

CITY OF CAPITOLA
PROFESSIONAL SERVICES AGREEMENT
Habitat for Humanity Monterey Bay

THIS AGREEMENT is entered into as of March 27, 2025 (the "Effective Date"), by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" and Habitat for Humanity Monterey Bay, a California Non-Profit Corporation, hereinafter called "Consultant" (together, the "Parties").

WHEREAS, City desires certain services described in Appendix One and Consultant is capable of providing and desires to provide these services;

NOW, THEREFORE, City and Consultant for the consideration and upon the terms and conditions hereinafter specified agree as follows:

SECTION 1
Scope of Services

The services to be performed under this Agreement are for Program Operator of the Capitola Housing Rehabilitation Assistance Program for Owner-Occupied, Deed-Restricted-Affordable Units With Resale Price Restrictions and further detailed in Appendix One.

SECTION 2
Duties of Consultant

All work performed by Consultant, or under its direction, shall be sufficient to satisfy the City's objectives for entering into this Agreement and shall be rendered in accordance with the generally accepted practices, and to the standards of, Consultant's profession.

Consultant shall not undertake any work beyond the scope of work set forth in Appendix One unless such additional work is approved in advance and in writing by City. The cost of such additional work shall be reimbursed to Consultant by City on the same basis as provided for in Section 4.

If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the Consultant's responsibility excluding, nevertheless, the security and safety of any facility of City within the job site which is not under the Consultant's control.

Consultant shall meet with Community Development Director, called "Director," or other City personnel, or third parties as necessary, on all matters connected with carrying out of Consultant's services described in Appendix One. Such meetings shall be held at the request of either party hereto. Review and City approval of completed work shall be obtained monthly, or at such intervals as may be mutually agreed upon, during the course of this work.

SECTION 3
Duties of the City

City shall make available to Consultant all data and information in the City's possession which City deems necessary to the preparation and execution of the work, and City shall actively aid and assist Consultant in obtaining such information from other agencies and individuals as necessary.

The Director may authorize a staff person to serve as his or her representative for conferring with Consultant relative to Consultant's services. The work in progress hereunder shall be reviewed from time to time by City at the discretion of City or upon the request of Consultant. If the work is satisfactory, it will be approved. If the work is not satisfactory, City will inform Consultant of the changes or revisions necessary to secure approval.

SECTION 4 **Fees and Payment**

Payment for the Consultant's services shall be made upon a schedule and within the limit, or limits shown, upon Appendix Two. Such payment shall be considered the full compensation for all personnel, materials, supplies, and equipment used by Consultant in carrying out the work. If Consultant is compensated on an hourly basis, Consultant shall track the number of hours Consultant, and each of Consultant's employees, has worked under this Agreement during each fiscal year (July 1 through June 30). In addition, each invoice submitted by Consultant to City shall specify the number of hours to date Consultant, and each of Consultant's employees, has worked under this Agreement during the current fiscal year.

SECTION 5 **Changes in Work**

City may order major changes in scope or character of the work, either decreasing or increasing the scope of Consultant's services. No changes in the Scope of Work as described in Appendix One shall be made without the City's written approval. Any change requiring compensation in excess of the sum specified in Appendix Two shall be approved in advance in writing by the City.

SECTION 6 **Time of Beginning and Schedule for Completion**

This Agreement will become effective when signed by both parties and will terminate on the earlier of:

- The date Consultant completes the services required by this Agreement, as agreed by the City; or
- The date either party terminates the Agreement as provided below.

Work shall begin on or about April 1, 2025.

SECTION 7 **Termination**

City shall have the right to terminate this Agreement at any time upon giving ten days written notice to Consultant. Consultant may terminate this Agreement upon written notice to City should the City fail to fulfill its duties as set forth in this Agreement. In the event of termination, City shall pay the Consultant for all services performed and accepted under this Agreement up to the date of termination.

SECTION 8 **Insurance**

Consultant shall procure and maintain for the duration of the contract and for **1** years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, or employees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001).
2. Insurance Services office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California, and Employer's Liability Insurance.
4. Professional (Errors and Omissions) Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage shall include contractual liability.

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

- | | |
|------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. General Liability:
(including operations,
products and completed
operations) | \$1,000,000 per occurrence and \$2,000,000 in
aggregate (including operations, for bodily injury,
personal and property damage. |
| 2. Automobile Liability: | \$1,000,000 per accident for bodily injury and
property damage. |
| 3. Employer's Liability Insurance | \$1,000,000 per accident for bodily injury and
property damage. |
| 4. Errors and Omissions
Liability:
Limits | \$1,000,000 per claim and \$2,000,000 in the
aggregate. |

Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Capitola, its officers, officials, employees and volunteers are to be covered as additional insured's as respects: liability arising out of work or operations performed by or on behalf of the Consultant or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after prior written notice has been given to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Capitola** for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements affecting coverage by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

SECTION 9 **Indemnification**

To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless the City, its directors, officers, employees from and against any and all claims, demands, actions, liabilities, damages, judgments, or expenses (including attorneys' fees and costs) arising from the acts or omissions of Consultant's employees or agents in any way related to the obligations or in the performance of services under this Agreement, except for design professional services as defined in Civil Code § 2782.8, and except where caused by the negligence or willful misconduct of the City.

SECTION 10 **Civil Rights Compliance/Equal Opportunity Assurance**

Every supplier of materials and services and all consultants doing business with the City of Capitola shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, and shall be an equal opportunity employer as defined by Title VII of the Civil Rights Act of 1964 and including the California Fair Employment and Housing Act of 1980. As such, consultant shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, age or sex with respect to hiring, application for employment, tenure or terms and conditions of employment. Consultant agrees to abide by all of the foregoing statutes and regulations.

SECTION 11 **Legal Action/Attorneys' Fees**

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which he or she may be entitled. The laws of the State of California shall govern all matters relating to the validity,

interpretation, and effect of this Agreement and any authorized or alleged changes, the performance of any of its terms, as well as the rights and obligations of Consultant and the City.

SECTION 12 Assignment

This Agreement shall not be assigned without first obtaining the express written consent of the City Manager after approval of the City Council.

SECTION 13 Amendments

This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the City and Consultant. Consultant acknowledges that no such amendment shall be effective until approved and authorized by the City Council, or an officer of the City when the City Council may from time to time empower an officer of the City to approve and authorize such amendments. No representative of the City is authorized to obligate the City to pay the cost or value of services beyond the scope of services set forth in Appendix One. Such authority is retained solely by the City Council. Unless expressly authorized by the City Council, Consultant's compensation shall be limited to that set forth in Appendix Two.

SECTION 14 Miscellaneous Provisions

1. *Consultant Service.* Consultant is employed to render professional services only to provide the services listed in Appendix One and any payments made to Consultant are compensation solely for such services.

3. *Licensure.* Consultant warrants that he or she has complied with any and all applicable governmental licensing requirements.

4. *Other Agreements.* This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter, and no other agreement, statement or promise related to the subject matter of this Agreement which is not contained in this Agreement shall be valid or binding.

5. *City Property.* Upon payment for the work performed, or portion thereof, all drawings, specifications, records, or other documents generated by Consultant pursuant to this Agreement are, and shall remain, the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information and reference in connection with the City's use and/or occupancy of the project. The drawings, specifications, records, documents, and Consultant's other work product shall not be used by the Consultant on other projects, except by agreement in writing and with appropriate compensation to the City.

6. *Consultant's Records.* Consultant shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for the services outlined in Appendix One. Such records and documentation shall be kept available at Consultant's office during the period of this Agreement, and after the termination of this Agreement for a period of three years from the date of the final City payment for Consultant's services.

7. *Independent Contractor.* In the performance of its work, it is expressly understood that Consultant, including Consultant's agents, servants, employees, and subcontractors, is an independent contractor solely responsible for its acts and omissions, and Consultant shall not be considered an employee of the City for any purpose.

8. *Conflicts of Interest.* Consultant stipulates that corporately or individually, its firm, its employees and subcontractors have no financial interest in either the success or failure of any project which is, or may be, dependent on the results of the Consultant's work product prepared pursuant to this Agreement.

9. *Notices.* All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

CITY
CITY OF CAPITOLA
420 Capitola Avenue
Capitola, CA 95010

CONSULTANT
Catherine Stihler, CEO
Habitat for Humanity Monterey Bay
108 Magnolia St.
Santa Cruz, CA 95061

Signatures on the following page

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date:

CITY:

CITY OF CAPITOLA
a municipal corporation

CONSULTANT:

HABITAT FOR HUMANITY MONTEREY
BAY
a California nonprofit corporation

By: _____
Benjamin Goldstein, City Manager

By: _____
Catherine Stihler, CEO

Approved as to Form:

Samantha Zutler, City Attorney

APPENDIX ONE

Scope of Services

HfHMB will act as the Program Operator for the Capitola Housing Rehabilitation Assistance Program for Owner-Occupied, Deed-Restricted-Affordable Units With Resale Price Restrictions (the "Program") in a manner consistent with the following:

1. HfHMB will administer the Program to serve owner-occupied inclusionary units and deed-restricted, single-family units within the City of Capitola. Up to \$12,650 dollars per each qualifying housing rehabilitation project will be awarded by the City per household (the "Grants").
2. Eligible Grant costs will include permits, materials, subcontractors and billable hours, consistent with the Program Guidelines. Billable hours for Habitat's licensed Construction Site Supervisor will be charged at the rate of up to \$68.00 per hour, and for its unlicensed Construction Site Manager up to \$36.00 per hour.
3. Upon receipt of a complete application from an eligible household, HfHMB will transmit the complete application to the City Community Development Director or designee, who will review and approve or deny the application and authorize the release of Grant funds to HfHMB.
4. As the Program Operator, HfHMB will comply with the Program Guidelines, attached hereto as Appendix Three and incorporated herein by this reference.
5. HfHMB will keep all Grant funds in a separate, earmarked account for the purpose of funding the Program work.
6. Program work will be performed exclusively on owner-occupied inclusionary units or owner-occupied deed-restricted single-family units within the City of Capitola.
7. HfHMB will use volunteer labor, donated materials, and implement other cost-saving strategies when available.
8. HfHMB will obtain all required permits, and will ensure that repair work is completed professionally and skillfully consistent with industry standards.
9. HfHMB will ensure that all work is complete in compliance with all applicable local building codes and accessibility standards.
10. All repair work that requires a building permit will be supervised by a licensed contractor employed by HfHMB. Repair work that does not require a permit may be supervised by either an HfHMB employee or a construction site qualified volunteer.
11. Before commencing work, HfHMB will execute a written agreement with each property owner or authorized representative that clearly defines the scope of the repair work, and household member participation, if any. Upon completion of the work, HfHMB will secure a certificate of completion signed by the property owner or authorized representative.
12. Any subcontractors hired by HfHMB to perform repairs will be licensed, adequately insured, and bonded (where appropriate) and must perform work in a manner consistent with local best practices.
13. HfHMB will be aware of additional insurance requirements for Program projects and must maintain adequate coverage with its own carrier and at its own expense.
14. HfHMB will follow safety procedures and requirements set forth in the HfHMB Construction Safety and Standards Policy.
15. HfHMB will provide an accounting of Grant expenditures to the City upon request.
16. No volunteers under the age of 18 will be permitted to volunteer at a Program job site.
17. At the conclusion of the Program or upon termination of this Agreement, HfHMB shall promptly return any unused Grant funds to the City.

APPENDIX TWO Fees and Payments

Consultant may charge a 10% administration fee for the management of the Capitola Housing Rehabilitation Assistance Program for Owner-Occupied, Deed-Restricted-Affordable Units With Resale Price Restrictions (the "Program"), not to exceed \$22,500 for the entire Program. Consultant will provide invoices to the City for all administrative costs on a monthly basis. City will endeavor to pay all invoices within 30 days of receipt. The total amount billed by Consultant and paid by City pursuant to this agreement shall not exceed \$22,500 for Program administration without written advance authorization from the City.

Consultant hereby represents and warrants, based upon Consultant's independent determination of the time and labor, including overtime, which will be required to perform said services, that Consultant will provide all said services at a cost which will not exceed the maximum price set forth in this agreement for Consultant's services. Consultant hereby assumes the risk that Consultant will perform said services within this maximum price constraint and Consultant acknowledges that its inability to do so shall not excuse completion of the services and shall not provide a basis for additional compensation.

Salary expenses include the actual direct pay of personnel assigned to the project (except for routine secretarial and account services) plus payroll taxes, insurance, sick leave, holidays, vacation, and other fringe benefits. The percentage of compensation attributable to salary expenses includes all of Consultant's indirect overhead costs and fees. For purposes of this Agreement, Consultant's salary expenses and non-salary expenses will be compensated at the rates set forth in the fee schedule attached to this appendix and in accordance with the terms set forth therein. Non-salary expenses include travel, meals and lodging while traveling, materials other than normal office supplies, reproduction and printing costs, equipment rental, computer services, service of subconsultants or subcontractors, and other identifiable job expenses. The use of Consultant's vehicles for travel shall be paid at the current Internal Revenue Service published mileage rate.

Salary payment for personnel time will be made at the rates set forth in the attached fee schedule for all time charged to the project. Normal payroll rates are for 40 hours per week. Consultant shall not charge the City for personnel overtime salary at rates higher than those set forth in the attached fee schedule without the City's prior written authorization.

In no event shall the total fee charged for the scope of work set forth in Appendix One exceed the total budget of \$22,500, without specific, written advance authorization from the City.

Payments shall be made monthly by the City, based on itemized invoices from the Consultant which list actual costs and expenses. Such payments shall be for the invoice amount. The monthly statements shall contain the following affidavit signed by a principal of the Consultant's firm:

"I hereby certify as principal of Habitat for Humanity Monterey Bay, that the charge of \$ as summarized above and shown in detail on the attachments is fair and reasonable, is in accordance with the terms of the Agreement dated March 28, 2025, and has not been previously paid."

APPENDIX THREE
Program Guidelines