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CITY OF CAPITOLA
PROFESSIONAL SERVICES AGREEMENT
Building Consulting Services
CSG Consultants

THIS AGREEMENT is entered into on July 1, 2024, by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" and CSG Consultants, Inc., hereinafter called "Consultant".

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 Building Division and Public Works Department Consultant services 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 Katie Herlihy, 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.

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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) and Consultant shall immediately notify City if the number of hours worked during any fiscal year by any of Consultant's employees reaches 900 hours. 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 July 1, 2024.

In the event that major changes are ordered or Consultant is delayed in performance of its services by circumstances beyond its control, the City will grant Consultant a reasonable adjustment in the schedule for completion provided that to do so would not frustrate the City's objective for entering into this Agreement. Consultant must submit all claims for adjustments to City within thirty calendar days of the time of occurrence of circumstances necessitating the adjustment.

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.

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SECTION 8
Insurance

Consultant shall procure and maintain for the duration of the contract and for two 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.

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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

For General Services: 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 sole or active negligence, or willful misconduct of the City.

For Design Professional Services under Civil Code §2782.8: To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless the City, its directors, officers, and employees

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from and against any and all claims, demands, actions, liabilities, damages, or expenses (including attorneys' fees and costs) arising from the negligence, recklessness, or willful misconduct of the Consultant, Consultant's employees, or agents in any way related to the obligations or in the performance of design professional services under this Agreement as defined in Civil Code §2782.8, except where caused by the sole or active negligence, or willful misconduct of the City. The costs to defend charged to the Consultant relating to design professional services shall not exceed the Consultant's proportionate percentage of fault per Civil Code §2782.8.and against all claims, damages, losses, and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the Consultant, Consultant's employees, agents or subcontractors, except where caused by the active negligence, sole 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 Director 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 Two. 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.

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SECTION 14
Miscellaneous Provisions

1. *Project Manager.* Director reserves the right to approve the project manager assigned by Consultant to said work. No change in assignment may occur without prior written approval of the City.

2. *Consultant Service.* Consultant is employed to render professional services only and any payments made to Consultant are compensation solely for such professional 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 this project. Such records and documentation shall be kept available at Consultant's office during the period of this Agreement, and after the term 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:

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CITY
CITY OF CAPITOLA
420 Capitola Avenue
Capitola, CA 95010
831-475-7300

By: DocuSigned by: Jamie Goldstein D05A9A7B5000485...
Benjamin Goldstein, City Manager

Dated: 6/17/2024

CONSULTANT
CSG Consultants
550 Pilgrim Drive
Foster City, CA 94404
(650) 522-2500

By: DocuSigned by: Cyrus Kianpour 7AC12FF2224A4B2...
Cyrus Kianpour, President

Dated: 6/27/2024

Approved as to Form:
DocuSigned by: Samantha W. Zutler 6ACC12B54AFB4B4...
Samantha Zutler, City Attorney

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APPENDIX ONE
Scope of Services

Services are to be provided on an as needed basis. Consultant shall provide well qualified and competent personnel to provide the following services to City:

1. Building Plan Review Services

    a. Services shall consist of the review of plans and documents for compliance with the City's adopted or enforced codes and regulations. Additionally, services shall be provided in accordance with accepted standards of practice for government plan review, and in conformance with the policies, procedures, interpretations and practices of the City.
    b. Services shall include but may not necessarily be limited to the examination of the following plans: Structural; electrical, mechanical and plumbing code; disabled access code; Green Building Code; Energy Code; and Non-structural fire and life-safety.
    c. During the plan review process, Consultant shall meet, if requested, with the applicant or architect/engineer, City staff or consultants.
    d. Turn-around time shall be a maximum of ten (10) business days for the first check. The turn-around time for subsequent checks, revisions, deferred submittals, and RFIs shall be a maximum of five (5) business days. **Note**: *Turn-around time may vary with the complexity and magnitude of the project. If a review is anticipated to take longer than the maximum turnaround time, Consultant shall notify City and negotiate additional time required to ensure an appropriate level of review.*
    e. At their option, City may transmit plans for review digitally in electronic format, or physically in hard copy format. Consultant may provide courier service to pick-up and return plans to City.
    f. Consultant shall provide expedited plan review services upon request of City. The review time shall be five (5) working days or less, or by mutually agreed upon between City and Consultant.
    g. City shall provide Consultant local changes to State codes as adopted from time to time.

2. On Call Certified Building Inspector

3. On Call CASp Inspctions

4. On Call Building Official/Counter Assistance

5. Public Works Plan Review Services

    a. Research and review civil engineering and site planning designs for properties undergoing development or improvement.
    b. Evaluate tentative maps and/or land development applications to ensure compliance with City standards during the entitlement process.
    c. Assess improvement plans for adherence to adopted City standards, approved Conditions of Approval, and industry best practices.
    d. Verify compliance with General Phase II permit for discharges to small Municipal Separate Storm Sewer Systems (MS4s)
    e. Review storm drain hydraulic calculations to ensure compliance with City standards and accepted industry norms.
    f. Evaluate technical studies such as traffic studies, geotechnical investigations, and environmental site assessments.

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g. Assess documents related to Grading Permit applications in accordance with the City of Capitola Municipal Code.
h. Clearly communicate identified issues to City staff and/or the developer's design professionals.

6. City Surveyor

a. Research and review title issues for properties under development or improvement.
b. Review land surveying aspects of tentative maps to ensure compliance with City standards during the entitlement process.
c. Verify final maps and parcel maps adhere to the Subdivision Map Act, City zoning, approved Conditions of Approval, and industry standards. Provide stamp and signature on maps prior to recordation.
d. Assess Lot Line Adjustment, Parcel Merger, and easement plat maps, legal descriptions, and math closure calculations for accuracy.
e. Clearly communicate identified issues to City staff and/or the developer's or owner's design professionals.
f. Fulfill all other obligations outlined in California Government Code §66451.1(b).

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APPENDIX TWO
Fees and Payments

Consultant will provide invoices to the City for all services and expenses 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 $120,000 (one hundred twenty thousand dollars), for fiscal year 2024/2025; $90,000 (ninety thousand dollars) for fiscal year 2025/2026; and $90,000 (ninety thousand) for fiscal year 2026/2027 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 $120,000 (one hundred twenty thousand dollars), for fiscal year 2024/2025; $90,000 (ninety thousand dollars) for fiscal year 2025/2026; and $90,000 (ninety thousand) for fiscal year 2026/2027 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 the firm of CSG Consultants, that the not to exceed $120,000 (one hundred twenty thousand dollars), for fiscal year 2024/2025; $90,000 (ninety thousand dollars) for fiscal year 2025/2026; and $90,000 (ninety thousand) for fiscal year 2026/2027 in total as summarized above and shown in detail on the attachments is fair and reasonable, is in accordance with the terms of the Agreement dated July 1, 2024, and has not been previously paid."