

PROFESSIONAL SERVICES AGREEMENT
STANDARD FORM

THIS AGREEMENT is entered into on August 28, 2025, by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" and Capitola Village and Wharf Business Improvement Area, a California non-profit corporation, hereinafter called "Consultant."

WHEREAS, City desires certain services described in Attachment 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 set forth in Attachment 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 Attachment One unless such additional work is approved in advance and in writing by City.

Consultant shall meet with, City Manager or other City personnel, or third parties as necessary designated by the City Manager, on all matters connected with carrying out of Consultant's services described in Attachment One. Such meetings shall be held at the request of either party hereto.

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 City Manager 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. The Consultant must perform and the City will inform the Consultant if the work is not satisfactory. 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.

The City shall, upon reasonable notice, be provided access to and the right to examine such books, documents, papers or records as may be reasonably required for the purpose of auditing Consultant's assessment revenues and expenditure of funds appropriated under the terms of this agreement. Such review is recommended annually or more frequently at the request of the City Manager

SECTION 4

Fees and Payment

In consideration for the City's agreement to authorize Consultant to perform the services set forth in Attachment 1 in lieu of the City itself providing those services. The City will reimburse the Consultant for work completed consistent with the scope of work within thirty (30) days of receiving invoices.

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 Attachment One shall be made without the City's written approval. Any change requiring the City to pay monetary compensation to Consultant shall be approved in advance in writing by the City.

SECTION 6

Time of beginning and Schedule for Completion

Consultant shall begin work upon the approval of this contract.

SECTION 7

Termination

City will provide Consultant with written notice of termination that identifies deficiencies 90 days prior to contract termination. Consultant shall have 60 days to cure City's identified deficiencies after notice is given in writing. Consultant may terminate this Agreement upon 90 days written notice to City should the City fail to fulfill its duties as set forth in this Agreement.

If notice of termination is not given as described above, this contract shall terminate at the end of one (1) year following execution of the contract.

SECTION 8

Insurance

Consultant shall procure and maintain for the duration of the contract 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 Liability coverage (occurrence Form CG 0001).
2. Workers' Compensation insurance as required by the State of California

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability: (including operations, products and completed operations)
 - a. \$1,000,000 per occurrence and \$2,000,000 in aggregate for bodily injury, personal and property damage.
2. Director and Officer insurance
 - a. \$1,000,000 per occurrence and \$1,000,000 in aggregate

Other Insurance Provisions

The commercial general 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 insureds 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 by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, 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.

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

Consultant agrees to indemnify, defend (with counsel acceptable to the City) and hold City, its officers, agents and employees (collectively the "City"), from and against any and all claims, demands, actions, damages, or judgements, including reasonable associated costs of defense from Consultant's performance of this Agreement. In addition, should Consultant subcontract with any person or firm in connection with the services to be provided to City pursuant to Attachment One, Consultant shall require said person or firm to similarly indemnify 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. Either the Santa Cruz County Superior or

Municipal Court shall have jurisdiction over any such action and that Court shall be authorized to determine which party is the prevailing party and what amount constitutes reasonable attorneys' fees to be awarded to the prevailing party.

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 that particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the City and an authorized representative of the 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.

SECTION 14

Miscellaneous Provisions

1. *Project Manager.* City Manager 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 and Corporate Status.* Consultant warrants that it has complied with any and all applicable governmental licensing requirements, and that it is duly incorporated and authorized to do business as a not-for profit corporation under the laws of the State of California.
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 records or other documents generated by Consultant pursuant to this Agreement are, and shall remain, the property of the City. The Consultant shall be permitted to retain copies for information and reference. The 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. Consultant shall defend, indemnify, and hold the City and its agents, servants, employees harmless from any and all claims and liabilities alleging that City employment benefits are due to any employee, agent, or subcontractor of the Consultant.
8. *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
831-475-7300

CONSULTANT
Capitola Village and Wharf Business
Improvement Area

By: _____
Jamie Goldstein, City Manager

By: _____

Dated: _____

Dated: _____

Approved as to Form:

Samantha W. Zutler, City Attorney

