

**REQUEST FOR PROPOSALS (RFP)**

**FULL COST ALLOCATION STUDY  
AND  
USER FEE STUDY**

**City of Foster City, California**

**Financial Services Department**

**610 Foster City Blvd.  
Foster City, CA 94404  
(650) 286-3200**

**July 12, 2022**

**(Proposals due August 8, 2022)**

## **FULL COST ALLOCATION STUDY USER FEE STUDY**

### **I. REQUEST SUMMARY**

The City of Foster City desires to undertake the preparation of a Full Cost Allocation Plan (an OMB 2 CFR Part 225 Cost Allocation Plan is desirable, as a supplemental part of the Cost Allocation Study) (collectively “Plan”) and a comprehensive review and evaluation of citywide user fees (“Fee Study”). To that end, the City is seeking to engage the services of a qualified professional firm experienced in cost recovery to prepare both reports.

The services are anticipated to commence in mid-September/early October 2022 with preliminary reports from the selected consultant due by the end of January, 2023. The presentation of the User Fee Study results to the City Council is planned for March 2023 with the public hearing and adoption of the City’s Master Fee schedule in April 2023 and an effective date of July 1, 2023.

### **II. INTRODUCTION**

#### **A. Background**

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 is governed by the same bodies and procedures as the City. The City/District, collectively call (“City”) has approximately 172 employees who deliver high quality municipal services to approximately 32,842 residents. The City’s fiscal year 2022-23 appropriations for its General Fund is approximately \$57.0 million.

The last comprehensive cost allocation plan and user fee study was performed in 2016. The City does not have an OMB 2 CFR Part 225 Plan for federal grant reimbursement charges. Current cost allocation plans are primarily based upon a combination of direct and indirect charges.

#### **B. Objective**

##### Full Cost Allocation Plan

The purpose of this project is to ensure that the City of Foster City has a basis of applying comprehensive overhead rates and is accurately accounting for the true cost of providing various services by each department. Furthermore, best practices, accounting standards and OMB 2 CFR Part 225 make it necessary for the City to maintain a well-documented cost allocation plan that will help it to appropriately allocate general and administrative costs in its budget; properly identify overhead rates that can be used in the calculation of billable hourly rates for federal and state grants, user fees, and reimbursements from other governmental agencies.

##### User Fee Study

The purpose of this project is to ensure that the City of Foster City utilizes overhead rates that accurately account for the true cost of providing various services within City operations and to assess appropriate fees and rates, allowing the City to recover the actual costs incurred for fee related services.

### C. General RFP Submittal Information

The City's designated staff will evaluate proposals received.

During the review process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from those that submit proposals, or allow corrections of errors or omissions. Any and all changes in the RFP will be made by written addendum, which shall be issued by the City to all proposer who have been responded to the RFP by the deadline.

The City reserves the right to retain all proposals submitted. Submission of a proposal indicates the firm's acceptance of the conditions contained in this Request For Proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the consultant selected.

The preparation of the RFP will be at the total expense of the Proposer. There is no expressed or implied obligation for the City to reimburse responding proposers for any expense incurred in the preparation of proposals in response to this RFP. All proposals submitted to the City shall become properties of the City and will not be returned.

The City reserves the right to reject any or all proposals, in whole or part, to waive any informality in any proposal, and to accept the proposal which, in its discretion, is in the best interest of the City.

To be considered, proposers must send **one original and three (3) hard copies of their proposal** in a sealed envelope with the name of the company submitting the proposal and the title of "Full Cost Allocation Study and User Fee Study" no later than 5:00P.M. PST on August 8, 2022 to:

City of Foster City  
Financial Services Department  
Attn: Edmund Suen  
610 Foster City Blvd.  
Foster City, CA 94404

### D. RFP Questions

Questions with regard to this RFP should be submitted by e-mail to Edmund Suen, Finance Director, at [esuen@fostercity.org](mailto:esuen@fostercity.org) by 5:00 P.M. PST on July 25, 2022. All firms sending questions will receive responses to their questions and any other addenda that may be released via e-mail on August 1, 2022.

### E. Schedule

The City reserves the right to make changes to the below schedule, but plans to adhere to the implementation of this bid process as follows:

RFP released:	July 12, 2022
Deadline for receiving questions:	July 25, 2022
Proposals due:	August 8, 2022
Finalists selected:	August 18, 2022
Presentations/Interviews (if necessary):	August 24-25, 2022
Contract approved by City Council/Consultant selected:	September 19, 2022

### III. SCOPE OF SERVICES

*Project tasks shall include, but are not necessarily limited to, the following. If the firm feels that additional tasks are warranted, they must be clearly identified in the firm's proposal.*

#### **Full Cost Allocation Plan**

Prepare the City's Full Cost Allocation Plan (OMB Cost Allocation Plan as optional supplement), which may include the following elements. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

- A.** Work and meet with City staff to refine the project scope, purpose, uses and goals of the City's Cost Allocation Plan to ensure that the study will be both accurate and appropriate to the City's needs. Review project schedule and answer any questions pertaining to the successful development of the study.
- B.** Meet with staff and conduct interviews as needed to gain an understanding of the City's processes and operations.
- C.** Identify the total cost of providing each City service at the appropriate activity level and in a manner that is consistent with all applicable laws, statutes, rules and regulations governing the collection of fees, rates, and charges by public entities including, but not limited to, the State Controller's Office Guidelines for Cost Claiming and OMB 2 CFR Part 225 standards.
- D.** Determine the appropriate General and Administrative overhead allocations to City activities and applicable overhead rates for use in calculating the City's Billable Hourly rates. The requirements of the model should allow for:
  - a) Additions, revisions, or removal of direct and overhead costs so that the full cost allocation plan can be easily adapted to a range of activities, both simple and complex.
  - b) The ability of the City to continuously update the model and full cost allocation plan from year to year as the organization changes.
  - c) The addition of hypothetical service area information for future service enhancements, and the ability to calculate the estimated costs of providing the service under consideration (i.e. ad-hoc analysis).
- E.** Report on other matters that come to your attention in the course of your evaluation that in your professional opinion the City should consider.
- F.** Present the plan to the City's management group and make necessary adjustments as requested.
- G.** If called upon to do so, prepare and deliver presentations to the Council to facilitate their understanding of the plan and its implications to the City.
- H.** Work with the Financial Services Department in developing service provisions, cost categories, and allocation criteria for current and future programs.
- I.** Provide the City with an electronic copy of the final comprehensive review, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in cost.

- J. Prepare a final report and provide five bound copies, one unbound copy, and a single Microsoft Excel and PDF file of the Full Cost Recovery Plan that can be made available to City staff. Models, tables and graphs should be provided in Microsoft Excel. Any Cost Allocation Model revisions developed shall also be made available to the City in Microsoft Excel and PDF formats, providing the ability to add, delete and/or update information as needed.
- K. Provide a computer-based model in Microsoft Excel for adjusting these fees and charges for the City's current and future needs and provide the City with an electronic copy of the final comprehensive study, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in costs.
- L. Consult with City staff should the need arise to defend the cost allocation plan as a result of audits or other challenges.

### **User Fee Study**

Prepare a User Fee Study of for the City, which may include the following elements. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

- A. Work and meet with City staff to refine the project scope, purpose, uses and goals of the City's User Fee Study to ensure that the study will be both accurate and appropriate to the City's needs. Review project schedule and answer any questions pertaining to the successful development of the study.
- B. Meet with staff and conduct interviews as needed to gain an understanding of the City's processes and operations. Conduct a comprehensive review of the City's existing fees, rates, and charges.
- C. Identify the total cost of providing each City service at the appropriate activity level and in a manner that is consistent with all applicable laws, statutes, rules and regulations governing the collection of fees, rates, and charges by public entities including, but not limited to, Proposition 218.
- D. Compare service costs with existing recovery levels. This should include any service areas where the City is currently charging for services as well as areas where perhaps the City should charge, in light of the City's practices, or the practices of similar or neighboring cities.
- E. Recommend potential new fees and charges for services that the City currently provides but does not have any fees and/or charges established. Recommendations should be based on practices by surrounding cities that may charge for similar services, industry best practices, or the consultant's professional opinion.
- F. Recommend appropriate fees and charges based on the firm's analysis together with the appropriate subsidy percentage for those fees where full cost recovery may be unrealistic.
- G. Prepare a report that identifies each fee service, its full cost, recommended and current cost recovery levels. The report should also identify the direct cost, the indirect cost, and the overhead cost for each service.
- H. Prepare a report that identifies the present fees, recommended fees, percentage change, cost recovery percentage, revenue impact and fee comparison with other San Mateo County, Santa Clara cities or other California cities that are comparable to Foster City. A survey comparison of rates and fees with similar cities is required.
- I. Report on other matters that come to the Consultant's attention in the course of the evaluation that, in the Consultant's professional opinion, the City should consider.

- J. Provide a computer-based model in Microsoft Excel for adjusting these fees and charges for the City's current and future needs and provide the City with an electronic copy of the final comprehensive study, including related schedules and cost documentation in a format that can be edited and updated by City staff to accommodate changes in the organization or changes in costs. The requirements of the model should allow for:
- a) Additions, revisions, or removal of direct and overhead costs so that the full cost allocation plan can be easily adapted to a range of activities, both simple and complex.
  - b) The ability of the City to continuously update the model and full cost allocation plan from year to year as the organization changes.
  - c) The addition of hypothetical service area information for future service enhancements, and the ability to calculate the estimated costs of providing the service under consideration (i.e. ad-hoc analysis).
- K. Prepare and deliver presentations to the City Council to facilitate their understanding of the plan and its implications for the City and make necessary adjustments as requested.
- L. Provide on-site training to enable staff to update fees on an annual basis.
- M. Prepare a final fee study report and provide five bound copies, one unbound copy, and a single Microsoft Excel and PDF file of the User Fee Study that can be made available to City staff. Models, tables and graphs should be provided in Microsoft Excel. Any Master Fee Schedule revisions developed shall also be made available to the City in Microsoft Excel and PDF format, providing the ability to add or delete and/or update information as needed.
- N. Consult with City staff should it become necessary to defend the City's User Fees as a result of any legal or other challenge.

#### General

The Consultant may recommend other tasks that it deems appropriate to achieve the objectives set forth in this RFP.

The successful respondent shall be required to retain all working papers and related supporting documents, including records of professional time spent, for a period of five years after delivery of the required reports, unless notified in writing by the City of the need to extend the retention period. The Consultant further agrees to allow City staff to review such documents upon written request at any time during the retention period.

#### **IV. PROPOSAL OUTLINE TO BE SUBMITTED**

The proposal shall be organized and submitted with the following elements:

- *Cover page*
- *Table of Contents*
- *Executive Summary*

Provide a brief summary describing the proposer's ability to perform the work requested, a history of the proposer's background and experience providing services, the qualifications of the proposer's personnel to be assigned to this project, any subcontractor, sub consultants, and/or suppliers and

a brief history of their background and experience, and any other information called for by this request for proposal which the proposer deems relevant, including restating any exceptions to this request for proposal. This summary should be brief and concise to apprise the reader of the basic services offered, experience and qualifications of the proposer, staff, subcontractors, and/or suppliers.

- *Questionnaire/Response to Scope of Services*

Proposer shall provide responses and information to fully satisfy each item in the Questionnaire. Each question item should be presented before the proposer's response.

- *Attachments*

## **V. QUESTIONNAIRE**

### **A. Company and General Information**

- Company name and address.
- Letter of transmittal signed by an individual authorized to bind the respondent, stating that the respondent has read and will comply with all terms and conditions of the RFP.
- General information about the primary contact who would be able to answer questions about the proposal. Include name, title, telephone number and email address of the individual.

### **B. Qualifications and Experience of the Firm**

- Describe your firm's history and organizational structure. Include the size of the firm, location of offices, years in business, organizational chart, name(s) of owner(s) and principal parties, and number and position titles of staff.
- What is the primary business of the parent company and/or affiliates?
- Which office(s) of your organization will have primary responsibility for managing the user fee study?
- What is your firm's experience conducting Full Cost Allocation Plans, and User Fee Studies? Identify the studies performed by your firm in the last five years.
- Which office(s) of your organization will have primary responsibility for managing the Cost Allocation Plan?
- What is your firm's experience preparing Full Cost and OMB 2 CFR Part 225 Cost Allocation Plans? Identify the Plans prepared by your firm in the last five years. Include the type of plan prepared (i.e. Full Cost; OMB 2 CFR Part 225, etc.)
- Comment on other areas that may make your firm different from your competitors.

**C. Qualifications and Experience of Proposed Project Team**

- Describe the qualifications of staff proposed for the assignment, position(s) in the firm, and types and amount of equivalent experience. Be sure to include any municipal agencies they have worked with in the past three years and their level of involvement.
- Identify and provide the resume(s) of the personnel who will be assigned to this project.

**D. Questions/Response to Scope of Services**

- Describe the methods by which your firm will fulfill the Full Cost Recovery Study and User Fee Study requested in the Scope of Services (Section III). In responding to the Scope of Services, please be thorough in describing your firm's methodology for completing Full Cost Recovery Studies and User Fee Studies, and how your firm will address all services identified in the Scope of this request.
- Provide a statement of the service(s) that differentiate your firm from other respondents.

**E. Fees**

**Please provide three copies in a separate envelope marked "Fees."**

- Provide your fees for the proposed service. Fee quotes should be detailed by service.
- The fee should include preparation of the Full Cost Allocation Plan (including a supplement for an OMB 2 CFR Part 225 Cost Allocation Plan) and a User Fee Study.
- Outline billing and payment expectations, including timing and method of payment.
- Describe any remaining fees not already detailed above.
- Present a specific "not to exceed" fixed fee including associated fees (i.e., printing costs, attendance at meetings, travel).

**F. References**

- Provide a list of the municipal agencies for which the respondent has conducted a Full Cost Recovery Plan and a User Fee Study within the past three years.

**The Consultant should provide a list of at least three municipal agencies for each component of the RFP under consideration by the City.**

- Provide the following information for three projects that are similar in size and scope to the project requested by this proposal:
  - 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 and telephone number



## **G. Implementation Schedule**

Include an implementation schedule with a preliminary report delivery date by the end of January 2023 and note key project milestones and timelines for deliverables. Identify any assumptions used in developing the schedule.

## **H. Insurance Requirements**

The City will require the successful Consultant to acquire and maintain workers' compensation, employer's liability, commercial general liability, owned and non-owned and hired automobile liability, and professional liability insurance coverage relating to Consultant's services to be performed covering the City's risks in a form subject to the approval of the City Attorney and/or City's Risk Manager. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be as follows:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	statutory minimum
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to Consultant's vehicle usage in performing services hereunder)
<sup>1</sup> Professional Liability	\$1,000,000 per claim and aggregate

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the City as an Additional Insured. Furthermore, the requirements for coverage and limits shall be the greater of either (1) the minimum coverage and limits or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured.

The Consultant shall agree to include with all subcontractors in their subcontracts the same requirements and provisions including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Consultant shall agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City and its accompanying documents. Subcontractors shall further agree to include these same provisions with any sub-subcontractors.

The Consultant shall furnish the City with certificates and copies of information or declaration pages of the insurance required and with respect to evidence of commercial general liability

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<sup>1</sup>Note: Professional liability insurance coverage is not required if the contractor/vendor/Consultant is not providing a service regulated by the state. (Examples of service providers regulated by the state are insurance agents, professional engineers, doctors, certified public accountants, lawyers, etc.)

and automobile liability insurance coverage, original endorsements:

- (a) Precluding cancellation or **reduction in per occurrence limits** before the expiration of thirty (30) days (10 days for nonpayment) after City shall have received written notification of cancellation in coverage or **reduction in per occurrence limits** by first class mail;
- (b) Naming the City of Foster City and Estero Municipal Improvement District, its Council, officers, boards, commissions, employees, and agents, as additional insureds; and
- (c) Providing that Consultant's insurance coverage shall be primary insurance with respect to City and Estero Municipal Improvement District, its Council, officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by City for itself, its Council, officers, boards, commissions, employees, or agents shall be in excess of Consultant's insurance and not contributory with it. Consultant and its insurer may not seek contribution from City's insurance or self-insurance.

The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's insurance or self-insurance may be called upon to protect City as a named Insured.

All self-insured retentions (SIR) must be disclosed to City for approval and shall not reduce the limits of liability coverage. Policies containing and SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Consultant/Named Insured or City.

The City reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Any and all Subcontractors shall agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City. Subcontractors shall further agree to include the same requirements and provisions, including the indemnity and insurance requirements, in any agreement with sub-subcontractors to the extent that they apply to the scope of the sub-subcontractor's work. A copy of the indemnity and insurance provisions shall be furnished to any subcontractor upon request.

The Consultant shall maintain insurance 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 the Consultant fails to obtain or maintain completed operations coverage as required by the City at its sole discretion may purchase the coverage required and the cost will be paid by Consultant.

## VI. EVALUATION OF PROPOSALS

The project's core implementation team, comprised of City staff, will be responsible for the bid evaluations. This team, in accordance with the criteria listed below, will evaluate all proposals received as specified. The City team members, in applying the major criteria to the proposals, may consider additional criteria beyond those listed. During the evaluation period, the team may elect to interview some or all the proposing firms.

The final selection will be the firm which, in the City's opinion, is the most responsive and responsible, meets the City's requirements in providing this service, and is in the City's best interest. The City maintains the sole and exclusive right to evaluate the merits of the proposals received.

Consultants will be objectively evaluated based on their responses to the project scope outlined in the RFP. The written proposal should clearly demonstrate how the firm could best satisfy the requirements of City.

Proposals will be evaluated based on the following criteria:

- Thoroughness and understanding of the tasks to be completed.
- Background and experience in organizational analysis evaluation.
- Staff expertise and overall experience of personnel assigned to the work.
- Time required to accomplish the requested services.
- Responsiveness to requirements of the project.
- Recent public sector experience, preferably in a municipal setting, conducting similar studies.
- Costs.

Although price for the services will be an important part of the consideration for award of the project, the City will consider the consultant's qualifications, expertise and level of professional service and advice in the award of the project.

## **ATTACHMENT**

Attachment 1 – Standard Agreement for Professional Services

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PROFESSIONAL SERVICES AGREEMENT  
FOR  
COST ALLOCATION PLAN AND USER FEE STUDY

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 and Estero Municipal Improvement District, 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 or Estero Municipal Improvement District, 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 and Estero Municipal Improvement District, 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.

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: \_\_\_\_\_

Sanjay Gehani, 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 COST ALLOCATION PLAN AND USERS FEE STUDY

**[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 one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) 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".

☒ 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 one million dollars (\$1,000,000) 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 one million dollars (\$1,000,000) per occurrence and five million dollars (\$1,000,000) aggregate.

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/Estero Municipal Improvement District (CITY)**  
**610 Foster City Boulevard, Foster City, CA 94404**  
**Attention:** \_\_\_\_\_

**Contract Administrator**

<b>Endorsement and Certificates of Insurance Required</b>		<b>Insurer</b>	<b>Policy No.</b>
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"/>	<b>General Liability:</b> (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"/>	<b>Auto Liability:</b> 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"/>	<b>Other:</b>		
<b>Certificates of Insurance Required (no endorsement needed) (Check all that apply)</b>		<b>Insurer</b>	<b>Policy No.</b>
<input type="checkbox"/>	<b>Workers Compensation:</b> 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"/>	<b>Professional Liability:</b>		

**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