync-app-web/vendor/register/Login.xhtml>). All proposals must be received via BidSync by the Department of Finance at or before **5:00 pm on May 6, 2024** when they will be opened electronically via BidSync on the proposal end date and time.

The preferred method for bid submission is electronic via BidSync. However, if you wish to submit a paper copy, please submit it in a sealed envelope to the Department of Finance, City of San Luis Obispo, 990 Palm Street, San Luis Obispo, CA, 93401.

Project packages and additional information may be obtained at the City's BidSync website at [www.BidSync.com](http://www.BidSync.com). For any additional information or questions, please contact **Rachel Cohen at (805) 602-0821 or via email at [rcohen@slocity.org](mailto:rcohen@slocity.org)**.

For technical help with BidSync please contact BidSync tech support at 800-990-9339.



## TABLE OF CONTENTS

A. INTRODUCTION.....	2
B. SCOPE OF WORK.....	2
C. PROJECT SCHEDULE .....	3
D. PROJECT BUDGET .....	4
E. GENERAL TERMS AND CONDITIONS .....	4
F. SPECIAL TERMS AND CONDITIONS.....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
G. FORM OF AGREEMENT .....	16
H. INSURANCE REQUIREMENTS .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
I. PROPOSAL SUBMITTAL FORMS.....	12

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## **A. INTRODUCTION**

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### **Background**

The [Margarita Area Specific Plan \(MASP\)](#) was adopted in 2004 to support the General Plan's goal for compact urban form and provide permanent open space and a mix of housing with supporting services. The MASP was envisioned on properties in the vicinity of the San Luis Obispo County Regional Airport and any proposed development was subject to the 2002 San Luis Obispo County Regional Airport's Airport Land Use Plan (ALUP). The ALUP identified safety subareas that limited residential and non-residential density based on potential aviation hazards. Most of the area that made up the MASP were within these safety subareas that required a close look at land use and density considerations to assure that development would be compatible with the 2002 ALUP.

### **MASP Current Residential Density**

Based on the ALUP safety subareas, residential development within the MASP was limited to a total of 868 residential units on 142.6 acres of land. This comes out to approximately 6 residential units per acre. As a comparison, the City's R-1 zone (low-density residential) allows 7 units per acre. Under the ALUP, properties zoned R-3 or R-4 were limited to 9.1 acres and 0.8 acres respectively (9.9 acres total) to reduce the overall housing density within the MASP. Approximately 60 acres of land was designated as R-1 or R-2 zoning.

### **2021 Airport Land Use Plan Amendments**

In 2021 the County of San Luis Obispo amended the 2002 ALUP. The size and shape of the safety subareas around the airport changed in such a way that now several areas of the MASP are either available for residential development (where it wasn't allowed before) or available for higher density residential development. Based on the revised ALUP safety subareas and the City's Major City Goal for Housing, there is now an opportunity to increase the number of housing units within the MASP.

### **MASP Amendment Opportunity**

As part of the City's 2023-2025 Financial Plan, in light of the 2021 ALUP Amendments, staff identified the opportunity to initiate amendments and an update to the MASP that would increase density on existing residentially zoned land and consider allowing mixed-use development on commercially zoned land consistent with the City's Housing and Homelessness Major City Goal.

## **B. SCOPE OF WORK**

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Prepare amendments and an update to the Margarita Area Specific Plan (MASP) by completing the following tasks:

- 1) Review and recommend which parcels to rezone within the MASP to increase density on existing residentially zoned land. For example, changing currently zoned land from R-2 to R-3 or R-4.
- 2) Explore and consider opportunities to support the development of Missing Middle Housing design types.
- 3) Review and evaluate rezoning the Business Park (BP) zoned parcels to Service Commercial (C-S) zoning opportunities and propose findings and criteria to allow mixed-use development consistent with the updated Airport Land Use Plan (ALUP).
- 4) Conduct a resource analysis of available water, sewer capacity, emergency services, etc. for proposed increased residential density and changes in land uses / zoning.

- 5) Conduct a fiscal analysis including but not limited to market conditions, development assumptions, and general fund fiscal impacts in order to inform the proposed mixed-use on rezoned C-S parcels in the MASP.
- 6) Conduct one public outreach meeting / event / activity to collect feedback on the proposed amendments.
- 7) Conduct the appropriate environmental review as required per the California Environmental Quality Act (CEQA) for the proposed amendments.

Completion date: Early calendar year 2026 (see draft/preliminary schedule below).

Presentations/Public Hearings: The consultant should be available for one hearing at the Planning Commission (PC) (for review and recommendation to Council) and one hearing for the City Council to consider final adoption of the Margarita Area Specific Plan Amendments. The consultant will be ready to present the recommended updates and answer questions from the PC, City Council and the public. There will also be periodic meetings either virtual or in person, with city staff to guide the updates as the project progresses.

Deliverables: Products include administrative draft documents, public draft documents, versions ready for final PC and a final document that responds to PC and staff feedback for Council review

Personnel: Rachel Cohen, Senior Planner, is the project lead and will be assisted by City staff. Ongoing contact and collaboration with Rachel to confirm direction and receive staff assistance is expected for the project's duration.

### C. PROJECT SCHEDULE

Preliminary Schedule*	Tasks
April 8, 2024	<ul style="list-style-type: none"> <li>• RFP Sent to qualified consultants</li> </ul>
May 6, 2024	<ul style="list-style-type: none"> <li>• Consultant proposals due</li> </ul>
May 6 – June 14, 2024	<ul style="list-style-type: none"> <li>• Consultant selection and contract execution</li> </ul>
June 17, 2024	<ul style="list-style-type: none"> <li>• Kick-off meeting with staff team (may be virtual)</li> </ul>
June 2024 – November 2024	<ul style="list-style-type: none"> <li>• Conduct Fiscal and Resource analysis</li> </ul>
August 2024	<ul style="list-style-type: none"> <li>• Project Description confirmed</li> </ul>
September - October 2024	<ul style="list-style-type: none"> <li>• Issue NOP / Start Environmental Review</li> </ul>
October 2024 – January 2025	<ul style="list-style-type: none"> <li>• Draft opportunities and incentives to develop Missing Middle Housing design types <b>and</b> findings and criteria for Mixed-Use development in the C-S zone</li> </ul>
January 2025	<ul style="list-style-type: none"> <li>• City comments/edits on proposed incentives for Missing Middle Housing design and criteria for Mixed-Use development</li> </ul>
March – April 2025	<ul style="list-style-type: none"> <li>• Administrative Draft of Proposed MASP Amendments to City</li> </ul>
May – June 2025	<ul style="list-style-type: none"> <li>• City comments/edits on admin draft documents</li> </ul>
July 2025	<ul style="list-style-type: none"> <li>• Public Environmental Documents available for public review</li> </ul>
August – September 2025	<ul style="list-style-type: none"> <li>• Final Draft of Amendments</li> </ul>

October 2025	<ul style="list-style-type: none"> <li>• PC Review Public Hearing</li> </ul>
December 2025 – January 2026	<ul style="list-style-type: none"> <li>• Updated draft based on any needed updates from PC review and Response to Comments</li> </ul>
March – April 2026	<ul style="list-style-type: none"> <li>• City Council review for approval of the Amendments to the MASP</li> </ul>

\*estimate/rough schedule only - schedule may be updated based on consultant recommended changes and additional detail included in the proposal including outreach, staff collaboration, etc.

#### D. PROJECT BUDGET

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\$300,000 has been allocated for this effort.

#### E. GENERAL TERMS AND CONDITIONS

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##### 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 submitted electronically via BidSync. However, if you can't submit electronic please send your bid copy in a sealed envelope to the Department of Finance, City of San Luis Obispo, 990 Palm Street, San Luis Obispo, CA, 93401. To guard against premature opening, the proposal should be clearly labeled with the proposal title, project number, name of bidder, and date and time of proposal opening. No FAX submittals will be accepted.
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 Section E.

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 Director of Finance 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. The contract shall be made in the form adopted by the City and incorporated in these specifications.

#### **CONTRACT PERFORMANCE**

11. The City's contract terms and conditions that Consultant will be expected to execute and be bound by are attached hereto as Exhibit A.

## **F. SPECIAL TERMS AND CONDITIONS**

1. **Contract Award.** Subject to the reservations set forth in Paragraph 9 of Section E (General Terms and Conditions) of these specifications, the contract will be awarded to the lowest responsible, responsive proposer.
2. **Sales Tax Reimbursement.**  
For sales occurring within the City of San Luis Obispo, the City receives sales tax revenues. Therefore, for bids from retail firms located in the City at the time of proposal closing for which sales tax is allocated to the City, 1% of the taxable amount of the bid will be deducted from the proposal by the City in calculating and determining the lowest responsible, responsive proposer.
3. **Labor Actions.**  
In the event that the successful proposer is experiencing a labor action at the time of contract award (or if its suppliers or subcontractors are experiencing such a labor action), the City reserves the right to declare said proposer is no longer the lowest responsible, responsive proposer and to accept the next acceptable low proposal from a proposer that is not experiencing a labor action, and to declare it to be the lowest responsible, responsive proposer.
4. **Failure to Accept Contract.**  
The following will occur if the proposer to whom the award is made (Contractor) fails to enter into the contract: the award will be annulled; any bid security will be forfeited in accordance with the special terms and conditions if a proposer's bond or security is required; and an award may be made to the next lowest responsible, responsive proposer who shall fulfill every stipulation as if it were the party to whom the first award was made.
5. **Contract Term.**  
The supplies or services identified in this specification will be used by the City for upon contract execution until the project is completed and consistent with the signed Professional Services Agreement. The prices quoted for these items must be valid for the entire period indicated above unless otherwise conditioned by the proposer in its proposal.
6. **Contract Extension.**  
The term of the contract may be extended by mutual consent for an additional one-year, and annually thereafter, for a total of four years.
7. **Supplemental Purchases**  
Supplemental purchases may be made from the successful proposer during the contract term in addition to the items listed in the Detail Proposal Submittal Form. For these supplemental purchases, the proposer shall not offer prices to the City in excess of the amounts offered to other similar customers for the same item. If the proposer is willing to offer the City a standard discount on all supplemental purchases from its generally prevailing or published price structure during the contract term, this offer and the amount of discount on a percentage basis should be provided with the proposal submittal.

8. **Contractor Invoices.**  
The Contractor may deliver either a monthly invoice to the City with attached copies of detail invoices as supporting detail, or in one lump-sum upon completion.
- 9 **Non-Exclusive Contract.** The City reserves the right to purchase the items listed in the Detail Proposal Submittal Form, as well as any supplemental items, from other vendors during the contract term.
10. **Unrestrictive Brand Names.** Any manufacturer's names, trade names, brand names or catalog numbers used in the specifications are for the purpose of describing and establishing general quality levels. Such references are not intended to be restrictive. Proposals will be considered for any brand that meets or exceeds the quality of the specifications given for any item. In the event an alternate brand name is proposed, supplemental documentation shall be provided demonstrating that the alternate brand name meets or exceeds the requirements specified herein. The burden of proof as to the suitability of any proposed alternatives is upon the proposer, and the City shall be the sole judge in making this determination.
11. **Delivery.** Prices quoted for all supplies or equipment to be provided under the terms and conditions of this RFP package shall include delivery charges, to be delivered F.O.B. San Luis Obispo by the successful proposer and received by the City within 90 days after authorization to proceed by the City.
12. **Start and Completion of Work.** Work on this project shall begin immediately after contract execution and shall be completed within 90 calendar days thereafter, unless otherwise negotiated with City by mutual agreement.
13. **Change in Work.** The City reserves the right to change quantities of any item after contract award. If the total quantity of any changed item varies by 25% or less, there shall be no change in the agreed upon unit price for that item. Unit pricing for any quantity changes per item in excess of 25% shall be subject to negotiation with the Contractor.
14. **Submittal of References.** Each proposer shall submit a statement of qualifications and references on the form provided in the RFP package.
15. **Statement of Contract Disqualifications.** Each proposer shall submit a statement regarding any past governmental agency bidding or contract disqualifications on the form provided in the RFP package.



## PROPOSAL CONTENT

1. **Proposal Content.** Your proposal must include the following information:

### ***Submittal Forms***

- a. Proposal submittal summary.
- b. Certificate of insurance.
- c. References from at least three firms for whom you have provided similar services.

### ***Qualifications***

- d. 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.
- e. 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.
- f. Standard hourly billing rates for the assigned staff, including any sub-consultants.
- g. 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***

- h. Detailed description of your approach to completing the work.
- i. Detailed schedule by task and sub-task for completing the work.
- j. 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.
- k. Detailed budget by task and sub-task for completing the work.
- l. Services or data to be provided by the City.
- m. Services and deliverables provided by the Consultant(s).
- n. Any other information that would assist us in making this contract award decision.
- o. Description of assumptions critical to development of the response which may impact cost or scope.

### ***Requested Changes to Terms and Conditions***

- p. ***The City desires to begin work soon after selecting the preferred Consultant and expects the Consultant to execute the City's contract and all of the terms therein, as set forth in Exhibit A.*** To expedite the contracting process, each submittal shall include requested redlined changes to terms and conditions, if necessary. Please be advised that Consultant's requested changes to the City's terms and conditions will be considered by City staff when scoring and determining the competency and responsibility of the proposer.

### ***Proposal Length***

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

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

- a. Understanding of the work required by the City.
- b. Quality, clarity and responsiveness of the proposal.
- c. Demonstrated competence and professional qualifications necessary for successfully performing the work required by the City.
- d. Recent team experience in successfully performing similar services.
- e. Creativity of the proposed approach in completing the work.
- f. Value
- g. Writing skills.
- h. References.
- i. Background and experience of the specific individuals managing and assigned to this project.
- j. Information about how your company mitigates the environmental impact of its services, such as greenhouse gas emissions, amount of waste generated, water and energy use, or other areas related to your products and services.

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.

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

- |    |   |                       |
|----|---|-----------------------|
| a. | Issue RFP   | April 8, 2024         |
| b. | Receive proposals                                       | April 8 – May 6, 2024 |
| c. | Complete proposal evaluations                           | May 7 – 31, 2024      |
| d. | Conduct finalist interviews and finalize recommendation | June 3 – 7, 2024      |
| e. | Execute contract  | June 10 – 14, 2024    |
| f. | Start work  | June 17, 2024         |

4. **Ownership of Materials.** All original drawings, plan documents and other materials prepared by or in possession of the Consultant 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.

5. **Release of Reports and Information.** Any reports, information, data, or other material given to, prepared by or assembled by the Consultant 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 Consultant without the prior written approval of the City.

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

7. **Required Deliverable Products.** The Consultant will be required to provide:
- a. 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.
  - b. 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
Digital Maps:	Geodatabase shape files in State Plan Coordinate System as specified by City GIS staff
  - c. City staff will review any documents or materials provided by the Consultant and, where necessary, the Consultant will be required to respond to staff comments and make such changes as deemed appropriate.

***ALTERNATIVE PROPOSALS***

8. **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).
9. **Attendance at Meetings and Hearings.** As part of the workscope and included in the contract price is attendance by the Consultant at up to two public meetings to present and discuss its findings and recommendations. The Consultant shall attend as many "working" meetings with staff as necessary in performing work-scope tasks.
10. **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, Consultant shall immediately notify the City in writing, and the Consultant and all subconsultants 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 Consultant'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.

**SECTION H: PROPOSAL SUBMITTAL FORM - SAMPLE**

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The undersigned declares that they have carefully examined [\_\_\_\_\_] which is hereby made a part of this proposal; is thoroughly familiar with its contents; is authorized to represent the proposing firm; and agrees to perform the specified work for the following cost quoted in full:

BID ITEM:

Total Base Price	
Sales tax []	
Other	
<b>TOTAL</b>	\$

Delivery of equipment to the City to be within \_\_\_\_\_ calendar days after contract execution and written authorization to proceed.

Certificate of insurance attached; insurance company's A.M. Best rating: \_\_\_\_\_.

***Firm Name and Address***

<i>Contact</i>	<i>Phone</i>

***Signature of Authorized Representative***

	<i>Date</i>
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**E NOTES ON THIS SAMPLE FORM**

***This is the City's "basic" submittal form, and something like it should accompany all proposals, even if: a combined "description of work/detailed proposal submittal form" (like Sample E) is required; or price information is not requested (like Sample F).***

**REFERENCES**

Number of years engaged in providing the services included within the scope of the specifications under the present business name: \_\_\_\_\_.

Describe fully the last three contracts performed by your firm that demonstrate your ability to provide the services included with the scope of the specifications. Attach additional pages if required. The City reserves the right to contact each of the references listed for additional information regarding your firm's qualifications.

**Reference No. 1:**

Agency Name	
Contact Name	
Telephone & Email	
Street Address	
City, State, Zip Code	
Description of services provided including contract amount, when provided and project outcome	

**Reference No. 2:**

Agency Name	
Contact Name	
Telephone & Email	
Street Address	
City, State, Zip Code	
Description of services provided including contract amount, when provided and project outcome	

**Reference No. 3**

Agency Name	
Contact Name	
Telephone & Email	
Street Address	
City, State, Zip Code	
Description of services provided including contract amount, when provided and project outcome	





**CITY OF SAN LUIS OBISPO  
PROFESSIONAL SERVICES AGREEMENT**

This agreement (Agreement) is made and entered into in the City of San Luis Obispo on \_\_\_\_\_, by and between the City of San Luis Obispo, a municipal corporation and charter city (City) and [FILL] hereinafter referred to as Consultant (collectively referred to as the “Parties”).

**WITNESSETH:**

WHEREAS, on [date], City requested proposals for [\_\_\_\_\_], per Project No. [xxxx] (the “Project”); and

WHEREAS, the City wants to [generally describe the service we want performed] (the “Services”); and

WHEREAS, Consultant is qualified to perform this type of Services and has submitted a written proposal to do so, which has been accepted by City; and

NOW, THEREFORE, in consideration of their mutual promises, obligations, and covenants hereinafter contained, the Parties hereto agree as follows:

1. **TERM.** The term of this Agreement shall be from the date this Agreement is made and entered, as first written above, until [date], or upon acceptance and completion of said Services, whichever occurs sooner. [If you plan to have an option to extend the agreement for some period after the term ends, insert that extension language here]
2. **INCORPORATION BY REFERENCE.** [Title of City’s RFP/RFQ/IFB] and Consultant’s proposal dated [date] are hereby incorporated in and made a part of this Agreement, attached as Exhibit A. [If no RFP attach Contractor/Consultant Proposal As Exhibit A]. The City’s insurance requirements are hereby incorporated in and made part of this Agreement, attached as Exhibit B. [Check with the City’s Risk Manager as to the risk level of the Agreement and to verify Consultant has sufficient insurance coverage for that risk level BEFORE routing the Agreement to the Parties.] [If RFP; the Contractor/Consultant Proof of Insurance should be with their bid package and can be attached and incorporated by reference in Exhibit A. You can remove the insurance as Exhibit B]. If no RFP; then you must attach the insurance proof as Exhibit B] To the extent that there are any conflicts between the Consultant’s fees and scope of work and the City’s terms and conditions as stated herein, the City’s terms and conditions shall prevail unless specifically agreed otherwise in writing signed by both Parties.

3. **CITY'S OBLIGATIONS.** For providing services as specified in this Agreement, City will pay and Consultant shall receive therefor compensation of \$xx,xxx.
4. **CONSULTANT'S OBLIGATIONS.** For and in consideration of the payments and agreements herein before mentioned to be made and performed by City, Consultant agrees with City to do everything required by this Agreement including that work as set forth in Exhibit A.
5. **PAYMENT OF TAXES.** The contract prices shall include full compensation for all taxes that Consultant is required to pay.
6. **LICENSES AND PERMITS.** At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the Services described in this Agreement. The Consultant shall procure all permits and licenses, pay all charges and fees, and give all notices necessary under this Agreement.
7. **COMPLIANCE WITH LAW.** The Consultant shall keep itself informed of and shall observe and comply with all applicable State and Federal laws and regulations, and county and City of San Luis Obispo ordinances, regulations and adopted codes, which in any manner affect those employed by Consultant or in any way affect the performance of the Services pursuant to this Agreement. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section. Failure to comply with local ordinances may result in monetary fines and cancellation of this Agreement.
8. **COMPLIANCE WITH INDUSTRY STANDARD.** Consultant shall provide services acceptable to City in strict conformance with the Agreement. Consultant shall also provide in accordance with the standards customarily called for under this Agreement using the degree of care and skill ordinarily exercised by reputable providers of such services. Where approval by the City, the City Manager, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Consultant of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.
9. **INDEPENDENT CONTRACTOR.**
  - a. Consultant is and shall at all times remain as to the City a wholly independent contractor. 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 whatsoever against City, or bind City in any manner.
  - b. No employee benefits shall be available to Consultant in connection with the 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 the 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.

10. **PRESERVATION OF CITY PROPERTY.** The Consultant shall provide and install suitable safeguards, approved by the City, to protect City property from injury or damage. If City property is injured or damaged resulting from Consultant's operations, it shall be replaced or restored at Consultant's expense. The City's facilities shall be replaced or restored to a condition as good as when the Consultant began the work. |
11. **IMMIGRATION ACT OF 1986.** The Consultant warrants on behalf of itself and all subconsultants engaged for the performance of the Services that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the Services hereunder.
12. **NON-DISCRIMINATION.** In the performance of the Services, the Consultant agrees that it will not engage in, nor permit such subconsultants 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.
13. **WORK SCHEDULED/TIME OF COMPLETION.**

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 for each and every day such performance is late or delayed. 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.
14. **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 Consultant (Net 30). Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Final June invoices shall be received no later than the 5th business day of July to meet City fiscal year-end deadlines. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within forty-five (45) days of receipt of an invoice, therefore.
15. **INSPECTION.** City shall at all times have the right to inspect the work being done under this Agreement and Consultant shall furnish City with every reasonable opportunity and assistance required for City to ascertain that the Services of the Consultant are being performed in accordance with the requirements and intentions of this Agreement. 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 Consultant of any of its obligations under the Agreement.

**16. RELEASE OF INFORMATION.**

- 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 subconsultants, 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. 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 subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement, unless the City is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless Consultant is prohibited by law from informing the City of such Discovery. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is averse to Consultant in such 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. CONFLICTS OF INTEREST.** Consultant covenants that neither they nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of the Services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

**18. 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 the 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 or copies 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 under 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, copying and/or printing computer files. Consultant hereby grants to City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the Services under this Agreement.

**19. INDEMNIFICATION AND DEFENSE.** 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 passive negligence, except for such loss or damage arising from the sole or active 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.

**20. 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 thirty (30) 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 14.
21. **TERMINATION FOR CAUSE.** If, during the term of the Agreement, the City determines the Consultant is not faithfully abiding by any term or condition contained herein, the City may notify the Consultant in writing of such defect or failure to perform. This notice must give the Consultant a ten (10) calendar day notice of time thereafter in which to perform said work or cure the deficiency.
- a. If the Consultant has not performed the work or cured the deficiency within the ten (10) days specified in the notice, such shall constitute a breach of the Agreement and the City may terminate the Agreement immediately by written notice to the Consultant to said effect (“Notice of Termination”). Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under the Agreement except to comply with the obligations upon termination.
  - b. In said event, the Consultant 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 Consultant as may be set forth in the Agreement payment schedule; compensation for any other work or services performed or provided by the Consultant shall be based solely on the City’s assessment of the value of the work-in-progress in completing the overall scope.
  - c. The City reserves the right to delay 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 Consultant be entitled to receive in excess of the not to exceed amount shown in this Agreement.
22. **INSURANCE.** Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit B attached to and made part of this Agreement.
23. **BUSINESS LICENSE & TAX.** The Consultant must have a valid City of San Luis Obispo business license & tax certificate before execution of the contract. Additional information regarding the City’s business tax program may be obtained by calling (805) 781-7134.
24. **SAFETY PROVISIONS.** The Consultant shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial

Safety.

25. **PUBLIC AND EMPLOYEE SAFETY.** Whenever the Consultant operations create a condition hazardous to the public or City employees, it shall, at its expense and without cost to the City, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.
26. **UNDUE INFLUENCE.** Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the City 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 has or 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.
27. **ASSIGNMENT.** The Consultant 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.
- Because of the personal nature of the services to be rendered pursuant to this Agreement, only [Insert name], an employee of Consultant, shall perform the services described in this Agreement. [Insert name] may use assistants, under their direct supervision, to perform some of the services under this Agreement. Consultant shall provide City fourteen (14) days' notice prior to the departure of [Insert name] from Consultant's employ. Should [Insert name] leave Consultant's employ, the City shall have the option to immediately terminate this Agreement, within three (3) days of the close of notice of [Insert name]'s departure. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City and the Consultant.
- a. As required above, before retaining or contracting with any subconsultant for any services under this Agreement, City must consent to such assignment of performance in writing. For City to evaluate such proposed assignment, Consultant shall provide City with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant, which shall include an indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from City for such insurance.
28. **AMENDMENT.** Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the appropriate review





CITY	CONSULTANT
<p>_____</p> <p>By: [Name] Its: [Title of City Manager or Department Head]</p>	<p>_____</p> <p>By: [Name] Its: [Title]</p>
APPROVED AS TO FORM:	
<p>_____</p> <p>By: J. Christine Dietrick, City Attorney</p>	

\_\_\_\_\_

**EXHIBIT A**

**[Placeholder for RFP/RFQ/IFB and Consultant's Proposal]**

## EXHIBIT B

### INSURANCE REQUIREMENTS

#### **Consultants**

Without limiting Consultant's indemnification of City, and prior to commencement of work, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the types and amounts described below and in a form that is satisfactory to City.

**General liability insurance.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile liability insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

**Umbrella or excess liability insurance.** [If required to meet higher limits]. Consultant may obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
- "Pay on behalf of" wording as opposed to "reimbursement";
- Concurrence of effective dates with primary policies.

**Excess insurance.** Should Consultant obtain and maintain an excess liability policy, such policy shall be excess over commercial general liability, automobile liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

**Workers' compensation insurance.** Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers

**Notice of cancellation.** Consultant agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Consultant's insurers are unwilling to provide such notice, then Consultant shall have the

responsibility of notifying the City immediately in the event of Consultant's failure to renew any of the required insurance coverages or insurer's cancellation or non-renewal.

**Additional insured status.** General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. Prohibition of undisclosed coverage limitations. None of the coverages required herein shall comply 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.

**Separation of insureds.** A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass through clause.** Consultant agrees to ensure that its subconsultants, subConsultants, and any other party who is brought onto or involved in the project/service by Consultant (hereinafter collectively "subConsultant"), provide the same minimum insurance coverage and endorsements 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. However, in the event Consultant's subConsultant cannot comply with this requirement, which proof must be submitted to the City, Consultant shall be required to ensure that its subConsultant provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subConsultant's scope of work and services, with limits less than required of the Consultant, but in all other terms consistent with the Consultant's requirements under this agreement. This provision does not relieve the Consultant of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subConsultants. This provision is intended solely to provide Consultant with the ability to utilize a subConsultant who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Consultant under this agreement given the limited scope of work or services provided by the subConsultant. Consultant agrees that upon request, all agreements with subConsultants, and others engaged in the project, will be submitted to City for review.

**City's right to revise specifications.** 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 and Consultant may renegotiate Consultant's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

**Timely notice of claims.** Consultant shall give City prompt and timely notice of claims made or suits instituted that arise.