



# Council Agenda Report

To: Mayor Stewart and the Honorable Members of the City Council

Prepared by: Susan Dueñas, Public Safety Director  
Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: June 15, 2024 Meeting date: August 12, 2024

Subject: General Plan Safety Element Update

---

**RECOMMENDED ACTION:** 1) Adopt Resolution No. 24-41 initiating amendments to the Safety Element of the General Plan and finding the action exempt from the California Environmental Quality Act; 2) Direct the Planning Commission to schedule a public hearing; and 3) Authorize the Mayor to execute a professional services agreement with Capstone City Planning to assist Public Safety staff with securing and managing a consultant to update the Safety Element of the General Plan.

**FISCAL IMPACT:** Funding for this project is included in the Adopted Budget for FY 2024-25 in Account No. Account No. 100-7021-5100-00 (Professional Services).

**STRATEGIC PRIORITY:** This item supports the Public Safety priority identified in the Adopted FY 2023-24 Strategic Priority Project List. Staff continue to work on ongoing projects and normal business while the FY 2024-25 Strategic Priority Plan is finalized.

**DISCUSSION:** The Safety Element of the General Plan is designed to reduce the potential short and long-term risk of death, injuries, property damage, and economic and social dislocation resulting from fires, floods, droughts, earthquakes, landslides, climate change, and other hazards. Other locally relevant safety issues, such as emergency response, hazardous materials spills, and crime reduction, may also be included. The safety element must identify hazards and hazard abatement provisions to guide local decisions related to zoning, subdivisions, and entitlement permits. The Safety Element should also contain general hazard and risk reduction strategies complementary with those of the Local Hazard Mitigation Plan (LHMP).

### Need for Update

The City's current Safety Element has not been updated since its adoption as part of the original General Plan in 1995. California Government Code (GOV) § 65302 requires that the Safety Element be updated upon the next revision of the LHMP as well as the next update to the Housing Element. The City's LHMP has recently been updated and is currently being reviewed by FEMA and will be brought to the City Council this Fall for adoption. The City's Housing Element update is in the final stages of completion and is expected to be adopted in Fall 2024 by the City Council, pending approval by the California Department of Housing and Community Development.

In addition, the Public Safety Department is pursuing eligibility to be placed on the Fire Risk Reduction Community List (List) in 2026. The establishment of this statewide list of agencies is required by California Public Resources Code (PRC) § 4290.1. This code tasks the Board of Forestry and Fire Protection (Board) to develop and maintain a list of local agencies located in a state responsibility area (SRA) or very high fire hazard severity zone (VHFHSZ) that meet best practices for local fire planning. As a local city designated a VHFHSZ, Malibu would need to meet the criteria set forth in California Code of Regulations (CCR) Title 14, § 1268.01 *Criteria for Local Agencies that are Cities, City and County, or Counties*.

One of the requirements to be placed on the list is that the "safety element of the Local Agency's general plan has been submitted to the Board for review pursuant to GOV § 65302.5(b) within the last eight years, and all recommendations have been adopted." The current Safety Element does not meet the requirements set forth in the Board's 2020 General Plan Safety Element Assessment guidelines.

The benefit of being on the List is that PRC § 4124.7 requires CAL FIRE to prioritize local assistance grant funding for local agencies based on the Fire Risk Reduction Community List. Also, Fire Prevention Grant applicants will receive priority whether they are utilizing the funding to meet the List eligibility requirements or if they are already on the Fire Risk Reduction Community List. Another benefit is that under the California Insurance Commissioners *Safer from Wildfire* program, becoming certified as a Fire Risk Reduction community is listed as one of the steps that can possibly lead to insurance discounts.

Therefore, to comply with GOV § 65302 and to meet the requirements for the Fire Risk Reduction Community List in 2026, the Safety Element needs to be updated as soon as possible. As such, a resolution to initiate amendments to the General Plan is before the City Council.

### Status of Current Effort

In 2020, the City awarded an agreement to JHD Planning, LLC (consultant) to prepare the 2021-2029 Housing Element Update and Safety and Health Element of the General Plan.

By February 2023, a substantial amount of work had been completed on the Housing Element but work on the Safety and Health Element had not commenced. Due to workload and a planned retirement, the consultant terminated the agreement with the City in February 2023. Since completing the Housing Element was a legally urgent matter, in March 2023, the Planning Department solicited the assistance of Rincon Consultants, Inc. to complete the Housing Element Update.

Recognizing the current staffing limitations and priorities of the Planning Department, the Public Safety Department offered to take the lead on the Safety Element and work in partnership with the Planning Department to move the project forward. To assist Public Safety staff with managing the project to its completion, staff seeks to contract with Capstone City Planning (Capstone) to serve as a subject matter expert. This is based on Capstone's experience in managing General Plan updates, including the Safety Element, for other cities.

Capstone has provided a detailed scope of work and cost proposal with a not-to-exceed budget of \$77,220 to complete the project. Staff is requesting an exception to the competitive bidding process pursuant to Malibu Municipal Code Section 2.56.130 (B)(4), (Competitive Bidding – Exceptions), the use of a competitive bidding process would cause unnecessary delay or expense and is not likely to result in a lower price from a responsible bidder who can provide the specialized services needed. In addition, Capstone currently has an agreement with the City for contract planning services which was obtained through a request for proposal process that was done in 2022.

In summary, the Safety Element of the General Plan needs to be updated as soon as possible to comply with State codes and to enable the City to qualify for the Fire Risk Reduction Community List in 2026. Public Safety staff will lead the project, working in partnership with the Planning Department, and request approval to contract with Capstone to help guide the update. Capstone has experience in Safety Element updates and was awarded a contract by the City after a competitive bidding process in 2022.

ATTACHMENTS:

1. Resolution No. 24-41
2. Professional Services Agreement with Capstone City Planning

RESOLUTION NO. 24-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU INITIATING A GENERAL PLAN AMENDMENT TO CONSIDER CHANGES TO SAFETY ELEMENT OF THE GENERAL PLAN AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council of the City of Malibu does hereby find, order, and resolve as follows:

SECTION 1. Initiation.

Pursuant to Malibu Municipal Code (M.M.C.) Section 17.74.030, the City Council hereby initiates amendments to the Safety Element of the General Plan and directs staff to issue a Public Notice consistent with M.M.C. Section 17.74.030(B) regarding said amendment.

SECTION 2. Planning Commission Hearing.

The Planning Commission is hereby directed to conduct a duly noticed public hearing in accordance with the provisions of M.M.C. Section 17.74.030. Following the public hearing, the Planning Commission shall recommend to the City Council whether it should approve, modify, or reject the amendments. The Planning Commission's recommendation shall be made by resolution carried by the affirmative vote of not less than the majority of the entire Planning Commission.

SECTION 3. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 12th day of August 2024.

\_\_\_\_\_  
DOUG STEWART, Mayor

ATTEST:

\_\_\_\_\_  
KELSEY PETTIJOHN, City Clerk  
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE

\_\_\_\_\_  
TREVOR RUSIN, Interim City Attorney

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of August 12, 2024 by and between the City of Malibu (hereinafter referred to as the "City"), and Capstone City Planning (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

### RECITALS

A. The City does not have the personnel able and/or available to perform the services required under this Agreement.

B. The City desires to contract out for consulting services for certain projects relating to an update to the Safety Element of the General Plan.

C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.

D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

NOW, THEREFORE, the City and the Consultant agree as follows:

**1.0 SCOPE OF THE CONSULTANT'S SERVICES.** The Consultant agrees to provide the services and perform the tasks set forth in Exhibit A (Scope of Work), attached to and made part of this Agreement, except that, to the extent that any provision in Exhibit A conflicts with this Agreement, the provisions of this Agreement govern. The Scope of Work may be amended from time to time by way of a written directive from the City.

**2.0 TERM OF AGREEMENT.** This Agreement will become effective on August 12, 2024, and will remain in effect for a period of one (1) year from said date unless otherwise expressly extended and agreed to by both parties or terminated by either party as provided herein.

**3.0 CITY AGENT.** The City Manager, or his or her designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Consultant understands that the City Manager, or his or her designee, has the authority to provide that approval or authorization.

**4.0 COMPENSATION FOR SERVICES.** The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Exhibit A's fee and cost schedule. The cost of services shall not exceed \$77,880 for the term of the Agreement. No additional compensation shall be paid for any other expenses incurred unless first approved in writing by the City Manager, or his or her designee.

4.1 The Consultant shall submit to the City, by no later than the 10<sup>th</sup> day of each month, its written, detailed bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Consultant all uncontested amounts set forth in the Consultant's bill within 30 days after it is received.

**5.0 CONFLICT OF INTEREST.** The Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. The Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

5.1 The Consultant represents that no City employee or official has a material financial interest in the Consultant's business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in the Consultant's business by any City employee or official.

5.2 If a portion of the Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

## **6.0 GENERAL TERMS AND CONDITIONS.**

**6.1 Termination.** Either the City Manager or the Consultant may terminate this Agreement, with or without cause, by giving the other party ten (10) calendar days written notice of such termination and the effective date thereof.

6.1.1 In the event of such termination, all finished or unfinished documents, reports, photographs, films, charts, data, studies, surveys, drawings, models, maps, or other documentation prepared by or in the possession of the Consultant under this Agreement shall be returned to the City. If the City terminates this Agreement without cause, the Consultant shall prepare and shall be entitled to receive compensation pursuant to a close-out bill for services rendered and fees incurred pursuant to this Agreement through the notice of termination. If the Consultant terminates this Agreement without cause, the Consultant shall be paid only for those services completed in a manner satisfactory to the City.

6.1.2 If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement and any payments due under this Agreement may be withheld to off-set anticipated damages.

**6.2 Non-Assignability.** The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City, which the City may grant or deny in its sole and absolute discretion.

**6.3 Non-Discrimination.** The Consultant shall not discriminate as to race, creed, gender, color, national origin, sexual orientation, or any other protected category in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

**6.4 Insurance.** The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement. Consultant further agrees to comply with all provisions in the attached Exhibit B which is incorporated herein.

**6.5 Indemnification.**  
To the fullest extent permitted by law, Consultant shall indemnify and hold harmless City and any and all of its officials, employees, agents, and/or volunteers (“Indemnified Parties”) from and against any and all losses, liabilities, damages, costs, and expenses, including attorney’s fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of services under this Agreement. Consultant’s duty to indemnify and hold harmless City shall not extend to the City’s sole or active negligence or willful misconduct.

**6.5.1. Duty to defend:**

In the event the Indemnified Parties, individually or collectively, are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by City, Consultant shall defend the Indemnified Parties at Consultant’s cost or at City’s option, to reimburse City for its costs of defense, including reasonable attorney’s fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by Consultant’s negligent acts, errors or omissions. Payment by City is not a condition precedent to enforcement of this provision. In the event of any dispute between Consultant and City, as to whether liability arises from the sole or active negligence or willful misconduct of the City or its officers, employees, or agents, Consultant will be obligated to pay for City’s defense until such time as a final judgment has been entered adjudicating the Indemnified Parties as solely or actively negligent or to have acted with willful misconduct. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney’s fees, expert fees, and costs of litigation.

**6.6 Compliance with Applicable Law.** The Consultant and the City shall comply with all applicable laws, ordinances, and codes of the federal, state, county, and city governments, including, without limitation, Malibu Municipal Code Chapter 5.36 Minimum Wage.

**6.7 Independent Contractor.** This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of

agency, servant, employee, partnership, joint venture, or association, as between the City and the Consultant.

6.7.1. The Consultant shall be an independent contractor and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent contractor and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

**6.8 Copyright.** No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

**6.9 Legal Construction.**

(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

**6.10 Counterparts.** This Agreement may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all parties hereto.

**6.11 Final Payment Acceptance Constitutes Release.** The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents 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 the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

**6.12 Corrections.** In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant.

**6.13 Files.** All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

**6.14 Waiver; Remedies Cumulative.** Failure by a party to insist upon the 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 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.

**6.15 Mitigation of Damages.** In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**6.16 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.

**6.17 Attorneys' Fees.** The parties hereto acknowledge and agree that each will bear his/her or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except for the provisions of Section 6.5 and except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

**6.18 Entire Agreement.** This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement,

is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

**6.19 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:

<b>CITY:</b>	Steve McClary City Manager City of Malibu 23825 Stuart Ranch Road Malibu, CA 90265-4861 TEL (310) 456-2489 x 226 FAX (310) 456-2760	<b>CONSULTANT:</b>	Allison Cook Principal Capstone City Planning 253 Camino Tolcua Camarillo, CA 93010 TEL (805) 415-1991
--------------	---	--------------------	---

**6.20 Warranty of Authorized Signatories and Acceptance of Facsimile or Electronic Signatures.** Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign. The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract will be considered signed when the signature of a party is delivered physically or by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.

## **7.0 GENERAL TERMS AND CONDITIONS.**

**7.1 Disclosure Required.** By their respective initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is a “consultant” for the purposes of the California Political Reform Act because Consultant’s duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18700.3(a) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the City. Consultant hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City’s Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to consultant commencing services hereunder, the City’s Manager shall prepare and deliver to consultant a memorandum detailing the extent of Consultant’s disclosure obligations in accordance with the City’s Conflict of Interest Code.

City Initials \_\_\_\_\_

Consultant Initials \_\_\_\_\_

**7.2 Disclosure not Required.** By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a “consultant” for the purpose of the California Political Reform Act because Consultant’s duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation

18700.3(a) and is otherwise not serving in staff capacity in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_

Consultant Initials AC

This Agreement is executed on August 12, 2024, at Malibu, California, and effective as of August 12, 2024.

CONSULTANT:

Allison Cook  
By: Allison Cook

CITY OF MALIBU:

\_\_\_\_\_  
DOUG STEWART, Mayor

ATTEST:

\_\_\_\_\_  
KELSEY PETTIJOHN, City Clerk  
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE

\_\_\_\_\_  
TREVOR RUSIN, Interim City Attorney



**PROPOSAL FOR PLANNING CONSULTING SERVICES FOR THE CITY OF MALIBU RELATED TO PREPARATION OF THE SAFETY ELEMENT**

**A. PROJECT UNDERSTANDING**

The City is preparing a Request for Proposals (RFP) and intends to hire a consultant to prepare the General Plan Safety Element consistent with state law, including any necessary technical studies, and a related CEQA document (altogether, the “Safety Element Project”). Capstone City Planning (Capstone) understands that one RFP will be prepared and one Consultant selected for the Safety Element Project.

The project for the purposes of this Proposal is to assist the City of Malibu in reviewing the work of the City Consultant preparing the Safety Element Project from a Planning Department perspective (the “Project”).

**B. SCOPE OF WORK**

The following outlines the scope of work for Capstone to assist the City as described in A. PROJECT UNDERSTANDING. The objectives of Capstone in performing this work are the following:

- Assist the City in selecting the most qualified Consultant to complete the Safety Element Project within a reasonable budget and timeframe, meeting required deadlines.
- Review Safety Element Project Consultant work for accuracy, completeness, responsiveness to City direction, and consistency with state law.
- Provide clear and thorough written work products, direction to the Consultant as desired by the City, and input to the City.
- Serve as a resource to the City for applicable state laws and planning practices related to the Safety Element Project.
- Serve as an advisor to the City, and take direction from the City.

Project Assumptions:

- Coordination meetings between City staff and Capstone, and City/Capstone and Consultant will consist of video or telephone conferences (for time and cost efficiencies), except as specifically noted.
- Hearings (2) will be attended in person.
- Capstone deliverables to the City will be in Word and/or Excel format.
- Review of California Coastal Commission application materials prepared by the City and coordination with the Commission is not included, but can be accomplished as an Optional Task.
- Review of separate technical reports necessary to prepare the Safety Element, such as climate action plans, emergency evacuation plans, etc. is not included, but can be accomplished as an Optional Task. Once Proposals are received, the City will have a better sense of what technical reports are necessary, and the needs for peer review of them.
- Scope of work and schedule changes on the part of the Safety Element Project Consultant may require an amendment to Capstone’s scope of work, schedule and budget.

**TASK 1.0: RESEARCH AND REVIEW DOCUMENTS**

Capstone will begin the Project by briefly reviewing any relevant City documents related to public safety, climate action, sustainability, emergency preparedness, fire protection, etc. Capstone will also review state law addressing Safety Elements and any such new legislation adopted by the Governor during the timeframe of this Project. This task will provide a framework for the selected Consultant and background for the RFP.

**TASK 2.0: REQUEST FOR PROPOSALS (RFP) AND CONSULTANT SELECTION**

The purpose of this task is to review the City’s Draft Request for Proposals (RFP) for the Safety Element Project.

**Subtask 2.1: Draft RFP**

Capstone will review the City’s Draft RFP, providing comments and any recommendations for additions and/or changes. In particular, Capstone will ensure the RFP is thorough and addresses all necessary Planning-related items. One important item to be addressed in the Safety Element, which may be helpful to note in the RFP, is consistency with relevant Local Coastal Program Land Use Plan and Local Implementation Plan policies and standards.

**Subtask 2.2: Revised RFP**

Capstone will provide a second review of the City-revised RFP, and provide comments as applicable.

**Subtask 2.3: RFP Distribution List**

Capstone will assist the City in creating a list of qualified consulting firms to receive the RFP.

**Subtask 2.4: Questions and Communication on the RFP**

Capstone will respond to questions on the RFP from potential proposers, as requested by the City.

#### **Subtask 2.5: Review and Evaluate RFPs**

This subtask consists of reviewing Proposals received by the City and assumes a maximum of five proposals. Capstone will evaluate and score each Proposal per any rating sheet/system preferred by the City.

#### **Subtask 2.6 Consultant Interviews**

This subtask includes assistance to the City in creating interview questions and attendance at one day of interviews. It is assumed that the City will schedule and otherwise arrange for the interviews.

#### **Subtask 2.7. Selection of Consultant**

Capstone will assist City staff in selecting the preferred Consultant based on proposals and interviews. It includes a virtual meeting with City staff to discuss the proposers and preferred Consultant.

#### **Subtask 2.8. Scope Refinement**

Capstone will briefly review and comment on any revised Safety Element Project Consultant scope of work requested by the City prior to preparing the City Agreement for Consultant Services. Frequently, once a preferred Consultant is selected, a more detailed discussion and negotiation of work scope occurs. This task assumes some time to assist the City in reviewing a refined scope of work.

### **TASK 3.0: PROJECT INITIATION**

This task consists of attendance at one kickoff/project initiation virtual meeting, including minor preparation for the meeting. This task assumes that City staff will collect and transmit any relevant City documents to the Consultant that are needed to prepare the Safety Element and CEQA document.

### **TASK 4: MEETINGS AND COORDINATION**

This task encompasses a wide range of potential meetings and coordination for the project. It consists of ongoing meetings and coordination between: (1) Capstone, the City, and the Safety Element Project Consultant preparing the project; and (2) between Capstone and City staff. The meetings would ensure the project stays on task and on schedule and would provide a forum for discussing issues that arise during preparation of the project that need to be resolved and for determining the desired approach to issues. This will help to avoid more substantial edits to the Safety Element draft versions.

#### **Subtask 4.1: Regular Check-In Meetings between Capstone/City and Consultant**

This subtask assumes bi-weekly (twice monthly) telephone/virtual check-in meetings of one hour each between Capstone/City and the Safety Element Project Consultant for a period of one year. The Safety Element Project Consultant would prepare the meeting notes.

#### **Subtask 4.2: Regular Check-In Meetings between Capstone and City Staff**

The subtask includes bi-weekly (twice monthly) three quarters of an hour telephone/virtual check-in meetings between the City and Capstone for a period of one year, beginning with Task 2.0. No meeting notes will be prepared. It includes additional coordination (e-mails, phone calls, etc.) assumed to be a total of 12 hours.

#### **Subtask 4.3: Meetings and Coordination on Key Issues Between Capstone/City and Consultant**

This subtask provides for five virtual meetings of one and one-half hours each on key topics between Capstone/City and the Safety Element Project Consultant. The task assumes the Safety Element Project Consultant will prepare meeting notes. It includes additional coordination (e-mails, phone calls, etc.) assumed to be a total of 12 hours.

#### **Subtask 4.4: Meetings and Coordination on Key Issues Between Capstone and City**

This subtask provides for 12 telephone/virtual meetings of one and one-half hour each on key topics either of Capstone's work or that of the Safety Element Project Consultant, which could include staff of various City Departments. It also includes coordination with other City departments for review of the Safety Element Project Consultant's work and to provide guidance to the Consultant, as needed.

### **TASK 5.0: REVIEW SAFETY ELEMENT**

The purpose of this task is to review the Consultant Safety Element Project work products in coordination with City staff. For each iteration of review (Subtask 5.1: Review Administrative Draft; Subtask 5.2: Review 2<sup>nd</sup> Administrative Draft; and Subtask 5.3: Review Public Draft), Capstone would prepare review comments in "strike-out/underline" Word versions for City staff review or would provide a separate written list of comments keyed to document page numbers. It is assumed that the City would provide the full set of comments to the Consultant.

### **TASK 6.0: ENVIRONMENTAL DOCUMENT REVIEW**

Capstone would review the Consultant CEQA document in coordination with City staff. Capstone will provide review comments in "strike-out/underline" Word versions for City staff review or would provide a separate written list of comments keyed to document page numbers. It is assumed that the CEQA document will be a Mitigated Negative Declaration. If an Environmental Impact Report (EIR) is the selected type of document, a change to the scope of work/budget will be warranted. This task includes three subtasks: (1) Subtask 6.1: Review Administrative Draft MND; (2) Subtask 6.2: Review Public Draft MND; and (3) Subtask 6.3: Review Final MND. It is assumed that the City would provide the full set of comments to the Consultant.

## **TASK 7.0: STAFF REPORT REVIEW**

### **Subtask 7.1: Review of Draft Planning Commission Report**

Capstone will review one version of the City staff-prepared Planning Commission report (including any Resolutions and Ordinances) and provide comments to the City in Word strikeout/underline mode. This task does not include preparing any portions of the report.

### **Subtask 7.2: Review of Draft City Council Report**

Capstone will review one version of the City staff-prepared City Council report (including any Resolutions and Ordinances) and provide comments to the City in Word strikeout/underline mode. This task does not include preparing any portions of the report.

## **TASK 8.0: PUBLIC HEARINGS**

This task includes attendance at two public hearings. It is assumed that these will be one Planning Commission hearing and one City Council hearing. The purpose is to respond to questions of the decision-making bodies, as directed by staff. This task includes a few hours of preparation for anticipated questions for each hearing but does not assume Capstone will provide any oral and/or PowerPoint presentations.

## **OPTIONAL TASKS/CONTINGENCY**

Capstone recommends that the City consider providing a contingency in the budget for this Project. Since the Safety Element Project Consultant has not been hired, and so the precise Consultant scope of work is unknown at this time, there is a good potential for additional work items to be needed (e.g., review of technical reports, review of additional Consultant proposals, review of multiple iterations of staff reports, and further assistance at public hearings, etc.). A contingency of 20 percent may be a fair amount and has been applied in another contract with Capstone (the Housing Element implementation amendments).

## **B. SCHEDULE**

The following schedule is for completing Tasks 1.0, 2.0, 5.0, 6.0 and 7.0. The other tasks are contingent upon the Consultant's and/or City's schedule or are ongoing (e.g., Task 4). The schedule is organized by the number of weeks to complete the task. For example, Task 2.1 would take one-half week to complete.

Task	# of Weeks Capstone Completion
1.0: Research and Review	1
2.1: Draft RFP Review	0.5
2.2: Revised RFP Review	0.5
2.3: RFP Distribution List	0.5

2.4: Questions and Coordination on RFP	Ongoing
2.5: Review and Evaluate RFPs	1
2.6: Consultant Interviews	0.5
2.7: Consultant Selection	0.5
2.8: Scope of Work Refinement	1
5.1: Administrative Draft Element Review	3
5.2: 2 <sup>nd</sup> Administrative Draft Element Review	2
5.3: Public Draft Element Review	2
6.1: Administrative Draft MND Review	2.5
6.2: Public Draft MND Review	1.5
6.3: Final MND Review	1.5
7.1: Review PC Report	2
7.2: Review CC Report	2

### C. BUDGET

The estimated not-to-exceed budget is \$77,220. No reimbursable expenses are proposed.

Task	No. of Hours	Hourly Rate (\$)	Cost (\$)
1.0: Research and Review	8	165	1320
<i>Task 1 Subtotal</i>	8		1,320
2.0: RFP and Consultant Selection			
2.1: Review and Comment on Draft RFP	10	165	1,650
2.2: Review and Comment on Revised Draft RFP	6	165	990
2.3: Prepare RFP Distribution List	4	165	660
2.4: Questions and Coordination on RFP from Proposers	4	165	660
2.5: Review and Evaluate RFPs	22	165	3,630
2.6: Consultant Interviews	8	165	1,320
2.7: Consultant Selection Discussion/Meeting	2	165	330
2.8: Scope Refinement Review for Contract	8	165	1,320
<i>Task 2 Subtotal</i>	62		10,560
3.0: Project Initiation/Kickoff	6	165	990
<i>Task 3 Subtotal</i>	6		990
4.0: Meetings and Coordination			
4.1: Check In Meetings with City/Capstone and Consultant	24	165	3,960
4.2: Check in Meetings with City and Capstone	36	165	5,940
4.3: Coordination Meetings with City/Capstone and Cons.	18	165	2,970
4.4: Coordination Meetings with City and Capstone	18	165	2,970
<i>Task 4 Subtotal</i>	94		15,840
5.0: Review Safety Element			

5.1: Review and Comment on Admin. Draft Element	48	165	7,920
5.2: Review and Comment on 2 <sup>nd</sup> Admin. Draft Element	40	165	6,600
5.3: Review and Comment on Public Draft Element	32	165	5,280
<i>Task 5 Subtotal</i>	<i>120</i>		<i>19,800</i>
6.0: Environmental Document Review			
6.1: Review and Comment on Administrative Draft MND	44	165	7,260
6.2: Review and Comment on Public Draft MND	36	165	5,940
6.3: Review and Comment on Final MND	30	165	4,950
<i>Task 6 Subtotal</i>	<i>110</i>		<i>18,150</i>
7.0: Staff Report Review			
7.1: Review and Comment on Draft PC Report (1 review)	24	165	3,960
7.2: Review and Comment on Draft CC Report (1 review)	24	165	3,960
<i>Task 7 Subtotal</i>	<i>48</i>		<i>7,920</i>
8.0: Public Hearings (2 total)	20	165	3,300
<i>Task 8 Subtotal</i>	<i>20</i>		<i>3,300</i>
<b>TOTAL</b>	<b>472</b>		<b>77,880</b>

*Note: Budget does not include optional tasks and contingency.*

**EXHIBIT B**  
**INSURANCE LANGUAGE**

Without limiting Consultant's indemnification of City, and prior to commencement of work and/or services under this Agreement, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

**General Liability Insurance.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile Liability Insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than 1,000,000 combined single limit for each accident.

**Professional Liability (Errors & Omissions) Insurance.** Consultant shall maintain 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. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

**OTHER PROVISIONS OR REQUIREMENTS**

**Proof of Insurance.** Consultant shall provide certificates of insurance and required endorsements to City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City for the contract period and any additional length of time required thereafter. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of Coverage.** Consultant shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Consultant, their agents, representatives, employees, or subconsultants.

**Primary/Noncontributing.** Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

**City's Rights of Enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications 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. In the alternative, City may cancel this Agreement.

**Acceptable Insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

**Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants.

**Enforcement of Contract Provisions (Non Estoppel).** Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

**Requirements Not Limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

**Notice of Cancellation.** Consultant agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Consultant's insurers are unwilling to provide such notice, then Consultant shall have the responsibility of notifying the City immediately in the event of Consultant's failure to renew any of the required insurance coverages, or insurer's cancellation or non-renewal.

**Additional Insured Status.** General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

**Prohibition Of Undisclosed Coverage Limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

**Separation of Insureds.** A severability of interests' provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass Through Clause.** Consultant agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Consultant (hereinafter collectively "Subcontractor"), provide the same minimum insurance coverage and endorsements required of Consultant under this Agreement. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Consultant's Subcontractor cannot comply with this requirement, which proof must be submitted to the City, Consultant may still be able to utilize the Subcontractor provided Consultant shall be required to ensure that its Subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with Subcontractor's scope of work and services, with limits less than required of the Consultant, but in all other terms consistent with the Consultant's requirements under this Agreement. This provision does not relieve the Consultant of its contractual obligations under the Agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Consultant with the ability to utilize a Subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Consultant under this Agreement given the limited scope of work or services provided by the subcontractor. Consultant agrees that upon request, all agreements with Subcontractors, and others engaged in the project and/or services, will be submitted to City for review.

**City's Right to Revise Specifications.** The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days' advance written notice of such change. If such a change results in substantial additional costs to the Consultant, the City and Consultant may renegotiate the Consultant's compensation.

**Self-Insured Retentions.** Any self-insured retentions must be declared to and approved by the City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

**Timely Notice Of Claims.** Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

**Additional Insurance.** The consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.