

REQUEST FOR PROPOSALS (RFP)

Date of Issuance: September 19, 2023
Due Date: October 9, 2023*

**BUSINESS LICENSE TAX CONSULTING
SERVICES**

CITY OF FOSTER CITY

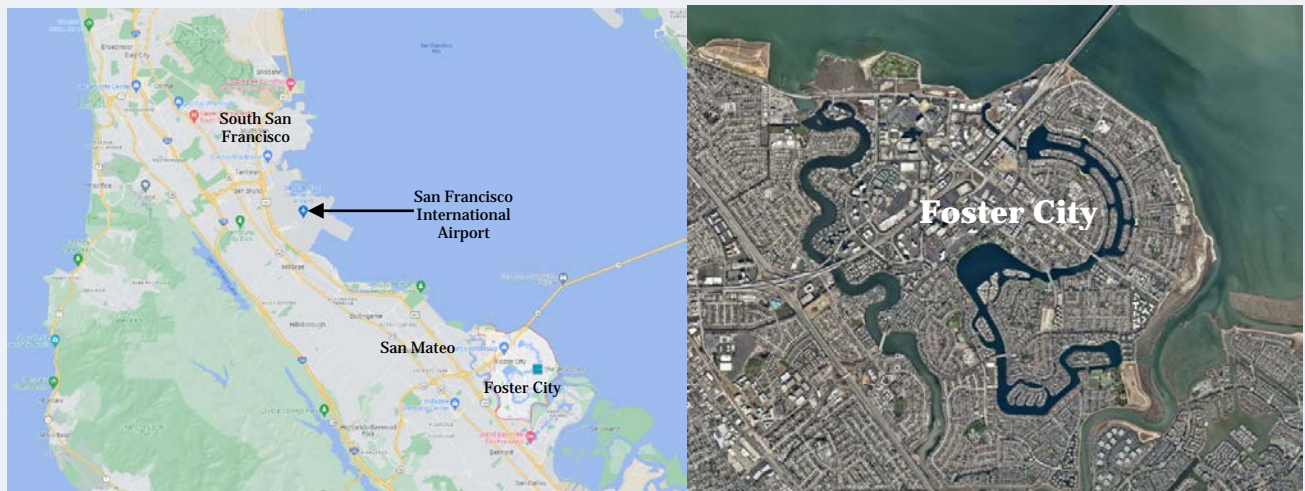


A. INTRODUCTION

The City of Foster City (the “City”) is seeking proposals from qualified firms for business license tax consulting services. The City is seeking to modernize its business license tax structure that is fair and equitable among businesses based on size and category. Respondents will conduct a comprehensive study on the City’s current business license tax ordinance and provide recommendations to the business license tax structure.

B. FOSTER CITY OVERVIEW

Foster City is located midway between San Francisco and San Jose on the western shoreline of the San Francisco Bay, east of U.S. 101, which provides convenient access to the San Francisco Airport and San Francisco to the north and Santa Clara County to the south. The City is bisected by State Route 92 (the J. Arthur Younger Freeway), which runs between Half Moon Bay to the west and Highway 880 to the east via the San Mateo-Hayward Bridge. The City encompasses 12,345 acres, of which 9,726 acres are part of San Francisco Bay and Belmont Slough, and 2,619 acres are land area.



Location map; Source: Google Maps

The City of Foster City is a full-service, General Law City with a Council-Manager form of government. The City Council also serves as the Board of Directors for the Estero Municipal Improvement District (“District”). The District, although a separate legal entity, encompasses the same geographical area, is inhabited by the same citizens and governed by the same bodies and procedures as the City. The City/District collectively call (“City”) has approximately 177 employees who deliver high quality municipal services to its 33,056 residents. The City’s fiscal year 2023-24 appropriations for its General Fund is approximately \$58.26 million.

Foster City Municipal Code requires that any person who engages in a business in the City must obtain and maintain a valid business license ([link](#)).

C. BUSINESS LICENSE TAX OVERVIEW

The City of Foster City's Business License Tax (BLT) Ordinance was enacted in 1972, shortly after the City's incorporation. Since that time, the BLT Ordinance has only been updated once in 2013 (Attachment 1). Foster City Municipal Code Title 5 "Business Licenses and Regulation" Chapters 5.04 to 5.40 outlines the provisions of the City's BLT. The model is based on the gross receipts model with a single tax rate. The last update in November 2013 increased minimum tax and maximum revenue caps upon which the tax is calculated and was phased in over a 3-year period from calendar year 2014 to 2016.

The City has approximately 1,700 Business License Tax licensees. Per its adopted 2023-24 Budget ([link](#)), the current tax rate is 0.075% with a gross receipts cap of \$38,129,333 for a maximum tax of \$28,597 for the calendar year 2023. There are approximately 24 businesses with gross receipts that exceed the cap. The gross receipts cap is adjusted annually based on inflation. FY 2022-23 revenues were estimated at \$1.58 million and projected to reach \$1.62 million in FY 2023-24, but still below the FY 2018-19 level of \$1.76 million.

Earlier this year, City Council adopted its key priorities and initiatives for the calendar year 2023 ([link](#)).

The Goal 3.1, reads:

"Identify new revenue sources and strengthen existing resources to ensure Foster City finances are more resilient to economic fluctuations and support city services."

Under this goal, one of the metrics for the success is as follows:

Consideration of a 2024 ballot measure on Business License Tax (BLT)

Metrics/Outcome/Deliverables:

- *Initiate and engage in ongoing dialogue with City businesses to build strong relationships and assess their needs and understand their perspectives on a BLT ballot measure.*
- *Research BLT methodologies and consider feasibility of various methodologies (e.g., gross receipts, square footage, employee count) with presentation to Council in January 2024.*

To protect Foster City's fiscal stability and maintain essential services, the City is looking to explore possibility of increasing the gross receipts cap. BLT is considered a general tax that would require a 2/3rd majority vote of the City Council (4 out of 5 Councilmembers) to be placed on the ballot and a simple majority vote (50% + 1) of the voters to pass. Based on City Council direction and following stakeholder engagement, the proposed BLT ballot measure will be placed in the November 2024 General Election.

In order to adequately inform the City Council and the business community, a comprehensive report on the City's current BLT ordinance, other license tax fee structures, and notably, impact of proposed changes to BLT on the City's revenue and business community is critical.

D. SCOPE OF SERVICES

Foster City is seeking proposals from qualified firms to provide a comprehensive report on the City's current business license tax ordinance and provide recommendations to the business license tax structure.

1. Meet with City staff to discuss the project scope, purpose, uses and goals of the City's business license tax to ensure that the proposal will be appropriate to needs of Foster City.
2. Meet with City staff to access data as needed to understand the City's methodology of calculating the current business license tax.
3. Develop a written study of the current business license tax fee structure.
4. Present an informational report to City Council that compares Foster City's business license tax with other local jurisdictions and provide an analysis of comparable cities' business license tax structures. Provide an analysis of alternative business license tax fee structures, formula, its impact on existing businesses and City's revenue. The timeline for this task is set for January 2024.
5. Discuss best practices for business license tax structure.
6. Present to City staff and the City Council the recommended changes, as well as the alternatives, providing documentation and reasoning as to why the proposed methodology is superior to the current business license tax structure and the other alternatives (one to two public meetings).
7. Based on the direction from the City Council, conduct or assist city staff with stakeholder outreach and engagements meetings to introduce the proposed changes to the BLT (three to four engagement meetings).

E. PRELIMINARY SCHEDULE

The following is a preliminary schedule for the award of the contract.

Distribution of RFP	September 19, 2023
Deadline to Submit Written Questions	5:00 pm October 02, 2023
Deadline to submit proposals	5:00 pm October 09, 2023*
Award of the contract	October 20, 2023*

Note that this schedule is preliminary. The schedule may be adjusted, as needed, by the City. The deadline for submitting proposals may be extended if the City does not receive adequate responses from qualified firms. Accordingly, the date for awarding the contract will change.

F. DEADLINE FOR WRITTEN QUESTIONS

All inquiries regarding this RFP shall be directed to Sofia Mangalam, Community Development Director, via telephone at (650) 286-3239, or, preferably, via email at smangalam@fostercity.org before 5:00 pm on **October 02, 2023**. The City will compile a list of written questions with responses and post to the City website within one week. It is the responsibility of consultants to carefully review this RFP and any addenda including checking the City website regularly.

Except as specified above, consultants and their representatives may not communicate with any officer, director, employee, or agent of the City with respect to this RFP except as may be reasonably necessary to carry out the procedures specified in this RFP. Nothing herein prohibits consultants or their representatives from making oral statements or presentations in public to one or more representatives of the City during a public meeting. The City will not respond to verbal inquires and interested consultants are specifically discouraged from contacting the city in person or by telephone during this RFP and selection process.

G. PROJECT BUDGET

All tasks within the enclosed Scope of Services shall be included within the proposal's fee schedule and itemized according to required and optional tasks.

H. PROPOSAL CONTENT

Consultant proposal must include the following and follow directions outlined in each section below:

1. A cover letter with contact information
A description and statement of the firm's qualifications for this project, as well as those of any subconsultants.
2. Project team
 - Organizational chart of the project team.
 - Names, qualifications and resumes of all project team members who will directly participate in the project.
 - Sub consultants. Identify any sub consultants that would be used and their specific role. (All sub consultant costs, including any markup, must be included in consultant's cost proposals.)
3. Table of Contents. Each proposal shall include an index to the major topics contained in the proposal and all pages shall be numbered.
4. Approach to Scope of Services.
 - a. Work Plan and Approach.
 - i. Discuss your firm's understanding of the Scope of Services to be performed.
 - ii. Describe the method for management of overall project costs, schedule, quality assurance/quality control, responsiveness to City requests and inquiries, and other issues critical to this project. Specifically address your firm's approach to resolving unanticipated issues efficiently and effectively while maintaining project budget and schedule. In addition, explain your team's ability to adapt to changes in environment and/or existing conditions throughout the process that may affect the program outcome and schedule.
 - iii. Describe the needs from City staff. For example, what City staff expertise is needed and how much time do you anticipate.
 - iv. Identify any "value-added" services that your firm may provide.

- b. **Schedule:** Outline a proposed project schedule starting from a kickoff meeting to development of draft documents and final report. Include any significant milestone and resource needs such as staff, meeting space, reports, etc. from the City.
5. **Timeline.** Provide a detailed timeline associated with each task listed “Scope of Services,” specifically ability to meet the deadline for presentation to the City Council in January 2024.
6. **Qualifications Details**
 - a. Provide experience/expertise of your firm in evaluating business license tax ordinances and making recommendations on alternative business license tax structures and proposing such recommendations to other similar governmental agencies.
 - b. Provide details of your firm’s ability to meet the Scope of Services outlined.
7. **References.** Provide at least three (3) references of California agencies. At least two (2) references must have worked with the proposed project manager and other key staff proposed to be assigned to the City’s project. References should include the following:
 - a. Name, address, and telephone number of the agency
 - b. Time period for the project
 - c. Brief description of the scope of the review
 - d. Recommended procedures
 - e. Reference contact name, email, and telephone number

I. CONSULTANT SELECTION PROCEDURE

i. EVALUATION CRITERIA

All proposals will be evaluated using the following criteria:

- Quality and completeness of proposal.
- Quality of the proposed services to be provided.
- Ability and experience of team members assigned to work on the project.
- Technical experience in performing work of a closely similar nature.
- Methodology and work program, including knowledge of local needs and the ability to work closely with City staff, the project team, Planning Commission and City Council.
- Consultant availability, including ability to attend and make presentations.
- Creativity and insight of proposal.
- Timing of work program and ability to perform the work within the time specified.
- Project cost.
- Ability to produce high-quality and easy-to-read graphic information.

ii. EVALUATION PROCEDURE

Evaluation of the proposals will be performed by City staff who will assess the qualifications, experience, and ability to perform the work of each consultant based

on the criteria listed above. An oral interview with one or more of firms may be requested after written proposals have been received and reviewed by the City. At the time of the interview, representatives of the consulting firm shall be prepared to clarify and elaborate on the details set forth in the firm's proposal.

The City of Foster City Community Development Department will administer the contract. The decision to accept any proposal shall be made not later than thirty (30) calendar days after the deadline for proposals to be submitted. Consultants whose proposals have not been accepted shall be so notified.

J. GENERAL INFORMATION FOR PROPOSALS

- The prospective consultant firm shall submit its proposal to the City via email not later than October 09, 2023* at 5:00 P.M.
- Any questions related to the project and/or this RFP shall be directed to the Community Development Director, Sofia Mangalam, who can be reached at (650) 286-3239 or via email at smangalam@fostercity.org.
- The proposal shall be signed by an authorized official of the firm.
- All costs incurred in the preparation of the proposal shall be the sole responsibility of the consultant.
- The City reserves the right to reject any and all proposals and to request additional information concerning any proposal for purposes of clarification.
- If awarded a contract, the consultant shall maintain insurance coverage, including worker's compensation, reflecting the minimum amounts and conditions specified by the City.
- The terms and scope of the contract will be arrived at on the basis of professional negotiations between the City and the prospective consultant. If the City and the prospective consultant fail to reach a contractual agreement, the City may then renegotiate with any other consultant.
- The consultant will comply with access of records, conflict of interest, and other provisions as required.

K. TERMS AND CONDITIONS

Issuance of this RFP does not commit the City to award a contract for services or to pay any costs incurred in the preparation of a response to this request. The City retains the right to reject any and all submittals. Once submitted, the proposals become the property of the City.

The consultant selected to perform the scope of services described in this RFP will be required to obtain a Foster City Business License. For more information regarding the Business License process, or to obtain a Business License application packet, please visit the City's Business License webpage at:

<https://www.fostercity.org/finance/page/business-license-application>.

L. ATTACHMENTS

- BLT Ordinance
- City's Standard Contract

ORDINANCE NO. 572

AN ORDINANCE OF THE CITY OF FOSTER CITY AMENDING TITLE 5, BUSINESS LICENSES AND REGULATIONS, OF THE FOSTER CITY MUNICIPAL CODE TO UPDATE THE CITY'S BUSINESS LICENSE TAX

CITY OF FOSTER CITY

(November 5, 2013 Ballot Measure)

IT IS SO ORDAINED by the City Council of the City of Foster City as follows:

Section 1. Code Amendment. Chapters 5.04, 5.08, 5.12, 5.16, 5.20, 5.24, 5.28, 5.32, 5.36, 5.40 of the Foster City Municipal Code are hereby amended to read as set forth in Exhibit A to this Ordinance.

Section 2. General Tax. The taxes imposed pursuant to Section 1 of this Ordinance are general taxes imposed for revenue purposes, shall be deposited in the City's general fund and may be expended for any lawful purpose of the City.

Section 3. Further Amendments. The provisions of this Ordinance may be repealed or amended by the City Council without a vote of the people except as follows: as required by Article XIII C of the State Constitution, any action that increases the rate or amount of a tax imposed by this Ordinance above the levels authorized by this Ordinance may not take effect unless approved by a vote of the people.

Section 4. Authorization for City Clerk to Delete Obsolete Provisions. The City Clerk is hereby authorized to conduct an annual review of Article 1 of Title 5 of the Foster City Municipal Code and delete provisions that have become inapplicable due to the passage of time.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

Section 6. Construction. To the extent the provisions of Article 1 of Title 5 of the Foster City Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Article read prior to the adoption of this Ordinance, they shall be construed as continuations of the earlier provisions and not as new enactments.

Section 7. Approval General Municipal Election; Effective Date. The effective date for the purposes of updating the City's Business License Tax shall take effect on January 1, 2014.

Section 8. Execution. The Mayor is hereby authorized to subscribe this ordinance where indicated below to evidence its adoption by the voters of the City and upon that subscription, the City Clerk shall certify to the passage and adoption of this ordinance, enter it into the book of original ordinances, and shall cause the same within fifteen (15) days after its adoption, to be posted in three (3) public places designated by the City Council according to law.

This Ordinance was introduced and read on the 17th day of June, 2013, and passed and adopted on the 15th day of July, 2013, by the following vote:

AYES: Councilmembers Bronitsky, Kiesel, Okamoto, Perez and Mayor Frisella

NOES: None

ABSENT: None

ABSTAIN: None


PAM FRISELLA, MAYOR

ATTEST:


DORIS L. PALMER, CITY CLERK

HISTORY: This ordinance was approved by the voters of the City of Foster City at the General Municipal Election of November 5, 2013 by the following vote:

AYES: 3,077

NOES: 1,126

This ordinance became effective on December 12, 2013 (10 days after certification of the election results) pursuant to City Resolution No. 2013-101.

Chapter 5.04 GENERAL PROVISIONS

Sections:

- 5.04.010 Revenue measure.
- 5.04.020 Article not exclusive.
- 5.04.030 License and tax requirements.
- 5.04.040 License—Separate for branch establishments or multiple legal entities.
- 5.04.050 Evidence of doing business.
- 5.04.060 Constitutional apportionment.
- 5.04.070 Exemptions.
- 5.04.080 Effect of article on past actions and unexpired licenses.

5.04.010 Revenue measure.

This article is enacted solely to raise revenue for municipal purposes and is not intended for regulation. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-102)

5.04.020 Article not exclusive.

Persons required to pay a license tax for transacting and carrying on any business under this article shall not be relieved from the payment of any license tax for the privilege of doing such business required under any other ordinance or provision of this code, and shall remain subject to the regulatory provisions of other ordinances and code provisions. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-103)

5.04.030 License and tax requirements.

A. There are imposed upon the businesses, trades, professions, callings and occupations specified in this article license taxes in the amounts hereinafter prescribed. It is unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the city without first procuring a license from the city so to do and paying the tax hereinafter prescribed or without complying with any and all applicable provisions of this article.

B. This section shall not be construed to require any person to obtain a license prior to doing business within the city if such requirement conflicts with applicable statutes of the United States or of the state of California. Persons not so required to obtain a license prior to doing business within the city nevertheless shall be liable for payment of the tax imposed by this article. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-104)

5.04.040 License—Separate for branch establishments or multiple legal entities.

A separate license must be obtained for each legal entity, branch establishment or location of the business transacted and carried on and for each separate type of business at the same location. Each license shall authorize the licensee to transact and carry on only the business licensed thereby at the location or in the manner designated in such license. Warehouses and distributing

plants used in connection with and incidental to a business licensed under the provisions of this article shall not be deemed separate places of business or branch establishments. Any person conducting multiple businesses, but for which those businesses use a single set or integrated set of books and records, shall pay only one tax calculated on all gross receipts of the businesses. The number of separate legal entities conducting business in the same location but using separate sets for books and records for which business license taxes must be paid is limited as specified in Section 5.24.020. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-105)

5.04.050 Evidence of doing business.

When any person, by use of signs, circulars, cards, telephone books or newspapers, advertises, holds out or represents that he is conducting business in the city, or when any person holds an active license or permit issued by a governmental agency indicating that he is conducting business in the city, and such person fails to deny by a sworn statement given to the collector that he is not conducting a business in the city, after being requested to do so by the collector, then these facts shall be considered prima facie evidence that he is conducting a business in the city. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-106)

5.04.060 Constitutional apportionment.

A. No Undue Burden. None of the license taxes provided for by this article shall be so applied as to occasion an undue burden upon interstate commerce or to violate the equal protection and due process clauses of the Constitutions of the United States and the state of California.

B. Apportionment Appeal Rights. In any case where a license tax is believed by a licensee or applicant for a license to place an undue burden upon interstate commerce or to violate constitutional nexus requirements or other applicable law, the licensee or applicant may apply to the collector for an adjustment of the tax. Such application may be made before, at or within six months after payment of the prescribed license tax. The applicant shall, by sworn statement and supporting testimony, show the method of business and the gross volume or estimated gross volume of business and such other information as the collector may deem necessary to determine the extent, if any, of such undue burden or violation. The collector shall then conduct an investigation, and, upon the written approval of the city attorney, shall fix as the license tax for the applicant an amount that is reasonable and nondiscriminatory, or, if the license tax has already been paid, shall order a refund of the amount over and above the license tax so fixed. In fixing the license tax to be charged, the collector shall have the power to base the license tax upon a percentage of gross receipts or any other measure which will ensure that the license tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the license tax as prescribed by this article. Should the collector determine the gross receipts measure of license tax to be the proper basis, he may require the applicant to submit, either at the time of termination of applicant's business in the city or at the end of each three-month period, a sworn statement of the gross receipts and pay the amount of license tax therefor; provided, that no additional license tax during any one calendar year shall be required

after the licensee has paid an amount equal to the annual license tax as prescribed in this article. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-107)

5.04.070 Exemptions.

A. Exemptions as Matter of Law. Nothing in this article shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or of the state of California from the payment of such taxes as are prescribed in this article.

B. Charitable (Nonprofit) Organizations. No business license tax imposed under this article shall be deemed or construed to apply to any person transacting and carrying on any business, which business is conducted, managed or carried on wholly as an organization exempt from federal income taxes as defined under Section 501(c) of the United States Internal Revenue Code.

C. Farmers Markets. Nothing in this article shall be deemed or construed to apply to any person transacting and carrying on any business, which business is conducted, managed or carried on exclusively in participation with a farmers market approved by the city, whether held on public or private property.

D. Claiming an Exemption. Any person claiming an exemption pursuant to this section shall file a sworn statement with the collector stating the facts upon which exemption is claimed, and in the absence of such statement substantiating the claim, such person shall be liable for the payment of the taxes imposed by this article. Businesses claiming an exemption under subsection B of this section shall be required to provide a copy of the Internal Revenue Service determination letter or similar document that certifies the exempt status granted under Section 501(c) of the Internal Revenue Code.

E. Non-Fee License Issuance. The collector shall, upon a proper showing contained in the sworn statement, issue a license to such person claiming exemption under this section without payment to the city of the business license tax required by this article.

F. Revocation of Exemption. The collector, after giving notice and a reasonable opportunity for hearing to a licensee, may revoke any license granted pursuant to the provisions of this section upon information that the licensee is not entitled to the exemption as provided in this section. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-108)

5.04.080 Effect of article on past actions and unexpired licenses.

A. Neither the adoption of the ordinance codified in this article nor its superseding of any portion of any other ordinance of the city shall in any manner be construed to affect prosecution for violation of any other ordinance committed prior to the effective date of the ordinance codified herein, nor be construed to waive any tax or license requirement or any penal provision applicable to any such violation, nor be construed to affect the validity of any bond or cash deposit required by

any ordinance to be posted, filed or deposited, and all rights and obligations pertaining thereto shall continue in full force and effect.

B. Where a license for revenue purposes has been issued to any person by the city and the tax paid for the business for which the license has been issued under the provisions of any ordinance heretofore enacted and the term of such license has not expired, then the license tax prescribed for the business by this article shall not be payable until the expiration of the term of such unexpired license. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-131)

Chapter 5.08 DEFINITIONS

Sections:

- 5.08.010 Business.
- 5.08.020 City.
- 5.08.030 Collector.
- 5.08.040 General contractor.
- 5.08.050 Gross receipts.
- 5.08.060 Person.
- 5.08.070 Sale.
- 5.08.075 Same location.
- 5.08.080 Solicitor.
- 5.08.090 Specialty contractor.
- 5.08.100 Sworn statement.

5.08.010 Business.

As used in this article, "business" includes professions, trades and occupations and all and every kind of calling whether or not carried on for profit. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-101(c))

5.08.020 City.

As used in this article, "city" means the city of Foster City, a municipal corporation of the state of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-101(b))

5.08.030 Collector.

As used in this article, "collector" means the city officer charged with administration of this article. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-101(g))

5.08.040 General contractor.

As used in this article, "general contractor" means (A) a general engineering contractor, or (B) a general building contractor, as those terms are defined in Sections 7056 and 7057, respectively, of

the Business and Professions Code of the state as they now exist or may hereafter be amended. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-101(h))

5.08.050 Gross receipts.

As used in this article, "gross receipts" includes the total actually received or receivable from sales of goods, materials, wares or merchandise, and the total actually received or receivable for the performance of any act or service, of whatever nature, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise. Included in "gross receipts" shall be all receipts, cash, credits, investment income, rental income, and proceeds from the sale of property of any kind or nature, without any deduction on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. The following are excluded from "gross receipts":

- A. Cash discounts allowed and taken on sales;
- B. Credit allowed on property accepted as part of a purchase price and which property may later be sold;
- C. Any tax required by law to be and is included in or added to the purchase price and collected from the consumer or purchaser;
- D. Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;
- E. Amounts collected for others as an agent or trustee to the extent such amounts are paid to those for whom collected, provided the agent or trustee has furnished the collector with the names and addresses of the others and the amounts paid to them;
- F. That portion of the receipts of a business related to sales of goods or services to the city of Foster City;
- G. That portion of the receipts of a general contractor which represents payments to subcontractors; provided, that such subcontractors are licensed under this article and provided the general contractor furnishes the collector with the names and addresses of the subcontractors and the amounts paid each;
- H. Receipts of refundable deposits, except that refundable deposits forfeited and taken into income shall not be excluded;
- I. As to a real estate agent or broker, the sales price of real estate sold for the account of others except that portion which represents commission or other income to the agent or broker. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-101(d))

5.08.060 Person.

As used in this article, “person” includes all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, Massachusetts, business or common law trusts, societies and individuals transacting and carrying on any business in the city, other than as an employee. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-101(a))

5.08.070 Sale.

As used in this article, “sale” includes the transfer, in any manner or by any means, of title to property for consideration; the serving, supplying or furnishing for consideration of any property; and a transaction whereby the possession of property is transferred and the seller retains the title as security for the payment of the price. The foregoing definitions shall not exclude any transaction which is or which, in effect, results in a sale within the contemplation of law. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-101(e))

5.08.075 Same location.

As used in this article, “same location” means the same physical address as recognized by the United States Postal Office, property parcel as recognized by the San Mateo County assessor’s office, or development area as evidenced by a development agreement with the city then currently in effect. (Ord. 572 § 1 Exh. A (part), 2013)

5.08.080 Solicitor.

As used in this article, “solicitor” means one who engages in the business of going from house to house, place to place or in or along the streets within the city, selling or taking orders for, or offering to sell or take orders for, goods, wares, merchandise or other things of value for future delivery, or for services to be performed in the future. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-101(j))

5.08.090 Specialty contractor.

As used in this article, a “specialty contractor” is as defined in Section 7058 of the Business and Professions Code of the state as it now exists or may hereafter be amended. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-101(i))

5.08.100 Sworn statement.

As used in this article, “sworn statement” means an affidavit sworn before a person authorized to take oaths, or a declaration or certification made under penalty of perjury. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-101(f))

Chapter 5.12 LICENSES

Sections:

- 5.12.010 Application—Issuance—Contents.
- 5.12.030 Application—First license—Contents.

- 5.12.040 Gross receipts estimate.
- 5.12.050 Sworn statement and tax payment prerequisite to renewal.
- 5.12.060 Renewal license.
- 5.12.070 License transferability.
- 5.12.080 Duplicate license.
- 5.12.090 Posting and keeping licenses.

Prior ordinance history: Prior code § 4-109.020.

5.12.010 Application—Issuance—Contents.

Every person required to have a license under the provisions of this article shall apply to the collector for a license as prescribed below. Upon payment of the prescribed license tax, the collector shall issue that person a license which shall contain the following information:

- A. The name of the person to whom the license is issued;
- B. The business licensed;
- C. The place where such business is to be carried on;
- D. The expiration date of such license; and
- E. Such other information as may be necessary for the enforcement of this article. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-109.010)

5.12.030 Application—First license—Contents.

Upon application for the first license under this article or for a newly established business, the applicant shall furnish a sworn statement, upon a form provided by the collector, setting forth the following information:

- A. The exact nature or kind of business for which a license is requested;
- B. The place where such business is to be carried on, and if the same is not to be carried on at any permanent place of business, the places of residences of the owners of same;
- C. If application is made for a license to a person doing business under a fictitious name, the application shall set forth the names and places of residences of those owning the business;
- D. In the event an application is for issuance of a license to a corporation or a partnership, the application shall set forth the names and places of residences of the officers or partners thereof;
- E. If the amount of license tax to be paid is measured by gross receipts, the application shall set forth such information the collector determines necessary to determine the amount of the license tax to be paid;

F. Any further information which the collector may require to enforce this article. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-110.010)

5.12.040 Gross receipts estimate.

If the amount of the license tax to be paid by a person applying for the first license under this article or for a newly established business is measured by gross receipts, the applicant shall estimate the gross receipts for the period to be covered by the license. Such estimate, if the collector accepts it as reasonable, shall be used in determining the amount of license tax to be paid; provided, however, the amount so determined shall be tentative only and such person shall, within thirty days after the expiration of the period for which such license was issued, furnish the collector with a sworn statement, upon a form furnished by the collector, showing the gross receipts during the period of such license, and the license tax for such period shall be finally ascertained and paid as provided by this article for the ascertaining and paying of renewal license taxes for other businesses, after deducting from the payment due the amount paid when the first license was issued. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-110.020)

5.12.050 Sworn statement and tax payment prerequisite to renewal.

The collector shall not renew a license to any person or issue him or her another license for the same or any other business until such person has furnished the sworn statement and paid the license tax required by this article. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-110.030)

5.12.060 Renewal license.

An applicant for renewal of a license shall submit to the collector, for guidance in ascertaining the license tax to be paid, a sworn statement, upon a form to be provided by the collector, setting forth such information concerning the applicant's business during the preceding year as may be required by the collector to ascertain the license tax to be paid pursuant to this article. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-111)

5.12.070 License transferability.

No license issued pursuant to this article shall be transferable; provided, that where a license is issued authorizing a person to transact and carry on a business at a particular place, such licensee may, upon application therefor and payment of the fee established under the city's master fees and charges schedule in effect at the time of filing, have the license amended to authorize the transacting and carrying on of such business under the license at some other location; provided further, that transfer, whether by sale or otherwise, to another person under such circumstances that the real or ultimate ownership after the transfer is substantially similar to the ownership existing before the transfer shall not be prohibited by this section. For the purpose of this section, stockholders, bondholders, partnerships or other persons holding an interest in a legal entity are regarded as having the real or ultimate ownership of such entity. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-117)

5.12.080 Duplicate license.

The collector may issue a duplicate license to replace any license that has been lost or destroyed upon the licensee filing a statement of such fact and paying a duplicate license fee established under the City's master fees and charges schedule in effect at the time of filing. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-118)

5.12.090 Posting and keeping licenses.

A. Any licensee transacting and carrying on business at a fixed place of business in the city shall keep the license posted in a conspicuous place upon the premises where such business is carried on.

B. Any licensee transacting and carrying on business but not operating at a fixed place of business in the city shall keep the license upon his or her person when transacting and carrying on the business for which it is issued. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-119)

Chapter 5.16 STATEMENTS AND RECORDS

Sections:

- 5.16.010 Statement—Limitations—Verification.
- 5.16.020 Records—Requirements.
- 5.16.030 Information confidential.
- 5.16.040 Failure to file statement or corrected statement.
- 5.16.050 Additional power of collector.

5.16.010 Statement—Limitations—Verification.

No statement shall be conclusive as to the matters set forth therein, nor shall its filing preclude the city from collecting by appropriate action such sum as is actually due and payable under this article. Such statement shall be subject to audit and verification by the collector, his or her deputies, authorized employees or agents of the city, who are authorized to examine, audit and inspect such books and records of any licensee or applicant for license, as may be necessary in their judgment to verify or ascertain the license fee due. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-112.010)

5.16.020 Records—Requirements.

All persons subject to this article shall keep complete records of business transactions, including sales, receipts, purchases and other expenditures, and shall retain all such records for examination by the collector for at least three years. Alternatively, persons may maintain copies of their annual federal income tax returns in lieu of maintaining the aforementioned records. No such person shall refuse to allow authorized representatives of the collector to examine the records at reasonable times and places. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-112.020)

5.16.030 Information confidential.

It is unlawful for the collector or any employee or agent of the city to make known in any manner whatsoever the business affairs, operations or information obtained by an investigation of records and equipment of any person required to obtain a license or to pay a license tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof, to be seen or examined by any person; provided, that nothing in this section shall be construed to prevent:

- A. The disclosure to, or the examination of records and equipment by, another city official, employee or agent for collection of taxes for the sole purpose of administering or enforcing this article or collecting taxes imposed under it;
- B. The disclosure of information to, or the examination of records by, federal or state officials, or the tax officials of another public agency, if a reciprocal arrangement exists, or to a grand jury or court of law, upon subpoena;
- C. The disclosure of information and results of examination of records of particular taxpayers, or relating to particular taxpayers, to a court of law in a proceeding brought to determine the existence or amount of any license tax liability to the city of those taxpayers;
- D. The disclosure, after the filing of a written request to that effect, to the taxpayer, or to the taxpayer's successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to the items included in the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the city attorney approves each such disclosure and that the collector may refuse to make any disclosure referred to in this subsection when in his or her opinion the public interest would suffer thereby;
- E. The disclosure of the names and business addresses of persons to whom licenses have been issued, and the general type or nature of their business;
- F. The disclosure by way of public meeting or otherwise of such information as may be necessary to permit the decision maker to be fully advised as to the facts when a taxpayer files a claim for refund of license taxes, or submits an offer of compromise with regard to a claim asserted against him by the city for license taxes, or when acting upon any other matter;
- G. The disclosure of general statistics regarding taxes collected or business done in the city;
- H. Any other disclosure required by applicable law. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-113)

5.16.040 Failure to file statement or corrected statement.

A. If any person fails to timely file any required statement, or if after demand therefor made by the collector any person fails to timely file a corrected statement, or if any person subject to the tax imposed by this article fails to apply for a license, the collector may determine the amount of license tax due using such information as is available to the collector.

B. If the collector is not satisfied with information supplied in statements or applications filed, he or she may determine any license tax due using such information as is available to the collector.

C. If the collector makes such a determination, he or she shall give a notice of the amount assessed by serving it personally or by depositing it with the United States Postal Service or any other carrier or delivery service offering prompt delivery, addressed to the person so assessed at his or her last-known address. Such person may, within fifteen days after the mailing or serving of such notice, apply in writing to the collector for a hearing. If such application is made, the collector shall set the matter for hearing within fifteen days. The collector shall give at least ten days' notice to such person of the time and place of hearing in the manner prescribed above for serving notices of assessment. The city manager or a hearing officer designated by the city manager shall consider all evidence produced and shall make findings thereon, which shall be final as to the city, but subject to judicial review pursuant to Code of Civil Procedure Section 1094.5. Notice of such findings shall be served upon the applicant in the manner prescribed above for serving notices of assessment. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-114)

5.16.050 Additional power of collector.

In addition to all other power conferred upon him, the collector shall have the power, for good cause shown, to extend the time for filing any required sworn statement or application for up to thirty days, and in such case to waive any penalty that would otherwise have accrued, except that six percent simple interest shall be added to any tax determined to be payable. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-116)

Chapter 5.20 LICENSE TAX PAYMENT—PENALTIES—REFUNDS

Sections:

- 5.20.010 How and when payable.
- 5.20.020 Delinquency—Penalty.
- 5.20.030 Delinquency issuance prohibited.
- 5.20.040 Delinquency—Installment payment agreement.
- 5.20.050 Refunds of overpayments.

5.20.010 How and when payable.

A. Unless otherwise specifically provided in this article, all annual license taxes shall be due and payable in advance on the first day of January of each year based on gross receipts during the prior calendar year ending December 31; provided, that license taxes covering new operations

commenced thereafter may be prorated for the balance of the license period based upon an estimate of the anticipated gross receipts for that year.

B. Except as otherwise herein provided, license taxes, other than annual, required under this article shall be due and payable as follows: Flat-rate license taxes are payable in advance of the first day of business and thereafter on the first day of any applicable period. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-120)

5.20.020 Delinquency—Penalty.

For failure to pay a license tax when due, the collector shall add a penalty of ten percent of the license tax at five p.m. on the sixtieth day after the due date thereof, and an additional ten percent at five p.m. on the last day of each month thereafter. The amount of such cumulative penalty to be added shall in no event exceed one hundred percent of the license tax due. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-121.010)

5.20.030 Delinquency issuance prohibited.

No license shall be issued, nor one which has been suspended or revoked shall be reinstated or reissued, to any person who, at the time of applying therefor, is indebted to the city for any delinquent license taxes, unless such person, with the consent of the collector, enters into a written agreement with the city, through the collector, to pay such delinquent taxes, plus ten percent annual interest upon the unpaid balance, in monthly installments, or more often, extending over a period of up to a year. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1974: prior code § 4-121.020)

5.20.040 Delinquency—Installment payment agreement.

In any agreement entered into under Section 5.20.030, the licensee shall acknowledge the obligation owed to the city and agree that, in the event of failure to timely pay any installment, the whole amount unpaid shall become immediately due and payable and that the current license shall be revocable by the collector upon thirty days' notice. In the event legal action is brought by the city to collect any amount included in the agreement, such person shall pay all costs of suit incurred by the city or its assignee, including a reasonable attorney's fee. The execution of such an agreement shall not prevent the prior accrual of penalties on unpaid balances at the rate provided in this article, but no penalties shall accrue on account of taxes included in the agreement after the execution of the agreement and the payment of the first installment and during such time as such person is not in breach of the agreement. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-121.030)

5.20.050 Refunds of overpayments.

No refund of an overpayment of taxes imposed by this article shall be allowed in whole or in part unless a claim for refund is filed with the collector within a period of one year from the last day of the calendar month following the period for which the overpayment was made, and all such claims for refund of the amount of the overpayment must be filed with the collector on forms furnished by

him or her and in the manner prescribed by him or her. Upon the filing of such a claim and a determination that an overpayment has been made, the collector may refund the amount overpaid. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-122)

**Chapter 5.24
GROSS RECEIPTS TAX**

Sections:

5.24.010 Rates.

5.24.020 Tax limit on number of multiple corporate entities.

Prior ordinance history: Prior code §§ 4-123.020 and 4-123.030.

5.24.010 Rates.

Every person who engages in business at a fixed place of business within the city shall pay a license tax of seventy-five cents per one thousand dollars (or 0.075 percent) of gross receipts or part thereof subject to the following:

A. Minimum Tax. The minimum tax shall be as follows:

Effective Date	General Contractor	Specialty Contractor	Solicitor	All Other Businesses
January 1, 2014	\$100	\$50	\$50	\$50
January 1, 2015	\$150	\$75	\$75	\$75
January 1, 2016, and thereafter	\$200	\$100	\$100	\$100

B. Gross Receipts Limit. The limit upon which the license tax shall be computed will be as follows:

1. Effective January 1, 2014, taxable gross receipts shall be limited to ten million dollars.
2. Effective January 1, 2015, taxable gross receipts shall be limited to twenty million dollars.
3. Effective January 1, 2016, taxable gross receipts shall be limited to thirty million dollars.
4. Effective January 1, 2017, and every January 1st thereafter, the taxable gross receipts limit shall be adjusted by the percentage change in the Consumer Price Index (All Urban Consumers) issued by the Bureau of Labor Statistics of the United States Department of Labor for the San Francisco-Oakland-San Jose, California, area (or any successor to that index) for the month of October immediately preceding, rounded to the nearest ten thousand

dollars. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 84 § 1, 1973: Ord. 45 § 1 (part), 1972: prior code § 4-123.010)

5.24.020 Tax limit on number of multiple corporate entities.

Subject to the provisions of Section 5.04.040, the gross receipts of separate legal entities conducting business at the same location that use separate books and records, other than those entities which are considered investment funds or trusts established for the sole purpose of providing investment instruments to investors, shall be reported on a form required by the collector, and the computation of the license taxes payable under Section 5.24.010 shall be computed based on the three legal entities with the largest reported gross receipts. (Ord. 572 § 1 Exh. A (part), 2013)

**Chapter 5.32
DELIVERY AND OUTSIDE BUSINESS**

Sections:

5.32.010 Delivery by vehicle.

5.32.020 Outside businesses.

5.32.010 Delivery by vehicle.

Every person not having a fixed place of business within the city, and not being otherwise licensed or classified in this article, who delivers goods, wares or merchandise of any kind by vehicle, or who provides any service by the use of vehicles in the city, shall pay a license tax equivalent to the minimum tax specified in Section 5.24.010. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-125)

5.32.020 Outside businesses.

Every person not having a fixed place of business within the city who engages in business within the city and is not subject to the provisions of Section 5.32.010 shall pay a license tax at the rate prescribed in this article for persons engaged in the same type of business and having a fixed place of business within the city. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-126)

**Chapter 5.36
APPEAL**

Sections:

5.36.010 Appeal.

5.36.010 Appeal.

Any person aggrieved by any final decision of the collector with respect to the issuance or refusal to issue a business license, the classification of a business, or any other matter under this article may appeal by submitting a letter and the basis upon which an appeal should be granted with the city clerk. The city manager or a hearing officer designated by the city manager shall thereupon fix

a time and place for hearing such appeal. The city clerk shall give notice to such person of the time and place of hearing in the manner specified in Section 5.16.040(C). The city manager or hearing officer shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of this article or other applicable law. The written decision of the city manager or hearing officer shall be final as to the city and subject to judicial review pursuant to Code of Civil Procedure Section 1094.5. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-115)

Chapter 5.40 ENFORCEMENT

Sections:

- 5.40.010 Rules and regulations.
- 5.40.020 Enforcement officials.
- 5.40.030 Business premises—Inspection authorization.
- 5.40.040 Business premises—Inspection entry right.
- 5.40.050 License tax a debt.
- 5.40.060 Remedies cumulative.

5.40.010 Rules and regulations.

The collector may make rules and regulations not inconsistent with the provisions of this article as may be necessary or desirable to aid in the enforcement of the provisions of this article. He or she shall give notice of those rules in the manner required by law for publication of ordinances. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-127)

5.40.020 Enforcement officials.

The collector shall enforce this article, and the chief of police shall render such assistance in the enforcement of this article as may be required by the collector or the city manager or a hearing officer. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-128.010)

5.40.030 Business premises—Inspection authorization.

The collector, in the exercise of the duties imposed upon him or her under this article and acting through his deputies or duly authorized assistants, shall examine or cause to be examined all places of business in the city to ensure compliance with this article. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-128.020)

5.40.040 Business premises—Inspection entry right.

The collector and his assistants and any police or code enforcement officer of the city shall have the power and authority (upon obtaining an inspection warrant therefor if required by law) to enter, free of charge and at any reasonable time, any place of business required to be licensed under this article, and demand an exhibition of the license. Any licensee who willfully fails to exhibit the same on demand is guilty of a misdemeanor punishable pursuant to Chapter 1.08 of this code and

subject to the penalties provided by this article. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-128.030)

5.40.050 License tax a debt.

The amount of any license tax and penalty imposed by the provisions of this article shall be deemed a debt to the city. An action may be commenced in the name of the city, in any court of competent jurisdiction, for the amount of any delinquent license tax and penalties. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-129)

5.40.060 Remedies cumulative.

All remedies prescribed under this article shall be cumulative and the use of one or more remedies by the city shall not bar the use of any other remedy to enforce this article. (Ord. 572 § 1 Exh. A (part), 2013: Ord. 45 § 1 (part), 1972: prior code § 4-130)

PROFESSIONAL SERVICES AGREEMENT
FOR
CONSULTANT SERVICES

This Agreement is made and entered into as of the ____ day of _____, 20____ by and between the City of Foster City hereinafter called "CITY" and _____ hereinafter called "CONSULTANT".

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

WHEREAS, CITY desires to engage CONSULTANT to provide professional services in the CITY;

WHEREAS, CONSULTANT is qualified to provide such services to the CITY and;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. Services. The services to be performed by CONSULTANT under this Agreement shall include those services set forth in Exhibit A, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit A is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

2. Term; Termination. (a) The term of this Agreement shall commence upon the date hereinabove written and shall expire upon completion of performance of services hereunder by CONSULTANT. (b) Notwithstanding the provisions of (a) above, CITY may with or without cause, direct CONSULTANT to suspend, delay or interrupt Services, in whole or in part, for such periods of time as CITY may determine in its sole discretion. (c) CITY may terminate performance of the Services under this Agreement in whole, or from time to time in part, for default, should CONSULTANT commit a material breach of this Agreement, or part thereof, and not cure such breach within ten (10) calendar days of the

date of CITY's written notice to CONSULTANT demanding such cure, in which case CONSULTANT shall be liable to CITY for all loss, cost, expense, damage and liability resulting from such breach and termination. (d) CITY may terminate performance of the Services under this Agreement in whole, or from time to time in part, for convenience, whenever CITY determines that such termination is in CITY's best interests, in which case CONSULTANT shall be entitled to recover its costs expended up to the termination date plus reasonable profit thereon to the termination date as this Agreement would otherwise provide, but may recover no other cost, damage or expense. CONSULTANT shall continue its work throughout the course of any dispute, and CONSULTANT's failure to continue work during a dispute shall be a material breach of this Agreement.

3. Compensation; Expenses; Payment. CITY shall compensate CONSULTANT for all services performed by CONSULTANT hereunder in an amount based upon CONSULTANT's hourly rates during the time of the performance of said services. A copy of CONSULTANT's hourly rates for which services hereunder shall be performed are set forth in CONSULTANT's fee schedule marked Exhibit "B" hereof, attached hereto and by this reference incorporated herein.

Notwithstanding the foregoing, the combined total of compensation and reimbursement of costs payable hereunder shall not exceed the sum (\$ _____). Invoices for amounts in excess of (\$ _____) shall not be paid unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by the City Manager (for contracts less than \$50,000) or City Council (for contracts \$50,000 or more) evidenced by motion duly made and carried and a written contract amendment having been executed.

Compensation and reimbursement of costs and expenses hereunder shall be payable upon monthly billing therefor by CONSULTANT to CITY, which billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of CITY including, without limitation, CONSULTANT's transmittal of all deliverables to CITY required by EXHIBIT A.

CITY shall not incur any charges under this Agreement, nor shall any payments become due to CONSULTANT for any payment period on the Project, until CITY receives all deliverables required under Exhibit A, SCOPE OF WORK AND SCHEDULE, for the payment period (if any) and

reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where CONSULTANT has partially completed one or more deliverables due during a payment period, and if CONSULTANT demonstrates diligent progress thereon, then CITY may make a partial progress payment based upon percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon CITY. CITY shall not be liable for, and CONSULTANT shall not be entitled to, any payment for Services performed before this Agreement's execution.

4. Additional Services. In the event CITY desires the performance of additional services not otherwise included within the services described in Exhibit A, such services shall be authorized in advance of the performance thereof by the City Manager (for contracts less than \$50,000) or City Council (for contracts \$50,000 or more) by motion duly made and carried. Such amendment to this Agreement shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefor, the time of performance thereof, and such other matters as the parties deem appropriate for the accomplishment of such services. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.
5. Records. CONSULTANT shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to services to be performed by CONSULTANT hereunder. Said records shall be available to CITY for review and copying during regular business hours at CONSULTANT's place of business or as otherwise agreed upon by the parties.
6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit A and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the

Compensation Schedule established in Exhibit A and within the times specified for each individual Project.

CONSULTANT represents that it possesses all necessary training, licenses and permits to perform the Services and that its performance of the Services will conform to the standards of practice of a professional having experience and expertise in performing professional services of like nature and complexity of the Services working on similar, successfully completed projects.

The granting of any progress payment by CITY, or the receipt thereof by CONSULTANT, or any inspection, review, approval or oral statement by any representative of CITY or any other governmental entity, shall in no way waive or limit the obligations in this Paragraph 7 or lessen the liability of CONSULTANT for unsatisfactory Services, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. CONSULTANT is an independent Contractor and does not act as City's agent in any capacity, whatsoever. CONSULTANT is not entitled to any benefits that CITY provides to CITY employees, including, without limitation, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within this Agreement regarding direction apply to and concern the result of the CONSULTANT's provision of Services, not the means, methods, or scheduling of the CONSULTANT's work. CONSULTANT shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Services under this Agreement. CONSULTANT shall pay all payroll taxes imposed by any governmental entity and shall pay all other taxes not specifically identified in this Agreement as CITY's responsibility.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit A; provided, that CITY shall grant reasonable extensions of time for the performance of such services occasioned by governmental reviews of CONSULTANT's work product or other unavoidable delays; provided, further, that such unavoidable delay shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, CONSULTANT's officers or employees.

CONSULTANT acknowledges the importance to CITY of CITY's Project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule.

11. Indemnity. To the fullest extent allowed by law, CONSULTANT hereby agrees to defend, indemnify, and save harmless CITY, its Council, boards, commissions, officers, employees, directors, volunteers and agents, from and against any and all claims, suits, actions liability, loss, damage, expense, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, at law or equity, which may be brought against, or suffered or sustained by, City of Foster City, its Council, boards, commissions, officers, employees, directors, volunteers or agents that arise out of, pertain to, or relate to any negligence, recklessness, or willful misconduct of CONSULTANT, any Subconsultant, anyone directly or indirectly employed or retained by them, or anyone that they control. In the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the CONSULTANT shall meet and confer with other parties regarding unpaid defense costs.

The duty of CONSULTANT to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require CONSULTANT to indemnify City of Foster City, its Council, boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

CONSULTANT's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement.

If CONSULTANT is a "design professional," as defined in California Civil Code Section 2782.8(c), CONSULTANT shall indemnify, defend, and hold the Indemnitees harmless against Liability only to the extent such Liability arises out of, pertains to, or relates to CONSULTANT's negligence, recklessness, or willful misconduct. In such an event, the cost to defend charged to CONSULTANT shall not exceed CONSULTANT's proportionate percentage of fault.

12. Insurance. Prior to execution of this Agreement, CONSULTANT shall furnish to CITY Certificates of Insurance showing satisfactory proof that it maintains the insurance required by this Contract as set forth in EXHIBIT C, Insurance, which are attached and made a part of this Agreement. CONSULTANT shall maintain all required insurance throughout the term of this Agreement and as otherwise provided in EXHIBIT C. In the event CONSULTANT fails to maintain any required insurance, and notwithstanding Paragraph 3 above, CITY may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due CONSULTANT under this Agreement (or CONSULTANT shall promptly reimburse CITY for such expense).

CONSULTANT shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following completion of this project or service. In the event CONSULTANT fails to obtain or maintain completed operations coverage as required by this Agreement, the CITY at its sole discretion may purchase the coverage required and the cost will be paid by CONSULTANT.

13. WORKERS' COMPENSATION. CONSULTANT certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and CONSULTANT certifies that he will comply with such provisions before commencing the performance of the work of this agreement.

14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

15. Notice. All notices required by this Agreement shall be given to the CITY and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:

CITY: City of Foster City
610 Foster City Boulevard
Foster City, CA 94404-2299
Attention: _____

CONSULTANT: _____
(Fill in CONSULTANT Name, Address, Phone Number, Project Manager and Email Address for CONSULTANT)

16. Non-Assignment. This Agreement is not assignable either in whole or in part.
17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
19. Governing Law. This Agreement shall be deemed to have been executed in the County of San Mateo, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.

21. Conflict of Interest. CONSULTANT represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of work and services required under this Agreement. Without limitation, CONSULTANT represents to and agrees with CITY that CONSULTANT has disclosed any potential conflict of interest, and will have no future conflict of interest, in providing CITY services hereunder, including but not limited to, any interest (financial, share ownership, shared management, shared directors, or reporting responsibilities) CONSULTANT may presently have, or will have in the future, with respect to any other person or entity (including but not limited to potential suppliers, vendors, consultants, contractors, or regulatory agency) which may have an interest in the subject matter of the Services.

22. Liability of CITY.

Except as provided in Exhibit A, Services to be Provided by CONSULTANT and Exhibit C, Insurance, CITY's obligations under this Agreement shall be limited to the payment of the compensation provided for in Paragraphs 1, 3, and 4 of this Agreement,

Notwithstanding any other provision of this Agreement, in no event shall CITY be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

CITY shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by CONSULTANT, or by any of its employees, even though such equipment be furnished, rented or loaned to CONSULTANT by CITY. The acceptance or use of such equipment by CONSULTANT or any of its employees shall be construed to mean that CONSULTANT accepts full responsibility for and shall exonerate, indemnify, defend and save harmless CITY from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the CONSULTANT, its employees, CITY employees or third parties, or to property belonging to any of the above.

Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which CITY or CONSULTANT may have under this Agreement or any applicable law. All rights and remedies of CITY or CONSULTANT, whether under this Agreement or other applicable law, shall be cumulative.

23. Waiver of Default. Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

24. Force Majeure. Except for defaults of subconsultants at any tier, CONSULTANT shall not be liable for any excess costs if the failure to perform the Agreement arises from causes beyond the control and without the fault or negligence of CONSULTANT, including without limitation failure to reasonably mitigate any adverse impacts (Force Majeure). Force Majeure events include the following:

Acts of God, fires, floods, earthquake, other natural disasters, epidemics and pandemics (other than COVID-19 or variants), abnormal weather conditions beyond the parameters otherwise set forth in this Article, nuclear accidents, strikes, lockouts, freight embargos, interruptions in service by a regulated utility, or governmental statutes or regulations enacted or imposed after the fact (together, "force majeure events").

[For consideration if applicable:] Any Force Majeure event with a duration in excess of [TBD by Owner—recommend not less than 30] days entitles either party to terminate this Agreement with written notice to the other party, without further penalty or compensation.

25. Entire Agreement. This Agreement, including Exhibits A, B, C, and D comprises the entire Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF FOSTER CITY

Dated: _____

_____, City Manager
(for contracts less than \$50,000)

[REMOVE signature line if \$50,000 or more]

Dated: _____

Jon Froomin, Mayor

(for contracts \$50,000 or more)
[REMOVE signature line if less than \$50,000]

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk

APPROVED AS TO FORM

Dated: _____

Benjamin Stock, City Attorney

CONSULTANT

Dated: _____

Type Name & Title of CONSULTANT
Authorized to Sign

DRAFT

EXHIBIT A

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS AND SCHEDULE, AND DELIVERABLES FOR [ENTER PROJECT TITLE]

[EITHER COMPLETE EXHIBIT A OR ATTACH A PROPOSAL/SCOPE OF WORK THAT CONTAINS ALL THE INFORMATION BELOW AND DELETE THE TEXT BELOW]

SERVICES TO BE PROVIDED

This is an Exhibit attached to, and made a part of and incorporated by reference to the Agreement dated [Date of Agreement](#), by and between [Consultant Name](#), hereinafter referred to as "CONSULTANT" and the City of Foster City, hereinafter referred to as "CITY" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

The CITY has developed a general scope of work as described below.

2.1 [Task 1 – Description of Task 1](#)

2.2 [Task 2 – Description of Task 2](#)

2.3 [Task 3 – Description of Task 3](#)

PAYMENTS

1. The maximum payment to CONSULTANT under this Agreement for the Project shall be: [Maximum Payment Amount](#)

2. METHODS OF PAYMENT FOR CONSULTANT'S SERVICES AND EXPENSES:
[List Methods of Payment](#)

3. TIMES OF PAYMENTS.
[List Times of Payments](#)

PROJECTS AND SCHEDULE

[List Project Schedule](#)

DELIVERABLES

CONSULTANT's deliverables under the Agreement are enunciated throughout the Professional Services Agreement and include but are not limited to the following:

1. **PROJECT DELIVERABLES**

1.1 **DELIVERABLES:** [List of Deliverables](#)

1.2 **OTHER:**

2. **CONSULTANT SERVICES.** The deliverables considered part of CONSULTANT's professional services are defined as, but are not limited to, the following deliverables:

2.1 **SERVICES:** [List of Services](#)

END OF EXHIBIT A

DRAFT

EXHIBIT B
FEE SCHEDULE

[Specify Consultant's hourly rates for which services hereunder shall be performed]

DRAFT

EXHIBIT C

INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified in herein on the attached form. No substitute form will be accepted.

This is an Exhibit to, and made a part of and incorporated by reference to the Agreement dated [Date of Agreement](#), by and between [Consultant Name](#), hereinafter referred to as "**Consultant**", and the City of Foster City, hereinafter referred to as "**City**", providing for professional services.

1. **Consultant's Duty to Show Proof of Insurance.** Consultant, in order to protect City and its Council members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Consultant's acts, errors, or omissions in connection with the performance of Consultant's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Consultant shall not perform any work under this Agreement until Consultant has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the City's authorized insurance representative, insurance Tracking Services Inc. (ITS). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Consultant shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, Consultant shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Consultant shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Consultant or City as an additional insured.

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least two million dollars (\$2,000,000) each occurrence and five million dollars (\$5,000,000) aggregate.

*Please note, the City will require a separate additional insured endorsement for the Commercial General Liability policy, listing the "City of Foster City, its Council members, officials, agents, officers, and employees".

[FOR THE FOLLOWING INSURANCE REQUIREMENTS, PLEASE CONSIDER IF EACH IS APPROPRIATE FOR THE SERVICE TO BE PROVIDED AND FOR THE CONSULTANT. UNCHECK THE CHECKBOX FOR ANY INSURANCE REQUIREMENT THAT IS NOT APPLICABLE. PLEASE CONTACT THE CITY MANAGER'S OFFICE WITH ANY QUESTIONS.]

Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least two million dollars (\$2,000,000) each occurrence.

Workers' Compensation Insurance

Consultant shall submit written proof that Consultant is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code. Consultant shall require any Subconsultants to provide workers' compensation for all of the Subconsultants' employees, unless the Subconsultants' employees are covered by the insurance afforded by Consultant. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Consultant shall provide and/or require each Subconsultant to provide adequate insurance for the coverage of employees not otherwise covered. Consultant shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than five million dollars (\$5,000,000) per occurrence and five million dollars (\$5,000,000) aggregate.

Installation Floater

Installation Floater, covering the work performed under this Contract, against all risks of direct physical loss. The policy shall cover the Contractor's labor, materials and equipment, including materials and equipment in transit or away from the project site, to be installed in the existing structure(s). The coverage shall be written for an amount equal to the initial contract amount plus the value of any subsequent change orders, subject to a deductible of not more than [\$10,000] payable by Contractor.

Cyber Liability Insurance

Cyber Liability Insurance, covering network risk and cyber liability (including coverage for unauthorized access, failure of security, breach of privacy perils, as well as notification costs and regulatory defense) in an amount of not less than \$1,000,000. Such insurance shall be maintained in force at all times during the term of the Contract and for a period of two years thereafter for services completed during the term of the Contract.

1.2 Self-Insured Retention

Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of insurance or other documentation provided to City and must be approved by the City Risk Manager.

1.3 Claims-Made Basis Coverage

If any of the insurance coverages required under this Agreement is written on a claims-made basis, Consultant, at Consultant's option, shall either (i) maintain said coverage for at least five (5) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting

period of not less than five (5) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

2. **City as Additional Insured**

On Consultant's Commercial General Liability and Automobile policies, the City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by Consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by Consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

3.2 All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII Any exception to these requirements must be approved by the City Risk Manager.

3.3 If Consultant is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Consultant shall provide coverage equivalent to the insurance coverages and endorsements required above. The City will not accept such coverage unless the City determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Consultant is equivalent to the above-required coverages.

3.4 For any claims related to the Agreement, the Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3.5 Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Consultant for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the City from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

3.6 Failure by Consultant to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Consultant. City, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, City may purchase such required insurance coverage, and without further notice to Consultant, City shall deduct from sums due to Consultant any premiums and associated costs advanced or paid by City for such insurance. If the balance of monies obligated to Consultant pursuant to this Agreement are insufficient to reimburse City for the premiums and any associated costs, Consultant agrees to reimburse City for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by City to take this alternative action shall not relieve Consultant of its obligation to obtain and maintain the insurance coverages required by this Agreement.

3.7 Should any of the required insurance (other than errors and omissions insurance) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defenses

costs be included in such general aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limit specified above.

3.8 City may (but is under no obligation to) secure project-specific insurance, wrap-up insurance, or administer an owner controlled insurance program ("OCIP"), in which case Consultant and its subconsultants shall communicate this fact to their insurance carriers and request that the risk of this project be excluded from their practice policies. Consultant's fees under this Agreement (and the fee of its subconsultants under subconsultant agreements) shall be reduced by the amount of insurance premiums that may be avoided by Consultant and its subconsultants by virtue of the City's obtaining the project-specific insurance, wrap-up insurance or administering an OCIP, and the exclusion of this project from coverage of Consultant's and subconsultants policies. Construction Manager and its subconsultants shall afford City access to their books and records and cooperate with City in verifying the amount of savings realized.

ATTACHED

1. Insurance Coverage Form

DRAFT

EXHIBIT C

This **INSURANCE COVERAGE FORM** modifies or documents insurance provided under the following:

Named Insured: _____ Effective Work Date(s): _____

Description of Work/Locations/Vehicles: _____

ADDITIONAL INSURED: **City of Foster City (CITY)**
610 Foster City Boulevard, Foster City, CA 94404
Attention: _____
Contract Administrator

Endorsement and Certificates of Insurance Required The Additional Insured, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (Check all that apply)	Insurer	Policy No.
<input type="checkbox"/> General Liability: (a) activities performed by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, (c) premises owned, leased occupied or used by the Named Insured, and/or (d) permits issued for operations performed by the Named Insured. {Note: MEETS OR EXCEEDS ISO Form # CG 20 10 11 85}		
<input type="checkbox"/> Auto Liability: the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Named Insured, regardless of whether liability is attributable to the Named Insured or a combination of the Named Insured and the Additional Insured, its elected or appointed officers, officials, employees or volunteers.		
<input type="checkbox"/> Other: [Cyber Liability, Installation Floater, etc.]		
Certificates of Insurance Required (no endorsement needed) (Check all that apply)	Insurer	Policy No.
<input type="checkbox"/> Workers Compensation: work performed by employees of the Named Insured while those employees are engaged in work under the simultaneous directions and control of the Named Insured and the Additional Insured.		
<input type="checkbox"/> Professional Liability:		

PRIMARY/NON-CONTRIBUTORY: This insurance is primary and is not additional to or contributing with any other insurance carried by or for the benefit of Additional Insureds.

SEVERABILITY OF INTEREST: The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer's limit of liability.

PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS: Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Additional Insured, its elected or appointed officers, officials, employees, or volunteers.

CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice (ten (10) days if canceled due to non-payment) by regular mail return receipt requested has been given to the Additional Insured. Such notice shall be addressed as shown above.

WAIVER OF SUBROGATION: The insurer(s) named above agree to waive all rights of subrogation against the CITY, its elected or appointed officers, officials, agents, volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the CITY.

Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.
SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

I, _____ (print/type name), warrant that I have authority to bind the above-named insurance company and by my signature hereon do so bind this company.

SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required)

ORGANIZATION: _____ **TITLE:** _____

ADDRESS: _____

TELEPHONE: () _____ **DATE ISSUED:** _____

DRAFT

EXHIBIT D
**COVID-19 AMENDMENT/ATTACHMENT
(Consulting Agreement Form)**

This COVID-19 Amendment/Attachment amends the Agreement between _____
("City") and _____ ("Consultant") dated _____.

1. Definitions

A. The 2019 novel coronavirus and the disease it causes are collectively referred to herein as "**COVID-19**".

B. A "**COVID-19 Condition**" is something attributable to COVID-19 not caused by the Consultant (which for purposes herein includes all subconsultants) and beyond its reasonable control including but not limited to COVID-19 Proclamations and supply chain disruptions due to COVID-19, and other circumstances concerning COVID-19 not caused by the Consultant and which are beyond its reasonable control.

C. A "**COVID-19 Proclamation**" includes but is not limited to orders, directives and guidance concerning COVID-19 that have been issued, and which may be issued from time to time, by public agencies or regulatory bodies, the CDC or OSHA or Cal/OSHA, including without limitation the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards. Consultant acknowledges that those orders, directives and guidance may require the Project to shut down or otherwise increase the Consultant's cost or time of performance by calling for things such as social distancing and the use of personal protective equipment. In the event of conflicting COVID-19 Proclamations, the Consultant shall follow the most applicable, restrictive and newest COVID-19 Proclamations.

D. An "**Unknown COVID-19 Condition**" is a COVID-19 Condition the Consultant did not know about, and reasonably should not have known about, as of the date the Consultant submitted its proposal. The requirements contained in COVID-19 Proclamations issued before submission of a proposal are not Unknown COVID-19 Conditions, and the Consultant will be deemed to have knowledge of those requirements.

E. An "**Unknown COVID-19 Cost**" is a cost that: (i) is solely attributable to an Unknown COVID-19 Condition; (ii) is reasonable and unavoidable under the circumstances; (iii) is not the result of the Consultant's failure to comply with the contract documents or a COVID-19 Proclamation; and (iv) is not the result of a subconsultants failure to comply with a COVID-19 Proclamation in connection with the performance of the Services.

2. COVID-19 Conditions and Proposal. Consultant is expected to know and is deemed to have known about COVID-19 Conditions when it submits its proposal, and COVID-19 Conditions must be accounted for in the Consultant's price and schedule. In order to be entitled to any relief from a COVID-19 Condition, the Consultant must demonstrate that the issue, cost or delay is due to an Unknown COVID-19 Condition.

3. Compliance with COVID-19 Proclamations.

A. Consultant shall comply with COVID-19 Proclamations in the performance of the Services, irrespective of when the COVID-19 Proclamations are issued, and as they pertain to performance of the Services. The cost of such compliance is non-compensable, except as otherwise expressly stated herein.

B. Consultant is responsible to ensure that its subconsultants and suppliers comply with COVID-19 Proclamations at all times in connection with the performance of their Services.

4. Delay. The Consultant is entitled to a reasonable time extension for an Unknown COVID-19 Condition. Such time extension is non-compensable.

5. City Directed Suspension. The City may suspend Services due to COVID-19 health concerns, even though the Consultant may be allowed to proceed with the Services based on COVID-19 Proclamations. The City may suspend the Services for its convenience. The Consultant is entitled to a time extension for a City Directed Suspension, and the contract amount will be equitably adjusted if and to the extent Consultant incurs increased costs that are Unknown COVID-19 Costs.

6. Compensation for COVID-19 Costs. City will reimburse the Consultant for Unknown COVID-19 Costs that are not included in the schedule of values.

7. Safe Work Practices. Consultant shall implement safe work practices recommended by CDC or OSHA or Cal/OSHA, which may include, inter alia, screening all employees, subconsultants, or others (“worker(s)”) at all locations where Services are performed for signs and symptoms of COVID-19; adopting staggered work schedules, e.g., providing alternating workdays or extra shifts, to reduce the total number of employees on a site at any given time and to ensure physical distancing; identifying choke points where workers are forced to stand together, such as hallways and elevators, ingress and egress points, break areas, and buses, and implement policies to maintain social distancing; coordinating deliveries in line with the employer's minimal contact and cleaning protocols; and instituting a rigorous housekeeping program to reduce dust levels at all exterior locations. Consultant remains fully responsible for following and complying with changes to recommended safe work practices from time to time.

8. Monitoring and Reporting. City may require the Consultant to actively monitor the health of its workers through temperature checks and questionnaires of major COVID-19 symptoms, including but not limited to cough, fever above 100.4 degrees Fahrenheit and shortness of breath. Consultant shall immediately report to City any outbreaks of COVID-19 among its workers. The Consultant shall not knowingly allow any worker who has tested positive with COVID-19 to enter a City building. In the event of an outbreak or an exposure to COVID-19, the City may impose appropriate mitigation strategies which may be in consultation with the public health officer.

9. Conflicts. In the event of an inconsistency between this COVID-19 Amendment and the Agreement, this Addendum shall control.

[Signatures on Next Page]

IN WITNESS WHEREOF, the City and Consultant have executed this Covid-19 Amendment as of the date set forth above.

CONSULTANT:

CITY:

Signature

Signature

Print Name & Title

Print Name & Title

DRAFT