



**Agenda Item A.11**  
**CONSENT CALENDAR**  
**Meeting Date: December 3, 2019**

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**TO:** Mayor and Councilmembers

**FROM:** Peter Imhof, Planning and Environmental Review Director

**CONTACT:** Lisa Prasse, Current Planning Manager  
Mary Chang, Supervising Senior Planner

**SUBJECT:** Amendment No. 1 to Professional Services Agreement No. 2018-121 for Planning Services with Bret McNulty, McNulty Consulting

**RECOMMENDATION:**

Authorize the City Manager to execute an Amendment No. 1 to Professional Services Agreement No. 2018-121 (Attachment 1) with Bret McNulty, McNulty Consulting, to provide planning services in the amount of \$130,000 with the term of the agreement extended to June 31, 2021.

**BACKGROUND:**

One of the functions provided by Current Planning is processing applications for land use development projects under applicable local, state and federal planning and environmental regulations and policies. In response to the volume of Current Planning project case processing and construction management oversight needs, the Planning and Environmental Review Department staffing is supplemented with and supported by contract planners to ensure timely, efficient, and responsive service to applicants in lieu of hiring additional full-time staff.

On July 17, 2018, the City Council authorized a professional services agreement (No. 2018-055) with Mr. McNulty for the processing of the Ritz-Carlton Bacara Beach House Replacement Project (Bacara Project) and other projects. To assist with additional case processing on other development projects, the City entered into a second agreement (No. 2018-121) on December 18, 2018. The date, purpose, amount, and expiration date of each contract are provided in Table 1 below.

**Table 1**

<b>TOPIC</b>	<b>CONTRACT 2018-055</b>	<b>CONTRACT 2018-121</b>
Date of Contract	July 17, 2018	December 18, 2018
Expiration Date of Contract	July 1, 2019	December 31, 2019
Purpose	Bacara Project Processing	Case Processing
Amount	\$65,000 (Bacara) \$15,000 (Other Projects)	\$75,000

To date, Mr. McNulty and subcontractors have provided approximately \$55,000 in services on the Bacara project and \$51,000 on other development projects. Table 2 below shows the amounts spent and remaining balances of the two contracts.

**Table 2**

<b>TOPIC</b>	<b>CONTRACT 2018-055</b>	<b>CONTRACT 2018-121</b>
Original Amount	\$80,000	\$75,000
Amount Spent	\$55,000 (Bacara) \$25,000 (Other Projects)	\$26,000
Amount Remaining	\$0	\$49,000

**DISCUSSION:**

In the past year and a half, Mr. McNulty has been managing the Bacara Replacement Beach House Project and other current planning development cases (cannabis CUPs, wireless antennas, etc.) as needs have arisen. His services have lessened the burden on and prevented overloading Current Planning staff and have helped accomplish project review and processing in a timely manner.

When Contract 2018-121 was approved, the need existed for two contracts with Mr. McNulty in order to distinguish the Bacara Beach House Replacement project from other development deposit cases more easily, particularly given the large number of cannabis applications on file with the City. As the City has shifted the review of the cannabis applications from a land use entitlement process to a business license process, there is no longer a need for project tracking under two, separate contracts. For this reason, the work to be done under Contract 2018-055 and Contract 2018-121 is being consolidated into one contract.

This contract amendment combines the tasks associated with the Bacara Beach House replacement project and the other project assistance into one contract, extends the time period to June 30, 2021 (which corresponds to the time period of the Bacara Beach House emergency permit), and increases the amount of the combined contract to ensure sufficient funding resources are available to support the anticipated projects. The costs associated with the work done by Mr. McNulty are all paid by developer deposits.

**FISCAL IMPACTS:**

The costs associated with Mr. McNulty contract would be supported solely by deposit funds provided by applicants. As such, there is no financial impact to the City and no appropriation is needed.

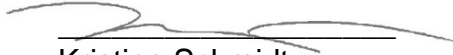
**ALTERNATIVES:**

The City Council may elect not to authorize the recommended action and the services provided by Mr. McNulty would not occur. Staff would either seek assistance from other consultants or have the tasks performed by existing staff. The latter option would have workload impacts on existing staff.

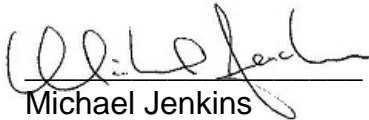
**Reviewed By:**

**Legal Review By:**

**Approved By:**



Kristine Schmidt  
Assistant City Manager



Michael Jenkins  
City Attorney



Michelle Greene  
City Manager

**ATTACHMENTS:**

1. Amendment No. 1 to Professional Services Agreement No. 2018-121
2. Professional Services Agreement No. 2018-121 and Professional Services Agreement No. 2018-055 (available online only)



## **Attachment 1**

Contract Amendment No. 1  
To Agreement 2018-121  
McNulty Consulting



**AMENDMENT NO. 1  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
McNULTY CONSULTING**

This **Amendment No. 1** to a PROFESSIONAL SERVICES AGREEMENT by and between the **City of Goleta**, a municipal corporation ("City") and **McNulty Consulting**, a Sole Proprietor ("Consultant") dated December 18, 2018 ("Agreement," Agreement No. 2018-121) is made this 3rd day of December 2019.

**RECITALS**

**WHEREAS**, the services to be performed in the original agreement by CONSULTANT is for professional planning services for Current Planning Services to process on-going and anticipated land use/development entitlement projects; and

**WHEREAS**, this Agreement is for the continuing planning services for Current Planning Services for processing of the Ritz-Carlton Bacara Beach House Replacement Project, previously under a separate agreement (Agreement No. 2016-112) and other Planning and Environmental review projects; and

**WHEREAS**, Agreement No. 2018-121 between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed \$75,000; and

**WHEREAS**, the parties desire to amend Agreement No. 2018-121 so as to provide for additional compensation in the amount of fifty-five thousand (\$55,000) for continued planning services; and

**WHEREAS**, Agreement No. 2018-121 between City and Consultant currently provides in Section 6 for the termination of Agreement on December 31, 2019; and

**WHEREAS**, the parties desire to amend Agreement No. 2018-121 so as to extend the Agreement to June 31, 2021; and

**WHEREAS**, the parties desire to amend Agreement No. 2018-121 so as to amend Scope of Work as set forth in Exhibit A-1; and

**WHEREAS**, the Agreement did not provide for the Agreement or any amendments to be executed in counterparts by facsimile or electronic mail; and

**WHEREAS**, the parties desire to amend the Agreement to allow for execution of the Agreement and amendments by facsimile and electronic mail in order to expedite the finalization of the agreements; and

**WHEREAS**, the City Council approved this Amendment No. 1, on this 3rd day of December 2019.

### **AMENDED TERMS**

**Now therefore** City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Section 3. COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$55,000 and to read in its entirety:

- (a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$130,000 (herein "not-to-exceed amount") and shall be earned as the work progresses.

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 31, 2021, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

- (b) **Payment.** CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

2. **Section 6. TERM, PROGRESS AND COMPLETION** of the Agreement is amended to extend the term for an additional eighteen (18) months to read in its entirety.

The term of this Agreement is from the date first written above to June 30, 2021, unless the term of this Agreement is extended or the Agreement is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's



Project Manager. All services shall be completed within the term of this Agreement following the notice to proceed.

3. This Agreement is amended to delete and replace in its entirety:

**Exhibit A "Scope of Work"** with **Exhibit A-1 "Scope of Work"** attached hereto and incorporated herein.

4. **Section 31. COUNTERPARTS AND ELECTRONIC/FACSIMILE SIGNATURES** of the Agreement is added to include counterparts and electronic/facsimile signatures as follows:

This Agreement may be executed in several counterparts, which may be facsimile or electronic copies. Each counterpart is fully effective as an original, and together constitutes one and the same instrument.

5. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect

**In concurrence and witness whereof**, this Amendment No.1 has been executed by the parties effective on the date and year first above written.

**CITY OF GOLETA**

**CONSULTANT**

\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
Bret McNulty, McNulty Consulting

**ATTEST:**

\_\_\_\_\_  
Deborah Lopez, City Clerk

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Assistant City Attorney

## **EXHIBIT A-1 SCOPE OF WORK**

CONSULTANT shall provide professional planning services to include processing of application(s) for land use/development entitlement projects, including but not limited to the Ritz-Carlton Bacara Beach House Replacement Project, and preparing environmental documents under applicable local, state, and federal planning and environmental regulations and policies. Case processing shall also be consistent with applicable CITY administrative policies and practices.

CONSULTANT shall conduct site investigations; engage in research; prepare necessary reports, resolutions, environmental analysis; make presentations as direction to the City decision-makers; coordinate with necessary Resource Agencies including the California Coastal Commission, coordination necessary environmental and/or on-going permit condition compliance; attend meetings; and identify problems and solutions in the course of conducting case processing.

CONSULTANT shall provide information to CITY staff, applicant (and its agents), agency representatives, and the public.

CONSULTANT shall manage data, records, and case files and other tasks and responsibilities as determined necessary.

## Exhibit B Schedule of Fees

Position/Technical Staff	Labor Rates
Senior Planner/Project Manager	\$137
Associate	\$112
Assistant	\$102
Analyst	\$82
Technical Subconsultants	Cost and 5%

*Labor rates include all direct and indirect labor expenses, transportation, cell phone and computer costs. Staff rates, other than the Senior Project Manager, are included should the City approve of the use of other staff depending on the scope of the project. Other staff and subconsultant resumes will be provided at the time of project proposal submittal.*

*Upon request, as discussed in the statement of qualifications, McNulty Consulting selects and contracts with local and regional resource experts at cost plus an administrative charge of 5% of the subconsultant contract to a maximum of \$1,300 per contract to cover coordination, accounting, and invoicing costs.*



## **Attachment 2**

Agreement No. 2018-121  
McNulty Consulting

Project Name: Planning Services

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF GOLETA AND  
McNULTY CONSULTING**

This AGREEMENT FOR PROFESSIONAL SERVICES (herein referred to as "AGREEMENT") is made and entered into this 18<sup>th</sup> day of December 2018, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **McNULTY CONSULTING**, a Sole Proprietor (herein referred to as "CONSULTANT").

**WHEREAS**, the CITY has a need for professional planning services for Current Planning Services to process on-going and anticipated land use/development entitlement projects; and

**WHEREAS**, the CITY does not have the personnel able and/or available to perform the services required under this AGREEMENT, and therefore, the CITY desires to contract for professional services to accomplish this work; and

**WHEREAS**, the CITY noticed a request for qualifications for professional services through a competitive bid process and established a list of seven qualified firms of which McNulty Consulting was included; and

**WHEREAS**, the City previously engaged the services of Bret McNulty, proprietor of CONSULTANT for Current Planning services for processing of the Ritz Carlton, Bacara Beach House Emergency Permit Project and other Planning and Environmental Review projects; and

**WHEREAS**, the CONSULTANT was recommended for award based on professional expertise in zoning and local coastal planning issues and previous work experience completed for the CITY and;

**WHEREAS**, the City Council, on this 18<sup>th</sup> day of December, 2018, approved this AGREEMENT and authorized the City Manager to execute the AGREEMENT.

CITY and CONSULTANT agree as follows:

**1. RETENTION AS CONSULTANT**

CITY hereby retains CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the services described in Section 2. CONSULTANT warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

## **2. DESCRIPTION OF SERVICES**

The services to be performed by CONSULTANT are as follows:

Professional planning services that shall generally include environmental analysis and case processing/coordination associated land use/development entitlement projects as more particularly set forth in the Scope of Work, attached as Exhibit "A" and incorporated herein.

## **3. COMPENSATION AND PAYMENT**

**(a) Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$75,000 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until December 31, 2019, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

**(b) Payment.** CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager as described in Section 5. Invoices shall be made no more frequently than monthly, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

## **4. EXTRA SERVICES**

CITY shall pay CONSULTANT for those CITY authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to in advance by CITY Project Manager and CONSULTANT. Unless CITY and CONSULTANT have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. The applicable hourly rates for extra services shall be at the hourly rates set forth in the compensation exhibit. Any compensation for extra services shall be part of the total compensation and shall not increase the not to exceed amount identified in Section 3.

**5. CITY PROJECT MANAGER AND SERVICES BY CITY**

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is Lisa Prasse, Project Manager shall have the authority to act on behalf of the CITY in administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

**6. TERM, PROGRESS AND COMPLETION**

The term of this AGREEMENT is from the date first written above to December 31, 2019, unless term of this AGREEMENT is extended or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed by December 31, 2019.

**7. OWNERSHIP OF DOCUMENTS**

All drawings, designs, data, photographs, reports and other documentation (other than CONSULTANT's drafts, notes and internal memorandum), including duplication of same prepared by CONSULTANT in the performance of these services, are the property of CITY. CITY shall be entitled to immediate possession of the same upon completion of the work under this AGREEMENT, or at any earlier or later time when requested by CITY. CITY agrees to hold CONSULTANT harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications for purposes other than those described in this AGREEMENT, unless written authorization of CONSULTANT is first obtained.

**8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR**

This AGREEMENT is for professional services which are personal to CITY. Bret McNulty is deemed to be specially experienced and is the key member of CONSULTANT's firm, and shall be directly involved in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate this AGREEMENT. This AGREEMENT may not be assigned or subcontracted without the CITY'S Project Manager /City Manager's prior written consent.

**9. HOLD HARMLESS AND INDEMNITY**

(a) **Hold Harmless for CONSULTANT's Damages.** CONSULTANT holds CITY, its elected officials, officers, agents, and employees, harmless from all of



CONSULTANT's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to CONSULTANT, to CONSULTANT's employees, to CONSULTANT's contractors or subcontractors, or to the owners of CONSULTANT's firm, which damages, losses, injuries or liability occur during the work required under this AGREEMENT, or occur while CONSULTANT is on CITY property, or which are connected, directly or indirectly, with CONSULTANT's performance of any activity or work required under this AGREEMENT.

**(b) Defense and Indemnity of Third Party Claims/Liability.** CONSULTANT shall investigate, defend, and indemnify CITY, its elected officials, officers, agents, and employees, from any claims, lawsuits, demands, judgments, and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, or professional errors and omissions arising out of, directly or indirectly, an error, negligence, or omission of CONSULTANT or any of CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, or the willful misconduct of CONSULTANT or any of CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, in performing the services described in, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions concerning any activity, product or work required under this AGREEMENT, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related thereto.

**(c) No Waiver.** CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

## **10. INSURANCE**

CONSULTANT shall, at CONSULTANT's sole cost and expense, provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating of A- or better, Class VII or better, or as otherwise approved by CITY.

Insurance shall include the following (or broader) coverage:

- a) Insurance Services Office Commercial Liability coverage "occurrence" form CG 00 01 or its exact equivalent with an edition date prior to 2004 and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- b) Insurance Services Office form number CA 00 01 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no

vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider's commercial general liability policy.

- c) Workers' Compensation insurance complying with California worker's compensation laws, including statutory limits for workers' compensation and an Employer's Liability limit of \$1,000,000 per accident or disease.
- d) Professional liability insurance that covers the services to be performed in connection with this agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate.

Liability insurance policies required to be provided by CONSULTANT hereunder shall contain or be endorsed to contain the following provisions:

- a) CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10, with an edition date prior to 2004, or its equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37, or its equivalent.
- b) General and automobile liability insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage will not be limited to CITY's vicarious liability.
- c) Professional liability insurance policies inception date, continuity date, or retroactive date must be before the effective date of this agreement. CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.
- d) Liability coverage shall be primary and non-contributing with any insurance maintained by CITY.
- e) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.
- f) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents,

from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.

- g) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.
- h) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by CONSULTANT hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.
- i) 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.

#### **11. RELATIONSHIP OF CONSULTANT TO CITY**

The relationship of the CONSULTANT to CITY shall be that of an independent contractor and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

#### **12. CORRECTIONS**

In addition to the above indemnification obligations, CONSULTANT shall correct, at its expense, all errors in the work that may be disclosed during CITY's review of CONSULTANT's report or plans. Should CONSULTANT fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONSULTANT or withheld from any funds due to CONSULTANT hereunder.

#### **13. TERMINATION BY CITY**

CITY, by notifying CONSULTANT in writing, may upon 10 calendar days notice, terminate without cause any portion or all of the services agreed to be performed under

this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, CONSULTANT shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to CONSULTANT within 30 days following submission of a final statement by CONSULTANT unless termination is for cause. In such event, CONSULTANT shall be compensated only to the extent required by law.

#### **14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance by CONSULTANT of the final payment made under this AGREEMENT shall operate as and be a release of CITY from all claims and liabilities for compensation to CONSULTANT for anything done, furnished, or relating to CONSULTANT'S work or services. Acceptance of payment shall be any negotiation of CITY's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by CITY shall not constitute, nor be deemed, a release of the responsibility and liability of CONSULTANT, its employees, subcontractors, agents and CONSULTANTS for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by CITY for any defect or error in the work prepared by CONSULTANT, its employees, subcontractors, agents and consultants.

#### **15. AUDIT OF RECORDS**

At any time during normal business hours and as often as it may deem necessary, CONSULTANT shall make available to a representative of CITY for examination of all its records with respect to all matters covered by this AGREEMENT and will permit CITY to audit, examine and/or reproduce such records. CONSULTANT will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this AGREEMENT.

#### **16. WAIVER; REMEDIES CUMULATIVE**

Failure by a party to insist upon the strict performance of any of the provisions of this AGREEMENT by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this AGREEMENT, or at law or in equity, shall be cumulative and alternative, and invocation of any such

right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

**17. CONFLICT OF INTEREST**

CONSULTANT is unaware of any CITY employee or official that has a financial interest in CONSULTANT'S business. During the term of this AGREEMENT and/or as a result of being awarded this AGREEMENT, CONSULTANT shall not offer, encourage or accept any financial interest in CONSULTANT'S business by any CITY employee or official.

**18. CONSTRUCTION OF LANGUAGE OF AGREEMENT**

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

**19. MITIGATION OF DAMAGES**

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**20. GOVERNING LAW**

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

**21. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**22. NON-APPROPRIATION OF FUNDS**

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.

**23. MODIFICATION OF AGREEMENT**

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and CONSULTANT.

**24. USE OF THE TERM "CITY"**

Reference to "CITY" in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

**25. PERMITS AND LICENSES**

CONSULTANT, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this AGREEMENT.

**26. CAPTIONS**

The captions or headings in this AGREEMENT are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the AGREEMENT.

**27. AUTHORIZATION**

Each party has expressly authorized the execution of this AGREEMENT on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this AGREEMENT.

**28. ENTIRE AGREEMENT BETWEEN PARTIES**

Except for CONSULTANT'S proposals and submitted representations for obtaining this AGREEMENT, this AGREEMENT supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services.

**29. PARTIAL INVALIDITY**

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**30. NOTICES**

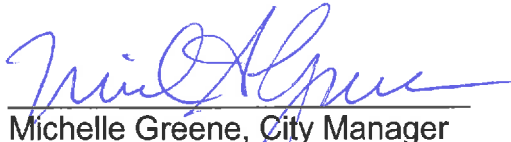
Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: Attention: Michelle Greene, City Manager  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117


TO CONSULTANT: Attention: Bret McNulty, McNulty Consulting  
3905 State Street, Suite 7, Box 181  
Santa Barbara, CA 93105

**In concurrence and witness whereof**, this AGREEMENT has been executed by the parties effective on the date and year first above written.

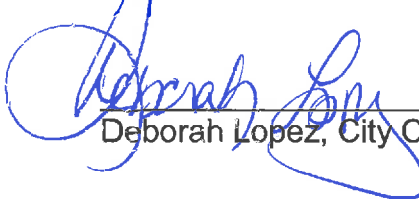
**CITY OF GOLETA**

  
Michelle Greene, City Manager

**CONSULTANT**

  
Bret McNulty, McNulty Consulting

**ATTEST**

  
Deborah Lopez, City Clerk

**APPROVED AS TO FORM**

  
Winnie Cai, Assistant City Attorney

## **Exhibit A Scope of Work**

Professional planning services to be provided by the Consultant shall include processing of application(s) for land use/development entitlement projects and preparing environmental documents under applicable local, state, and federal planning and environmental regulations and policies. Case processing shall also be consistent with applicable CITY administrative policies and practices.

CONSULTANT shall: conduct site investigations; engage in research; prepare necessary reports, resolutions, environmental analysis; make presentations as direction to the City decision-makers; coordinate with necessary Resource Agencies including the California Coastal Commission, coordination necessary environmental and/or on-going permit condition compliance; attend meetings; and identify problems and solutions in the course of conducting case processing.

CONSULTANT shall provide information to CITY staff, applicant (and its agents), agency representatives, and the public.

CONSULTANT shall manage data, records, and case files and other tasks/responsibilities as determined necessary.



## Exhibit B Schedule of Fees

Position/Technical Staff	Labor Rates
Senior Planner/Project Manager	\$137
Associate	\$112
Assistant	\$102
Analyst	\$82
Technical Subconsultants	Cost and 5%

*Labor rates include all direct and indirect labor expenses, transportation, cell phone and computer costs. Staff rates, other than the Senior Project Manager, are included should the City approve of the use of other staff depending on the scope of the project. Other staff and subconsultant resumes will be provided at the time of project proposal submittal.*

*Upon request, as discussed in the statement of qualifications, McNulty Consulting selects and contracts with local and regional resource experts at cost plus an administrative charge of 5% of the subconsultant contract to a maximum of \$1,300 per contract to cover coordination, accounting, and invoicing costs.*

## **Attachment 3**

Agreement No. 2018-055  
McNulty Consulting for  
Ritz Carlton Bacara



Agreement No. 2018-055  
City of Goleta, California

Project Name: Ritz Carlton, Bacara Beach House Emergency Permit

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF GOLETA AND  
McNULTY CONSULTING**

This AGREEMENT FOR PROFESSIONAL SERVICES (herein referred to as "AGREEMENT") is made and entered into this 17th day of July, 2018, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **McNULTY CONSULTING**, a Sole Proprietor (herein referred to as "CONSULTANT").

**WHEREAS**, the CITY has a need for professional planning services for the Ritz Carlton, Bacara Beach House Emergency Permit Project and other anticipated land use/development entitlement projects; and

**WHEREAS**, the CITY does not have the personnel able and/or available to perform the services required under this AGREEMENT, and therefore, the CITY desires to contract for professional services to accomplish this work; and

**WHEREAS**, the City previously engaged the services of Bret McNulty, proprietor of CONSULTANT for the Ritz Carlton, Bacara Beach House Emergency Permit Project when the CONSULTANT worked for a different firm; and

**WHEREAS**, the CONSULTANT was recommended for award based on professional expertise in zoning and local coastal planning issues and previous work experience completed for the CITY;

**WHEREAS**, the City Council, on this 17<sup>th</sup> day of July, 2018, approved this AGREEMENT and authorized the City Manager to execute the AGREEMENT.

CITY and CONSULTANT agree as follows:

**1. RETENTION AS CONSULTANT**

CITY hereby retains CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the services described in Section 2. CONSULTANT warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

**2. DESCRIPTION OF SERVICES**

The services to be performed by CONSULTANT are as follows:

Professional planning services that shall generally include environmental analysis and case processing/coordination associated land use/development entitlement projects including the Bacara Beach

Stabilization Emergency Permit Project as more particularly set forth in the Scope of Work, attached as Exhibit "A" and incorporated herein.

### **3. COMPENSATION AND PAYMENT**

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$80,000 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until July 1, 2019, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

(b) **Payment.** CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager as described in Section 5. Invoices shall be made no more frequently than monthly, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

### **4. EXTRA SERVICES**

CITY shall pay CONSULTANT for those CITY authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to in advance. Unless CITY and CONSULTANT have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. The applicable hourly rates for extra services shall be at the hourly rates set forth in the compensation exhibit. Any compensation for extra services shall be part of the total compensation and shall not increase the not to exceed amount identified in Section 3.

### **5. CITY PROJECT MANAGER AND SERVICES BY CITY**

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is Mary Chang, Project Manager shall have the authority to act on behalf of the CITY in administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

**6. TERM, PROGRESS AND COMPLETION**

The term of this AGREEMENT is from the date first written above to June 30, 2019, unless term of this AGREEMENT is extended or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed by June 30, 2019.

**7. OWNERSHIP OF DOCUMENTS**

All drawings, designs, data, photographs, reports and other documentation (other than CONSULTANT's drafts, notes and internal memorandum), including duplication of same prepared by CONSULTANT in the performance of these services, are the property of CITY. CITY shall be entitled to immediate possession of the same upon completion of the work under this AGREEMENT, or at any earlier or later time when requested by CITY. CITY agrees to hold CONSULTANT harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications for purposes other than those described in this AGREEMENT, unless written authorization of CONSULTANT is first obtained.

**8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR**

This AGREEMENT is for professional services which are personal to CITY. McNulty Consulting is deemed to be specially experienced and is the key member of CONSULTANT's firm, and shall be directly involved in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate this AGREEMENT. This AGREEMENT may not be assigned or subcontracted without the City Manager's prior written consent.

**9. HOLD HARMLESS AND INDEMNITY**

(a) **Hold Harmless for CONSULTANT's Damages.** CONSULTANT holds CITY, its elected officials, officers, agents, and employees, harmless from all of CONSULTANT's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to CONSULTANT, to CONSULTANT's employees, to CONSULTANT's contractors or subcontractors, or to the owners of CONSULTANT's firm, which damages, losses, injuries or liability occur during the work required under this AGREEMENT, or occur while CONSULTANT is on CITY property, or which are connected, directly or indirectly, with CONSULTANT's performance of any activity or work required under this AGREEMENT.

**(b) Defense and Indemnity of Third Party Claims/Liability.** CONSULTANT shall investigate, defend, and indemnify CITY, its elected officials, officers, agents, and employees, from any claims, lawsuits, demands, judgments, and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, or professional errors and omissions arising out of, directly or indirectly, an error, negligence, or omission of CONSULTANT or any of CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, or the willful misconduct of CONSULTANT or any of CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, in performing the services described in, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions concerning any activity, product or work required under this AGREEMENT, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related thereto.

**(c) No Waiver.** CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

## **10. INSURANCE**

CONSULTANT shall, at CONSULTANT's sole cost and expense, provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating of A- or better, Class VII or better, or as otherwise approved by CITY.

Insurance shall include the following (or broader) coverage:

- a) Insurance Services Office Commercial Liability coverage "occurrence" form CG 00 01 or its exact equivalent with an edition date prior to 2004 and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- b) Insurance Services Office form number CA 00 01 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider's commercial general liability policy.
- c) Workers' Compensation insurance complying with California worker's compensation laws, including statutory limits for workers' compensation and an Employer's Liability limit of \$1,000,000 per accident or disease.

- d) Professional liability insurance that covers the services to be performed in connection with this agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate.

Liability insurance policies required to be provided by CONSULTANT hereunder shall contain or be endorsed to contain the following provisions:

- a) CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10, with an edition date prior to 2004, or its equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37, or its equivalent.
- b) General and automobile liability insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage will not be limited to CITY's vicarious liability.
- c) Professional liability insurance policies inception date, continuity date, or retroactive date must be before the effective date of this agreement. CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.
- d) Liability coverage shall be primary and non-contributing with any insurance maintained by CITY.
- e) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.
- f) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.
- g) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.

- h) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by CONSULTANT hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.
- i) 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.

#### **11. RELATIONSHIP OF CONSULTANT TO CITY**

The relationship of the CONSULTANT to CITY shall be that of an independent contractor and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

#### **12. CORRECTIONS**

In addition to the above indemnification obligations, CONSULTANT shall correct, at its expense, all errors in the work that may be disclosed during CITY's review of CONSULTANT's report or plans. Should CONSULTANT fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONSULTANT or withheld from any funds due to CONSULTANT hereunder.

#### **13. TERMINATION BY CITY**

CITY, by notifying CONSULTANT in writing, may upon 10 calendar days notice, terminate without cause any portion or all of the services agreed to be performed under this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, CONSULTANT shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to CONSULTANT within 30 days following submission of a final statement by CONSULTANT unless termination is for cause. In such event, CONSULTANT shall be compensated only to the extent required by law.



#### **14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance by CONSULTANT of the final payment made under this AGREEMENT shall operate as and be a release of CITY from all claims and liabilities for compensation to CONSULTANT for anything done, furnished, or relating to CONSULTANT'S work or services. Acceptance of payment shall be any negotiation of CITY's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by CITY shall not constitute, nor be deemed, a release of the responsibility and liability of CONSULTANT, its employees, subcontractors, agents and CONSULTANTS for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by CITY for any defect or error in the work prepared by CONSULTANT, its employees, subcontractors, agents and consultants.

#### **15. AUDIT OF RECORDS**

At any time during normal business hours and as often as it may deem necessary, CONSULTANT shall make available to a representative of CITY for examination of all its records with respect to all matters covered by this AGREEMENT and will permit CITY to audit, examine and/or reproduce such records. CONSULTANT will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this AGREEMENT.

#### **16. WAIVER; REMEDIES CUMULATIVE**

Failure by a party to insist upon the strict performance of any of the provisions of this AGREEMENT by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this AGREEMENT, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

#### **17. CONFLICT OF INTEREST**

CONSULTANT is unaware of any CITY employee or official that has a financial interest in CONSULTANT'S business. During the term of this AGREEMENT and/or as a result of being awarded this AGREEMENT, CONSULTANT shall not offer, encourage

or accept any financial interest in CONSULTANT'S business by any CITY employee or official.

**18. CONSTRUCTION OF LANGUAGE OF AGREEMENT**

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

**19. MITIGATION OF DAMAGES**

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**20. GOVERNING LAW**

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

**21. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**22. NON-APPROPRIATION OF FUNDS**

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.

**23. MODIFICATION OF AGREEMENT**

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and CONSULTANT.


**24. USE OF THE TERM "CITY"**

Reference to "CITY" in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

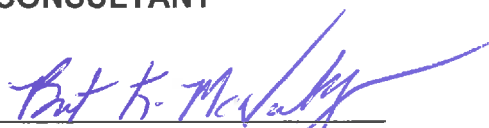


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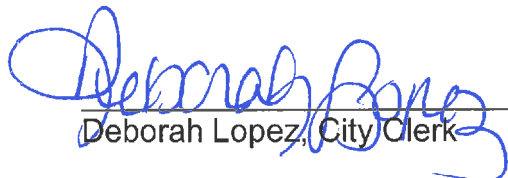
**CITY OF GOLETA**

  
\_\_\_\_\_  
Michelle Greene, City Manager

**CONSULTANT**

  
\_\_\_\_\_  
Bret McNulty, McNulty Consulting

**ATTEST**

  
\_\_\_\_\_  
Deborah Lopez, City Clerk

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Deputy City Attorney

## **Exhibit A Scope of Work**

Professional planning services to be provided by the Consultant shall include processing of application(s) for land use/development entitlement projects including the Bacara Resort and Spa Beach House Stabilization Emergency Permit, under applicable local, state and federal planning and environmental regulations and policies. Case processing shall also be consistent with applicable CITY administrative policies and practices.

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**Exhibit B  
Schedule of Fees**

<b>Position</b>	<b>Labor Rates</b>
Planner/Project Manager	\$137
Associate Planner	\$126
Assistant Planner	\$110

*This scope of work assumes that travel outside the City of Goleta will not be necessary and therefore no mileage charges will be necessary. Travel outside of the City of Goleta is charged at \$.54 a mile. Associate and Assistant Planner rates are provided should the City approve the use of additional staff on the project..*