

Request for Proposal Community Development Software



City of Seaside, California

Information Technology Department

440 Harcourt Avenue

Seaside, CA 93955

July 2018

Section I - Introduction

- A. **Purpose for RFP:** The City of Seaside is interested in contracting with a Permitting and Licensing software vendor to provide workflow automation and tracking Services for building permits, zoning permits, building inspections, code enforcement, and general administrative permits and licenses. Online and mobile functionality is a requirement in order to provide citizen portal and contractor access as well as functionality that will allow field staff to directly access and edit permits and inspections.
- B. **Background Information:** Seaside (pop. 34,312) is a coastal community 90 miles south of San Francisco and 300 miles north of Los Angeles located immediately adjacent to the campus of California State University Monterey Bay. The City of Seaside doubled in size with the closure of Fort Ord military base in 1992 and is 50% developed with mixed use of residential, commercial and lodging. In the next few years, the City will experience tremendous reinvestment and growth in its residential, commercial and undeveloped properties, in 2017 there were 1300 building and trade permits issued.

The City is seeking to significantly increase the volume of permits and license applications, inspection requests and payments that are submitted online. Seaside is implementing a “One Stop Shop” concept where all customer transactions are handled in one physical location, and the City is seeking to extend that customer friendly environment to the online user experience and interface of its permitting and licensing software solution.

The City currently utilizes Tyler Incode software for its financial management and community development software. There are no plans to switch from Incode for financial management, so the selected vendor will need to ensure that their software is able to either directly integrate with Incode, or able to provide a file for electronic import into Incode along with providing the necessary cash register functionality and reports that will allow it to function in conjunction with the City’s existing financial software.

- C. **SOW:** The Scope of Work, as may be modified through negotiation and/or by written addendum, will be made a part of the Agreement. Through this RFP, the City intends to procure the software functionality listed in this section. **Please provide brief itemized answers that correspond to each numbered section that clearly detail how your software provides this functionality. For your convenience an editable Word document is available for you to provide your answers.**

The City desires a customizable, off-the-shelf software solution that will support automation of all necessary functions related to the overall permitting and licensing process. The software will contain the following functions to the greatest extent possible:

1. **General:** Provide modern web form capabilities that allow for easy editing of forms and that clearly define workflows for customers and staff. System must allow online submission and payment of permits, licenses and related activities. The City will consider hosted solutions as well as client/server software solutions. If providing a hosted solution, please detail the network environment, data backup frequency and structure, and guaranteed percentage of uptime. All solutions must clearly explain the City's ability to export information from the system in the event of the maintenance contract being terminated. Please note if your software includes a REST API.
2. **Data:** Integrate with ESRI ArcGIS Online. The city will maintain a public ArcGIS online website. Allow automated updating of property address and owner information from the Monterey County Assessor.
3. **Permitting:** Monitor all building activity, issue a variety of permit types (building, mechanical, electrical, plumbing, right of way, residential alarm and sprinkler, commercial alarm and sprinkler, etc.), link to related records, account for all appropriate fees, and validate that contractors are licensed with Seaside and the State of California. The City would like the capability to have some permits that require no additional administrative review following submission and payment to have the capability to be instantly/automatically approved. Also desire dating functionality that would alert customer and staff of the pending expiration of a permit. The City requires the ability to customize permit number formatting, currently using 00000001. The city requires a solution that includes the ability to flag a property or parcel with a "Stop Work" directive and double fees on

designated properties. The City would prefer a solution that includes functionality for a customer to see an estimate of the fees that will be required for a permit prior to submission.

- 4. Licensing & Contractor Registration:** Provide licensing functionality including contractor licensing that can be directly integrated into the permitting process.
- 5. Inspection Tracking and Scheduling:** Allow automatic creation of specific inspection types based on permit applications. Track both routine and periodic inspections of buildings and property, and manage all building inspection scheduling activities. Allow online customer inspection requests and provide calendaring functionality for inspectors that allow them to easily create a daily schedule from inspection requests. Allow real time inspection results to be publicly available to all users including via email to permit holder. Provide dating functionality that provides ticklers for permits and inspections with no activity. The City would prefer functionality that allows an inspector to see a map of their daily inspections. Permits should automatically close upon a successful final inspection.
- 6. Plan Application Tracking/Workflow:** Provide on-line reporting capabilities for all permit applications and license reviews from permit submission to issuance. The system should provide a visual workflow status that is clear to both the customer and internal staff.
- 7. Reporting:** Generation of reports using any combination of data elements maintained by land use and permitting systems. A dashboard that overviews activity levels and that is capable of being made public is preferred. The City desires automated reports that can be emailed on a pre-defined schedule as well as a publicly (without registration) viewable list of registered contractors.
- 8. Code Enforcement:** Allows for the monitoring of codes and management of violations associated with all building projects and property maintenance. Includes dating functionality that provides reminders for follow-up inspections or needed activities. Allows for the online submission of anonymous code enforcement complaints without prior registration as well as the generation of automated letters based on identified code violations.

9. Public Online Application Submittal, Complaint and Inquiry

Capabilities: The software will allow unregistered read-only queries of active and closed permits based on address. The City would prefer a solution that also allows queries of a map to see active permits or code complaints. Software will have the capability to allow online submittal of permit applications and related plan submissions, and code enforcement complaints.

10. Complete software documentation for support staff, users, and administrators.

11. Mobility/In-Field Usage: View, schedule and modify inspections and record notes while in the field from laptops, iPads and tablet devices. Allow pictures to be easily attached to inspection reports. Have the ability to quickly access all contact details for the owner, applicant, contractor or complainant as well as attached plans. Retrieve data by searching any parameter, including permit #, contractor, address, etc.

12. Capability to track planning and zoning applications: Software must include the ability to assign conditions to certain parcels such as a Historic District, Floodplain etc.

13. Payment Processing: Software must directly integrate with credit card processor and contain cash register functionality for processing of payments. Payment processing must contain audit mechanism to track payment overrides and nuanced user rights that limit users who can override payment structures. Integration with cash drawer functionality of Tyler Incode 10 is preferred.

D. The Scope of Work must include implementation services, including, but not limited to:

- Software installation and setup
- Template and application form development
- Testing, including acceptance testing

- Training for support staff, end users, and administrators
- Software maintenance and warranty services. The Scope of Work must also include a schedule of deliverables and milestones associated with each of the above modules or phases. A solution that will provide a high level of functionality with ease of use is desired. Consideration will be given to a well- designed and proven software system that has excellent vendor support, rich capabilities, and robust ad hoc reporting tools.

E. Proposal Contact Information: All proposals must be in conformance with the submittal instructions provided in Section II of this RFP and received no later than August 4, 2018 at 4 p.m. PST. An electronic copy shall be submitted in PDF format to: bdempsey@ci.seaside.ca.us.

F. Questions: Any matter concerning this RFP document that requires explanation or interpretation must be requested in writing. All questions should be directed to Brian Dempsey, Fire Chief City of Seaside bdempsey@ci.seaside.ca.us. Addendum will be recorded and made available for all proposers.

Section II – Additional Language for Software Proposals

Title and Indemnity.

Proposer warrants that it owns the software, including all associated intellectual property rights, or otherwise has the right to grant City the right and license provided in this Agreement, and that as of the date of this Agreement, to the best of Proposer's knowledge, neither the software nor the documentation infringe on any valid patents, copyrights, trademarks, or other proprietary rights of any third parties.

Travel Expenses

Proposer's policies for reimbursement of employee or contractor travel and living expenses shall be subject to City's review and approval, such approval not to be unreasonably withheld. Proposer shall provide City with supporting documentation such as receipts for travel, hotels, and rental cars with regard to such reimbursable items upon City's request. Fees for services shall be limited to rate schedules

provided to City in advance of providing the additional services. Proposer agrees to use the same diligence in controlling reimbursable expenses as it uses in its own business for expenses incurred by Proposer.

Deliverables

The deliverable(s) shall be accepted by City when (1) the deliverable(s) has been delivered, installed and made ready for use at City's site in accordance with Proposer's installation and operating specifications; (2) City has tested the deliverable(s) and the deliverable(s) has passed testing; and (3) City agrees that deliverables meet or exceed the specifications and those contained in the statement of work and order concerning performance and capabilities of the deliverable(s) as modified by Proposer.

Proposer represents and warrants that (1) the computer programs provided constitute all the applications or systems software or interfaces required by City to operate the Software System; (2) the software system as delivered to City hereunder shall operate on or with the hardware currently utilized within the City; (3) the software systems as delivered to City hereunder shall meet the specifications without the need for customization or modification or the delivery of any additional services except as specified in the statement of work and the work order; (4) the software shall be compatible with City's existing data files, business information and systems such that significant additional applications or systems software or interfaces shall not be required to be produced or procured in order to complete the implementation of the software; and (5) the software shall be free of any defect in material of the media in which the software are delivered, or any virus or other program routine designed to erase or otherwise harm the City's hardware, data or other programs.

In the event City reports a defect or malfunction that materially and adversely affects City's use of the software in a way that interferes with an immediate, urgent need of City, Proposer shall use its best efforts to respond to such report within 24 hours and thereafter to provide continuous technical assistance to diagnose and correct the defect or malfunction. Proposer shall maintain a trained staff capable of rendering the services set forth in this Agreement.

Section III – Proposal Format and Evaluation Process

- A. **To simplify the evaluation process, the Vendor's proposal shall be submitted in the format outlined below:** All responses to be attached on-line.

1. Letter of Transmittal – The proposal letter shall be addressed to the Contact listed and shall include the complete name of the firm or person(s) submitting the proposal, the main office address, primary contact person's name, title, telephone number, email as well as a signature of representative legally authorized to bind the proposal.

2. Executive Summary – A summary of the proposal stating the proposer's understanding of the requested system and highlights of the proposed solution.

3. Vendor Profile and Qualifications – Include vendor and executive information, including age of the company, age of the product platform being sold, whether product was originally acquired, and if so when and from whom, frequency of updates over last two years, a description of the product platform, and a description of qualifications of key staff that would be assigned to the implementation of the solution.

4. Experience – Provide a description of local government experience and experience completing similar projects.

5. References – Provide at least five (5) references of current clients of similar scope with the proposal. Include name, title, address, phone number and email of contact person.

6. Software Description – Please provide answers to the Scope of Work criteria in Section I C. 1-13 of this RFP.

7. Technical Requirements – All hardware requirements, system software, and application requirements must be listed.

8. Implementation Services/Scope of Work – Provide a sample project management plan including reasonable target dates. This section must also outline key activities, work products and assumptions.

9. Training – Provide an overview of proposed training, including options for on-site or training center services, end users, and system administrators. This section should also include an implementation and training plan including an estimated time-frame and deliverables for each stage of the project and training documentation provided.

10. Support and Maintenance – Provide support services including provisions of regular updates and new releases, as well as technical consultation and support. Please include a timeline of recent updates and a description of the normal upgrade cycle.

11. Cost Proposal – Please provide costs for licensing, maintenance, training and any additional services. The City would like to see 1st year costs as well as total annual cost for the next four years of agreement.

12. Additional Information – Please provide any other information you feel is important for consideration in our evaluation of proposals.

- B. Proposal Evaluation and Selection Process:** Following the submission deadline, a selection committee will evaluate all responses and short-list the proposing vendors. Responders will be notified and finalists will be invited to present demonstrations to our staff if necessary. After all demonstrations are completed, the selection committee shall reconvene to either make a decision or to request further information. The City will request finalists provide a sandbox demonstrating the functionality of the program over a 30 day period for staff to try out the software. The selection committee will then make recommendations regarding the selection and request authorization to enter into a contract with the approved vendor. The committee reserves the right to accept/reject any or all proposals. Submission of a proposal indicates acceptance of the conditions contained in the RFP and an agreement to negotiate a contract for services. An award can be made on the basis of greatest benefit to the City of Seaside.

Section IV – Additional Information Questions/Additional Requirements:

Right to Cancel – The City of Seaside reserves the right to change any aspect of, terminate, or delay this RFP, the RFP process and/or the program which is outlined within this RFP at any time, and notice shall be given in a timely manner

thereafter.

No Award – Recipients of this RFP are advised that nothing stated herein, or any part thereof, or any communication during the evaluation and selection process, shall be construed as constituting, offering or awarding a contract, representation or agreement of any kind.

Not Liable for Costs – The City is not liable and will not be responsible for any costs incurred by any vendor(s) for the preparation and delivery of the RFP responses, nor will we be liable for any costs incurred prior to the execution of an agreement, including but not limited to, presentations by RFP finalists.

Property of the City – Responses to this RFP will become the property of the City and will form the basis of negotiations of an agreement with the apparent successful vendor.

Waiver of Irregularities – The City reserves the right, at its sole discretion, to waive minor administrative regularities contained in any proposal.

No Obligation to Buy – The City reserves the right to reject any or all proposals at any time without penalty and from contracting with any vendor. The release of this RFP does not convey the initiation of a purchase.

Withdrawal of Proposals – Vendors may withdraw a proposal that has been submitted at any time up to the proposal closing date and time. To accomplish this, simply retract your on-line bid. The vendor may submit another proposal at any time up to the proposal closing date and time.

Errors in Proposal – The City will not be liable for any errors in vendor proposals. Vendors will not be allowed to alter proposal documents after the deadline for proposal submission.

Corrections or amendments due to errors identified in the vendor's Proposal may be accepted if this type of correction or amendment is due to typing, transposition or any other obvious errors. Vendors are liable for all errors or omissions contained in their proposals.

After opening and reading proposals, they will be checked for correctness. If, after the opening and tabulation of proposals, a vendor claims error and requests to be relieved of award, he/she will be required to promptly present certified work sheets. Staff will review the work sheets and if staff is convinced, by clear and convincing evidence, that an honest, mathematically excusable error or critical omission of costs has been made, the vendor may be relieved of he/she proposal.

Section V - Required Contract Terms

These are the required contract terms that a Successful Proposer shall agree to by submitting the Proposal for consideration. Any contract with the City of Seaside shall include these provisions.

1. Applicable laws:

The Revised Code of the City of Seaside and all City ordinances and administrative rules insofar as they apply to the laws of competitive bidding, contracts and purchases are made a part hereof.

2. Indemnification by Proposer:

To the fullest extent allowed by law, the Proposer shall indemnify and hold harmless the City, its employees and agents, from any liability for claims, damages, losses and expenses, including reasonable attorney fees, resulting from the performance of the contract, or any act or omission, by Proposer, its employees, agents, subcontractors or assigns.

Proposer's obligation to indemnify under this section shall not be construed to negate, abridge, or reduce other rights of indemnity or contribution to which the City, its agents or employees are legally entitled.

3. No indemnification by City:

The City does not agree to indemnify or hold harmless the Proposer, its employees and agents, from any liability for claims, damages, losses and expenses, including reasonable attorney fees, resulting from or arising under the contract.

4. Insurance:

The Proposer shall not commence work under this contract until he/she has obtained all insurance required under this paragraph and such insurance has been approved by the City nor shall the Proposer allow any subcontractors to commence work on this subcontract until all similar insurance required for coverage of the subcontractor has been so obtained and approved. General liability insurance is required \$1,000,000 single occurrence; \$2,000,000 aggregate.

The Proposer shall take out and maintain during the life of this contract, Workers' Compensation Insurance for all of his/her employees employed on the project, and in case any work is sublet, the Proposer shall require the subcontractor similarly to provide General Liability and Workers' Compensation Insurance for all of the latter's employees unless such

employees are covered by the protection afforded by the Proposer. If the Proposer already maintains Worker's Compensation Insurance, Proposer shall submit proof of such coverage to the City with Proposer's submission and thereafter upon request. Proposer shall maintain such insurance throughout the life of any contract with the City.

5. Force majeure:

For the purpose hereof, force majeure shall be any of the following events: acts of God or the public enemy; compliance with any order, rule, regulation, decree, or request of any governmental authority or agency or person purporting to act therefore; acts of war, public disorder, rebellion, terrorism, or sabotage; floods, hurricanes, or other storms; strikes or labor disputes; or any storms; strikes or labor disputes; or any other cause, whether or not of the class or kind specifically named or referred to herein not within the reasonable control of the party affected. A delay in or failure of performance of either party shall not constitute a default hereunder nor be the basis for, or give rise to, any claim for damages, if and to the extent such delay or failure is caused by force majeure. The party who is prevented from performing by force majeure (i) shall be obligated, within a period not to exceed fourteen (14) days after the occurrence or detection of any such event, to give notice to other party setting forth in reasonable detail the nature thereof and the anticipated extent of the delay, and (ii) shall remedy such cause as soon as reasonably possible.

6. Termination of contract for cause:

If, through any cause, the Proposer shall fail to fulfill in a timely manner and proper manner its obligations or if the Proposer shall violate any of the covenants, agreements or stipulations of the contract, the City shall thereupon have the right to terminate the contract by giving written notice to the Proposer of such termination and specifying the effective date of termination. The notice may be mailed, hand-delivered, or sent electronically. In that event, and as of the time notice is given by the City, all finished or unfinished services, reports or other materials prepared by the Proposer shall, at the option of the City, become its property, and the Proposer shall be entitled to receive compensation for any satisfactory work completed, prepared documents or materials as furnished.

Notwithstanding the above, the Proposer shall not be relieved of liability to the City for damage sustained by the City by virtue of breach of the contract by the Proposer and the City may withhold any payments to the Proposer for the purpose of set off until such time as the exact amount of damages due the City from the Provider is determined.

7. Termination of contract for convenience:

The City may terminate the contract at any time by giving written notice to the Proposer of such termination and specifying the effective date thereof, at least thirty (30) working days before the effective date of such termination. The notice may be mailed, hand-delivered, or sent electronically. In that event, all finished or unfinished services, reports, material(s) prepared or furnished by the successful Proposer under the contract shall, at the option of the City, become its property. If the contract is terminated due to the fault of the successful Proposer, termination of contract for cause relative to termination shall apply. If the contract is terminated by the City as provided herein, the successful Supplier will be paid an amount as of the time notice is given by the City which bears the same ratio to the total compensation as the services actually performed or material furnished bear to the total services/materials the successful Proposer covered by the contract, less payments of compensation previously made.

8. Proposal and contract information is public:

The Proposer acknowledges that all documents submitted with any proposal may become public documents and shall be subject to California Public Records Act. By submitting any document to the City of Seaside in connection with a Proposal or Contract, the Proposer waives any claim against the City of Seaside and any of its officers and employees relating to the release of any document or information submitted. Furthermore, the Proposer agrees to hold the City of Seaside and its officers and employees harmless from any claims arising from the release of any document or information made available to the City of Seaside arising from or related to the Proposal or Contract.

9. The terms and conditions of the RFP shall be incorporated and made part of the contract between the City and the successful Proposer. In case of any conflict between the term and conditions of the RFP and the Proposal, the RFP shall prevail unless otherwise agreed upon in writing by the City. The City reserves the right to incorporate terms and conditions contained in the Proposal provided it is not in conflict with the RFP.

10. The Proposal should include any proposed contractual terms that the Proposer intends to request the City to include in the contract. Such terms and conditions should not conflict with the required contract terms in this Section. If the proposed contractual terms conflict with the required contract terms, the City may reject the Proposal. The City reserves the right, but not the obligation, to negotiate additional terms with the Successful Proposer. The Proposer shall provide on the front page of the proposal and titled as **“Conflict with Required Contract Terms”** all terms and conditions of the Proposal

that conflict with the required contract terms.

11. If awarded the proposer will be required to sign the attached City of Seaside “Agreement for Consulting Services Contract” including Exhibit D Insurance Requirements.

12. Acknowledgement:

The undersigned hereby acknowledges that:

- The undersigned has read and understands the terms and conditions of the RFP, including the required contract terms.
- The undersigned has the lawful authority to sign this document on behalf of the Proposer and attach to the bid system.
- If the Proposal is selected, the undersigned’s signature incorporates the required contract terms into the final contract and shall supersede any subsequent contract terms provided by the Proposer, unless otherwise agreed to by the City pursuant to Section 10.

Name

Date

CITY OF SEASIDE

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, is made and effective as of September 1, 2018, between the City of Seaside, a municipal corporation ("City") and _____, *[a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation]* ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on September 1, 2018 and shall remain and continue in effect until tasks described herein are completed, but in no event later than February 1, 2019, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. PERFORMANCE

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

4. CITY MANAGEMENT

City's Fire Chief shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change Consultant's compensation, subject to Section 5 hereof.

5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed _____ dollars (\$____.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall such sum exceed twenty four thousand nine hundred ninety nine dollars (\$24,999.00). Any additional work in excess of this amount shall be approved by the City Council.

(c) 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. 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.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 3.

7. DEFAULT OF CONSULTANT

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

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall

have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts there from 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 at the City of Seaside's City Hall for a minimum period of three (3) years after receipt of final payment.

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

9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any act, error or omission of Consultant, its officers, agents, employees or sub consultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement. With respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit without the written consent of the Consultant.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall

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

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

10. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit D attached to and part of this agreement.

11. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

(b) No employee benefits shall be available to Consultant in connection with 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 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.

12. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. 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.

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Seaside in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Seaside 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.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or sub consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery

requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

[the following paragraph is only to be used when the City will be taking in a fee or deposit from an applicant and use that fund to retain the consultant to prepare an EIR, Specific Plan, or some other specific document or where the City is funding a similar development-type study]

(c) Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly nor indirectly, which will conflict in any manner or degree with the performance of their 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 sub consultant. 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 sub consultants 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.

16. NOTICES

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

To City: City of Seaside
440 Harcourt Avenue
Seaside, California 93955
Attention: City Clerk

To Consultant: _____

17. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Because of the personal nature of the services to be rendered pursuant to this Agreement, only _____ shall perform the services described in this Agreement.

18. LICENSES

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.

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. WORK SCHEDULED/TIME OF COMPLETION

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

City and Consultant agree that time is of the essence in this Agreement. City and Consultant further agree that Consultant's failure to perform on or at the times set forth in this Agreement will damage and injure City, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, City and Consultant agree that any failure to perform by Consultant at or within the times set forth herein shall result in liquidated damages of _____ dollars (\$_____.00) per day for each and every day such performance is late. City and Consultant agree that such sum is reasonable and fair. Furthermore, City and Consultant agree that this Agreement is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

22. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

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

23. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY OF SEASIDE

CONSULTANT

By: _____
[City Manager or Mayor]

By: _____
(Signature)

(Typed Name)

EXHIBIT A

TASKS TO BE PERFORMED

See Scope of Work in RFP

EXHIBIT B

PAYMENT SCHEDULE

EXHIBIT C

LOCATION SCHEDULE

EXHIBIT D

INSURANCE REQUIREMENTS

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

Consultant shall provide the following types and amounts of insurance:

[Note: verify minimum limit for each coverage with Risk Manager]

Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence, \$2,000,000 aggregate.

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

[Note: may need to delete workers' compensation and employer's liability insurance requirements for certain sole proprietorships, partnerships, or corporations without employees]

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

[Note: If the required limits for general liability, auto and employer's liability are \$1 million or less, the following paragraph may be omitted.]

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision

providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Consultant, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$_____ per occurrence.

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

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

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

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Consultant also agrees to require all contractors, and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant’s employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.
8. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to City.
10. Consultant agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.
11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review

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

12. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to City.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
15. Consultant will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.
17. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
19. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

20. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
22. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.