



City of Foster City Request for Proposals **Amendment to the Foster City's General Plan Parks and Open Space Element and the General Plan Conservation Element**

RFP Schedule:

Release Date: Tuesday, October 8, 2024

Proposals Due: **Friday, November 8, 2024 by 5:00 PM**

Deadline for Email of Intent to Respond: Tuesday, October 15, 2024

Deadline for Questions/Comments: Tuesday, November 1, 2024 @ 5:00 PM

Please send questions, comments, and proposals via email to:

vbrannon@fostercity.org (Vanessa Brannon, Senior Management Analyst)

OFFICIAL CONTACT:

Vanessa Brannon - Senior Management Analyst
City of Foster City
Community Development
610 E. Hillsdale Blvd.
Foster City, CA 94404
650-286-3354
vbrannon@fostercity.org

City of Foster City Request for Proposals (RFP)

Amendment to the Foster City's General Plan Parks and Open Space Element and the General Plan Conservation Element

1. SUMMARY

This Request for Proposals (RFP) invites a team of professionals specializing in Planning, Landscape Architecture, Architecture, Parks, Community Engagement, and/or Engineering to develop an amendment to the City's General Plan Parks & Open Space, and Conservation Elements to meet the requirements of SB 1425 and AB 1889, respectively. The selected consultant(s) will be tasked with leading the planning process, drafting the General Plan Amendments, conducting the required environmental review in accordance with CEQA, and coordinating the public outreach and adoption processes with the City.

In the 2021-2022 state legislative session, SB 1425 was passed and signed into law. This bill requires every city and county to review and update its local Open-Space plan by January 1, 2026. The plan update would include plans and an action program addressing specified issues, including climate resilience and other benefits of open space, correlated with the General Plan—Safety Element. The bill would create a state-mandated local program by imposing additional duties on local officials. The bill also explicitly focuses on "rewilding opportunities," or creating and preserving open space networks to support biological and recreational uses.

AB 1889 requires the conservation element of a local general plan to consider the impact of development on wildlife movement and habitat connectivity. The bill would also require a city or county, upon the next revision of one or more general plan elements on or after January 1, 2028, to update the conservation element to, among other things, identify and analyze wildlife passage features to ensure that planned development does not undermine the effectiveness of those features.

The entire process, from data collection to the development of the General Plan Amendment to the Parks & Open Space and Conservation Elements, will be guided by identifying community values and creating goals for the City's parks and open spaces, which will be informed through extensive community engagement. This engagement will help address current and future parks, conservation, and open space needs. The selected consultant(s) will be responsible for facilitating the planning process, drafting the Amendment to the Open Space & Recreation Element and the Conservation Element, through to the adoption process in partnership with the City. The amendments will also align with the City's mission to provide safe, clean, and accessible parks, facilities, and open spaces for everyone to enjoy.

Proposals should reflect the following project goals:

1. **Engage and Empower the Community:** Conduct inclusive and transparent outreach that actively engages, educates, and empowers stakeholders and community members to provide meaningful input. This will ensure that the findings and recommendations for the General Plan Amendments accurately reflect the community's diverse needs.
2. **Develop an Inclusive Open Space Standard:** Create an open space standard that prioritizes accessibility for all residents and considers parks' qualitative and quantitative value.
3. **Enhance Park Equity:** Identify opportunities and strategies to acquire, develop, and optimize existing open space to promote greater park equity. For instance, the City could expand its partnership with the San Mateo-Foster City School District through a Master Agreement, allowing joint use of school district facilities during non-school hours.
4. **Create a Sustainable and Resilient Open Space Network:** Establish an open space network that is environmentally sustainable, accessible, attractive, and resilient. This network should promote health equity, protect natural resources, increase native habitat and biodiversity, improve air quality and stormwater management, mitigate the urban heat island effect, and provide wildlife corridors. Additionally, it should incorporate holistic mitigation programs that offer environmental and social co-benefits and support climate change adaptation.
5. **Align Open Space and Conservation Policies with Broader City Goals:** Develop strategic and consistent policies for open space maintenance, programming, and natural resource stewardship that align with other General Plan Elements, the City's Climate Action Plan Update (currently in draft), the City's Bicycle & Pedestrian Improvements Project, the City's Capital Improvement Plans, and the upcoming Parks Master Plan.
6. **Balance New and Existing Open Space Needs:** Recognize and address the need for new parks and open spaces while also considering resource limitations related to acquisition, development, maintenance, ongoing operations, and programming. Additionally, prioritize resource needs for upgrades to existing parks, aligning with the Parks Master Plan Project currently underway.
7. **Promote Community Engagement and Safety:** Encourage public use of the City's open spaces by promoting creative, cultural, civic, and educational activities. Ensure that all residents and community members feel safe and welcome, fostering connections within the community.
8. **Leverage Technology and Financial Innovation:** Identify and utilize technology and innovative financial strategies to support open space services, infrastructure, and facilities.

9. **Establish Effective Governance and Implementation:** Provide clear guidance on governance and implementation structures to ensure that key departments—Community Development, Parks and Recreation, Public Works, and Police—can collaborate effectively and efficiently to deliver services and maintain safety in open spaces.

A single qualified firm or a team of qualified firms may submit a proposal. The selected firm shall have experience and knowledge in planning, project management, and effective public involvement processes. The consultant will work closely with City staff to prepare the General Plan Amendments and create a document for public distribution.

The successful proposer(s) will enter into a professional services agreement with the City with a project completion date of no later than November 2025. The goal is to receive City Council's approval and adoption of the proposed General Plan Amendments by November 2025, which includes completion of community outreach to ensure the community is aware of the Project and has the opportunity to provide feedback and inform Project goals and recommendations, and completion of the applicable environmental review.

2. ATTACHMENTS

Attachment 1: A sample Agreement for Professional Services and Insurance Requirements

- The sample Agreement for Professional Services is attached to this Request for Proposals (RFP) for the Proposer's review and submission. To facilitate smooth and timely implementation of the consultant's services, a proposer responding to this RFP must carefully review all the terms and conditions of the agreement, including, but not limited to, provisions relating to insurance, indemnity, and termination.

Attachment 2: Senate Bill No. 1425 – Open-Space Elements

Attachment 3: Assembly Bill No. 1889 – Conservation element: wildlife and habitat connectivity

3. BACKGROUND

Incorporated in 1971, the City of Foster City is a planned community in San Mateo County, California. Foster City is a General Law City with a Council-Manager form of government. It is approximately four square miles, located about 25 miles south of San Francisco and 30 miles north of Silicon Valley, with easy access from Highway 101 and Highway 92.

Foster City is a culturally diverse community of roughly 33,000 residents. It has limited

space for growth in both residential and commercial areas. The developed portion of Foster City is protected from flooding by an approximately 43,000-linear-foot (8-mile) levee system that surrounds Foster City along the bayfront and an interior lagoon that serves as a drainage detention basin.

The City's Parks System consists of 24 parks, eight miles of levee pedway (Bay Trail), 14 easements containing ice plants, sound walls, walkways, and bridges (the Parks System). There are 16 playgrounds and nine synthetic turf sports fields. The City has continuously improved the existing park infrastructure, ensuring that components meet legal and City standards regularly.

The Conservation Element was adopted in May 2003. This Element of the General Plan addresses preserving and conserving natural resources in Foster City. In September 2009, it was split from the former Parks, Open Space, and Conservation Element.

Foster City's Parks and Open Space Element was adopted in September 2009. This Element of the City's General Plan addresses the preservation of parks and open space. Since park lands comprise much of the city's open space resources, the Parks section was combined with the Open Space section.

4. GENERAL PROVISIONS AND CONDITIONS

The City reserves the right to:

1. Reject any and all responses.
2. Negotiate with more than one consultant.
3. Waive minor irregularities in a response.
4. Cancel, revise, or extend this solicitation.
5. Request additional information on any response beyond that required by this RFP.
6. Modify the selection process outlined in this RFP upon written notification to all respondents who have not been rejected at the time of modification.
7. Request substitution of sub-consultants.

Should discrepancies or omissions be found in this RFP or should there be a need to clarify it, questions or comments regarding this RFP must be received by the City no later than Tuesday, November 1, 2024, at 5 PM and should be sent to **Vanessa Brannon (Senior Management Analyst) @ vbrannon@fostercity.org**.

5. PROPOSED TENTATIVE TIMELINE

The tentative RFP timeline is provided for the convenience of the Proposers but may be

subject to change at any time by the City. Any such changes will be stated in an addendum to this RFP. The tentative RFP timeline is as follows:

RFP ACTION	DATE
RFP Issued	Tuesday, October 8, 2024
Pre-Proposal Meeting	None
Deadline for questions and clarifications	Tuesday, November 1, 2024 @ 5:00 PM
Proposals Due	Friday, November 8, 2024 @ 5:00 PM
Finalist Identified	November 2024
Consultant Interviews	TBD
Consultant selection & contract preparation	TBD
Contract awarded	Fall 2024
Work commences	Fall/Winter 2024

6. RELATED DOCUMENTS/LINKS

[Foster City's Parks and Open Space Element](#)

Foster City's Parks and Open Space Element was adopted in September 2009. This Element of the City's General Plan addresses the preservation of parks and open space. Since park lands comprise much of the city's open space resources, the Parks section was combined with the Open Space section.

[Foster City's Conservation Element](#)

The Conservation Element was adopted in May 2003. This Element of the General Plan addresses preserving and conserving natural resources in Foster City. In September 2009, it was split from the former Parks, Open Space, and Conservation Element.

[Parks Master Plan—Public Participation Plan](#)

On August 19, 2024, Foster City's City Council reviewed and accepted a Parks Master Plan Public Participation Plan. The Parks Master Plan Project is already underway. The Public Participation Plan will be the guiding document for outreach and engagement. The Public Participation Plan includes various opportunities for public participation, including offering two Community Open Houses and Workshops for residents and facility users to attend, hosting various intercept events and pop-up kiosks, conducting both a statistically valid

survey as well as other online surveys to reach the community where they are at. In addition, a website will be created and maintained throughout the project, allowing the community to stay informed of the project's development and progress through various social media platforms.

Consultants should understand the opportunities to combine efforts with the Parks Master Project Team.

7. PROPOSAL REQUIREMENTS

Consultants interested in submitting a proposal should respond to this RFP with a written proposal providing all the requested information. The proposal will be considered complete only if it includes all the items listed under the Proposal Requirements:

1. **Title Page:** Include the RFP subject, firm name, primary contact person, title, address, telephone number, email address, and submittal date.
2. **Cover Letter of Interest:** A statement of the consultant's interests and qualifications and pertinent areas of expertise, as well as a description of the organization(s) (e.g., Corporation, Limited Liability Company, or Joint Venture). Include a summary of the proposer's understanding of the project and the proposed approach.
3. **Conflicts of interest:** Teams/firms submitting proposals in response to this RFP must disclose any actual, apparent, direct or indirect, or potential conflicts of interest that may exist concerning the firm, its management, employees, or other persons relative to the services to be awarded pursuant to this RFP. If a team/firm has no conflicts of interest, a statement to that effect shall be included in the cover letter.
4. **Scope of Work:** Provide a detailed proposed scope and projected timeline for conducting and completing the tasks outlined in the Scope of Work. Please address the project approach, reflecting knowledge about the Foster City community. This section should include the respondent's specific tasks for performing the work.
5. **Schedule:** Present a schedule reflecting timeframes and milestones for completing each phase and task.
6. **Outreach Strategy:** Outreach and engagement are critical to understanding community needs and vision for Foster City's General Plan Parks & Open Space Element and Conservation Element Amendments.
7. **Qualifications and References:** Provide an overview of the proposer's experience and history in performing this type of work in California. Provide at least three references from local government clients for whom the consultant has rendered

similar services recently. Describe the organization's overall capabilities, structure, and the number and type of licensed professionals. Proposers should demonstrate they possess the technical expertise to provide professional services and clearly understand the process of amending the General Plan Parks, Open Space, and/or Conservation Elements.

8. **Cost Proposal:** Provide a complete description of the expected expenditure of funds for the proposed work. The cost detail should include a breakdown of expenses by task and key personnel. The cost proposal should also include options for reducing or adding services. All costs should reflect “not to exceed” amounts per task.
9. **Acknowledgment of Contract:** Acknowledge that a contract and insurance will be provided in substantially the same form as attached and that the *City’s Finance Division will maintain a business license annually during the contract term.*

8. CONSULTANT SELECTION CRITERIA AND PROCEDURE

Responding consultant firms and/or teams will be evaluated based on the following criteria:

1. Demonstrated understanding of the requested work and responsiveness to the scope of services;
2. Quality and completeness of proposal;
3. Related and recent experience of similar scope and complexity in San Mateo County, the Bay Area, and California;
4. Outreach and community engagement expertise and techniques;
5. Expertise and experience of the proposed project team members and the in-house expertise, or inclusion of sub-consultants, to fully address all items noted in the scope of work;
6. Ability to perform the work within a reasonable time frame and budget;
7. Creativity in approach to the scope of work and requested deliverables;
8. Acceptance of the City’s Standard Agreement for Professional Services and insurance requirements, including any proposed changes to the agreement or insurance coverages (See Attachment); and
9. References.

The top proposals may be invited to an interview. The interview will help clarify each proposal's approach and qualifications for the project. Based on the interviews and evaluation of the proposals, the top-ranked consultant will be recommended to the City Council.

9. GENERAL PROVISIONS AND CONDITIONS

The City reserves the right to:

1. Reject any and all responses.
2. Negotiate with more than one consultant.
3. Waive minor irregularities in a response.
4. Cancel, revise, or extend this solicitation.
5. Request additional information on any response beyond that required by this RFP.
6. Modify the selection process set forth in this RFP upon written notification to all respondents who have not been rejected at the time of modification.
7. Request substitution of sub-consultants.

By submitting a proposal, each Proposer represents and warrants that its proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that the Proposer has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

10. SCOPE OF WORK

The City requests proposals from qualified consultants to provide technical professional services for policy development and master planning related to open space. These services will be integrated into an amendment to the City's Parks & Open Space and Conservation Elements, which will guide both near-term and long-term planning efforts. The project work plan will encompass research, data gathering and analysis, community engagement, needs assessment, development of metrics, goals, recommendations, action plans, and the completion of the required environmental review.

Proposers should demonstrate significant experience in parks, open space, conservation, and recreation planning, including acquisitions, improvements, usage, maintenance, operation, and financing. Experience in preparing general plan amendments for Parks and Open Space Elements and a strong background in developing inclusive practices and policies, addressing park access issues, and managing projects efficiently is essential.

The primary goal of the project is to provide the City with a comprehensive roadmap to expand access to open spaces, identify climate resilience and other co-benefits of open space, explore "rewilding" opportunities, and establish an integrated network of open spaces that support beneficial uses. Additionally, the project aims to develop a natural communities conservation plan to facilitate coordinated mitigation of the impacts of new development.

The City's objective in this consultant selection process is to obtain an effective, efficient, and creative approach to providing the deliverables that meet the City's goals and timeline for this Project. The anticipated Scope of Work required to complete the Amendment will require, but is not limited to, the following tasks and deliverables:

Task 1: Project Initiation and Project Management

- Kick-off meeting
- Project timeline and goal and content framing regarding the requirements of SB 1425 and AB 1889

Task 2: Community Outreach and Engagement

- Development of a community outreach plan to gain input from residents, community stakeholders, and the general Foster City Community
- Conduct a community assessment to understand the Community's interests, needs, and concerns
- Public Information strategies that align with the City's existing communication efforts
- Identify and maintain a list of potential community, local, and regional partners interested in helping bring the goals of the Parks and Open Space Element and Conservation Element to fruition

Task 3: Existing Conditions Analysis

- Thorough review and analysis of existing documents and regulations
- Develop a Community Profile to provide context for the General Plan Amendment
- Understanding of the City's existing urban tree inventory
- Parks, Open Space, and Conservation Assessment—inventory and analyze the City's entire parks and open space system, including natural resources, outdoor recreation, and public health and safety, collaborating with the existing Parks Master Plan consultants

Task 4: Research and Analysis

- Make policy recommendations in line with the requirements of SB 1425 and AB 1889
- Develop Parks, Open Space, and Conservation goals, policy, and priority recommendations
- Create financial cost estimates, alternative funding strategies,
- Develop a Project Implementation Plan
- Develop Open Space maps that improve existing Parks and Open Space Element maps
- Prepare a habitat conservation plan for the City's open spaces

Task 5: Preparation and Adoption of Amendments to the Parks and Open Space Element and Conservation Element

- Develop Administrative Drafts of the General Plan Amendments
- Provide a policy-tracking matrix
- Assist City Staff with preparing staff reports
- After the environmental review process, develop the Final GPAs for City Council adoption

Task 6: Environmental Review Preparation

- Complete CEQA documentation for General Plan Amendments

Attachment E – Sample Agreement for Professional Services Insurance Requirements

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: [REDACTED]

CONSULTANT: [REDACTED]
(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: _____

_____, 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

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

EXHIBIT B
FEE SCHEDULE

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

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

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		Insurer	Policy No.
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)			
<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:** _____

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

Senate Bill No. 1425
CHAPTER 997

An act to add Section 65565.5 to the Government Code, relating to local government.

[Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022.]
legislative counsel's digest

SB 1425, Stern. Open-space element: updates.

Existing law requires cities and counties to prepare, adopt, and amend general plans and elements of those plans, as specified. Existing law requires the general plan to include a housing element and an open-space element, which is also called an open-space plan. Existing law sets forth various deadlines for updates to the housing element.

This bill would require every city and county to review and update its local open-space plan by January 1, 2026. The bill would require the local open-space plan update to include plans and an action program that address specified issues, including climate resilience and other cobenefits of open space, correlated with the safety element. By imposing additional duties on local officials, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The people of the State of California do enact as follows:

SECTION 1. Section 65565.5 is added to the Government Code, to read:

65565.5. (a) Every city and county shall review and update its local open-space plan by January 1, 2026. The update shall include plans and an action program, as required by Section 65564, that address all of the following:

- 1) Access to open space for all residents in a manner that considers social, economic, and racial equity, correlated with the environmental justice element or environmental justice policies in the general plan, as applicable.
- 2) Climate resilience and other cobenefits of open space, correlated with the safety element.
- 3) Rewilding opportunities, correlated with the land use element.
- b) For purposes of this section, "rewilding opportunities" may include, but are not limited to, the following:
 - 1) Opportunities to preserve, enhance, and expand an integrated network of open space to support beneficial uses, such as habitat, recreation, natural resources, historic and tribal resources, water management, and aesthetics.
 - 2) Establishing a natural communities conservation plan to provide for coordinated mitigation of the impacts of new development.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 3. The Legislature finds and declares that the preservation of open space is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Section 1 of this act adding Section 65565.5 to the Government Code applies to all cities, including charter cities.

