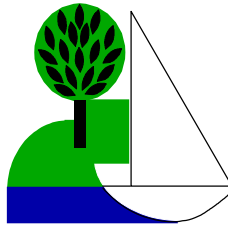


CITY OF FOSTER CITY



**REQUEST FOR PROPOSAL
FOR CONSTRUCTION MANAGEMENT AND SUPPORT SERVICES
FOR
THE RECREATION CENTER REPLACEMENT PROJECT
(CIP 301-678)**

PROPOSAL SUBMITTAL DEADLINE: FRIDAY, JANUARY 27, 2023, at 2:00PM

RETURN PROPOSAL TO:

City of Foster City
Public Works Department
Attn: Sophia Lee
Assistant Engineer
610 Foster City Blvd.
Foster City, CA 94404

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REQUEST FOR PROPOSAL
FOR CONSTRUCTION MANAGEMENT AND SUPPORT SERVICES
FOR
THE RECREATION CENTER REPLACEMENT PROJECT
(CIP 301-678)

SECTION I. INTRODUCTION

The City of Foster City (City) is seeking a consultant team to provide construction management and support services for the Recreation Center Replacement Project (CIP 301-678). To that end, the City invites qualified consulting firms to submit proposals.

Consultants shall examine all information in this Request for Proposal (RFP), including the attachments.

Consultants are required to attend a mandatory, pre-proposal meeting on **Thursday, January 12, 2023 at 9:00 am**. The deadline for submitting questions about the proposal is **Friday January 20, 2023 at 5:00 pm**. The City will consider proposals received on or before the proposal submittal deadline of **Friday January 27, 2023 at 2:00 pm**. The City may extend the proposal submittal deadline if the City receives an inadequate amount of applicant response. Interested consultants will be notified via an addendum.

SECTION II. GENERAL INFORMATION

CIP 301-678 involves the replacement of the City's Recreation Center. The current center, located at 650 Shell Boulevard, was opened to the public in 1974. Due to its location as a central amenity in Foster City's Leo Ryan Park, the center is a hub of activity in the community. The current Recreation Center consists of the original building that was built in 1974 and two expansion wings that were constructed in the 1990s. The current structure contains approximately 18,500 square feet of meeting room/user space in the 36,000 square foot building, with the remaining space allocated to lobbies, storage, mechanical rooms and long hallways to access the phased additions. Because the building was originally three separate structures that were combined into one building with one roof in 1997, multiple roof penetrations were added to install HVAC equipment and aesthetic screens on the flat deck of the roof. Due to the construction history, several structural issues are known or anticipated related to water intrusion. The age of the building and the piecemeal way in which it was constructed contribute to the current need for a rebuild that would best meet the recreational needs of the Foster City community and the infrastructure needs of the City both now and in the years to come.

The Recreation Center will be starting the design process in January 2023.

The construction of the Recreation Center Project is anticipated to start June 2024 and may take 18-24 months to complete. The City is seeking a team to provide a

constructability review, construction inspection and administer the construction contract, which is estimated to be approximately \$42 million, and work with the designer to provide assistance with public outreach.

The team leader should be an experienced Resident Engineer or Construction Manager. As such, a professional engineer's license is not required for the team leader. The Resident Engineer / Construction Manager will be responsible for all aspects of administering the construction contract, including assigning tasks to team members.

The following information describes the team, as currently envisioned by the City. The team should include an office engineer, part-time scheduler, and part-time estimator. The office engineer will assist the Resident Engineer / Construction Manager with change management, submittal coordination, processing monthly progress payments, and other duties as required. The estimator will develop independent cost estimates of change order work. The scheduler will assist with reviewing the baseline schedule, baseline schedule updates, and time impact analyses associated with contract change orders.

Administering the construction contract will require construction inspectors. Typical construction hours will be from 8 am to 5 pm, Monday through Friday, unless otherwise approved by the City.

The specifications require the Contractor to perform material testing; therefore; the team will include a person who is experienced in reviewing testing methods, procedures, and test results to ensure the material placed conforms to the contract requirements. Even though the Contractor is required to perform material testing, the team will include a geotechnical and/or material testing firm to intermittently verify the Contractor's test results.

The specifications require the Contractor to create a storm water pollution prevent plan and inspect its implementation. The team will include member(s) who are experienced in reviewing storm water pollution prevention plans and inspecting the implementation of storm water pollution prevention best management practices.

The City places a particular importance on communicating potential construction impacts to local residents, the City's recreation programs and businesses owners. The team will include staff who will perform public outreach and supplement the City's communications staff, as required. Public outreach staff is required to collaborate and coordinate with City staff and the Resident Engineer/Construction Manager.

This description of the team envisioned by the City in this Section is intended to provide information about the Project. The description is not meant to dictate how Consultant staffs the Project. Final staffing will be determined as part of negotiating the professional services contract. Please note that in "Section B. Executive Summary" of the proposal, the City provides each Consultant the opportunity to explain how and why its staffing proposal is set up to ensure the team's success.

Consultants shall bear all costs and assume all liability associated with developing and/or submitting proposals. The City shall bear no costs and/or assume no liability for developing and/or submitting proposals.

SECTION III: MANDATORY, PRE-PROPOSAL MEETING

For a prime consultant's proposal to be considered, a prime consultant representative shall attend the mandatory, pre-proposal meeting. The prime consultant's representative shall sign in at the meeting. The pre-proposal meeting will be held at City Hall located at 610 Foster City Boulevard, Foster City, CA 94404, on **Thursday January 12, 2023 at 9:00 AM.**

The meeting will also be accessible via Zoom. Dial-in information is provided below. If consultants have any questions about the pre-proposal meeting, please contact the Assistant Engineer, Ms. Sophia Lee at slee@fostercity.org

One tap mobile: US: [+16699006833](tel:+16699006833), [89184929900#](tel:+189184929900) or [+16694449171](tel:+16694449171), [89184929900#](tel:+189184929900)

Meeting URL: <https://fostercity-org.zoom.us/j/89184929900?pwd=cGloM3oyY0JTS0hOYlkvV0JjMnVuUT09>

Meeting ID: 891 8492 9900

Passcode: 297883

Join by Telephone

For higher quality, dial a number based on your current location.

Dial:

US: +1 669 900 6833 or +1 669 444 9171

Meeting ID: 891 8492 9900

Consultants shall bear all costs associated with attending the pre-proposal meeting. The City shall bear no costs and/or assume no liability for consultants attending the pre-proposal meeting.

SECTION IV. PROPOSAL REQUIREMENTS

To demonstrate the qualifications and experience necessary to perform the construction management and construction support services for the project, as described in the **Attachment A, Draft Scope of Services**, consultant shall submit a proposal that includes the information described in this section.

Direct questions about the proposal to the Assistant Engineer, Ms. Sophia Lee at slee@fostercity.org on or before **Friday January 20, 2023, at 5:00 pm.**

The proposal shall be comprised of two (2) parts:

- Part 1 is comprised of five (5) copies of a bound and tabbed document containing sections A, B, C, D, E, F, G and H described below. Consultant shall also provide a flash drive with electronic copies for Part 1 only.
- Part 2 is one (1) copy of section I submitted in a sealed envelope.

The proposal shall be concise and address qualifications and experience. Consultant shall not include superfluous information or analytical work that would otherwise be performed during work in the proposal. The body of the proposal, excluding the table of contents and appendices, should not exceed 15 pages. As an appendix, provide resumes for the proposed team members. Proposals should be bound with tabs identifying each section herein specified.

PART 1

A. Table of Contents

Consultant shall provide a table of contents for all material contained in the proposal.

B. Cover Letter

Consultant shall provide a cover letter. The person who signs the cover letter shall be authorized to contractually bind the consultant. The cover letter shall include the following:

- 1) A statement that all the information in the Request for Proposal was examined.
- 2) A statement that the proposal is binding for a 90-calendar day period.
- 3) The name, title, address, email, and telephone number of the individual to whom correspondence and other communications should be directed during the consultant selection process.
- 4) The name, title, address, email, and telephone number of the individual who will negotiate the consulting agreement with the City, if selected, and is authorized to contractually bind the firm.

C. Executive Summary

Consultant shall provide an executive summary. The executive summary shall include a statement that consultant reviewed the draft scope of services and is able to provide the required professional services. The summary shall briefly summarize those consultant qualifications and experience, contained in the proposal, which best highlight its ability to successfully deliver the work.

D. Project Approach

A summary presentation of the proposed approach for performing the services, describing how the project team would be organized to:

- 1) Clearly specify the scope of work and schedule for the work that will be included in the contract for professional engineering services.
- 2) Monitor and control the scope of work, communicate potential scope of work changes prior to performing that work, and manage the change in scope of work.
- 3) Monitor and control costs of professional design services to ensure the services are performed within the negotiated not-to-exceed amount.
- 4) Monitor the schedule and ensure that deliverables are completed on or before schedule milestones.
- 5) Monitor the progress of the work to ensure that each submittal is complete and has been adequately reviewed prior to submitting deliverables.
- 6) Monitor the quality of consultant's deliverables to reduce the amount of City resources required to review the submittal.
- 7) Ensure responsiveness to City Staff.
- 8) Facilitate communications.
- 9) No substituting of staff listed in the proposal and adding staff not listed in the proposal.

E. Proposal Schedule

The purpose of the proposal schedule is to ensure consultant completes work in a timely manner and to ensure that labor projections are consistent with the proposal schedule.

Consultant shall prepare a schedule showing the staff required to perform the work described in **Attachment A**, Draft Scope of Services. Group staffing activities by task.

The schedule should include a milestone for each Authorization to Proceed for each task identified in **Attachment A**, Draft Scope of Service. The schedule should reflect "staffing up" at the beginning of the project and "staffing down" near the end of the project. If applicable, show other staff adjustments including seasonal adjustments or construction staging adjustments.

The City may request additional detail as part of contract negotiations.

Consultant shall use the following dates for the proposal schedule and labor projections, based on the Draft Work Plan by Group 4 that has been attached.

April 24, 2023
April 26, 2023

Notice to Proceed Issued for Task 1
Kick Off Meeting

April 2023 – February 2024	Constructability Review
March - May 2024	Bidding Phase
June 2024	Construction Begins
June 2026	Construction Ends
October 2026	Project Closeout Completed

F. Labor Projections

Consultant shall provide a spreadsheet showing an estimate of the number of hours by staff role to complete the work described in Attachment A - Draft Scope of Service. Group labor projects by task. The labor projections shall be consistent with the schedule created as part of section C above. Provide a list of assumptions made in developing the labor hours.

G. Consultant Information

Consultant shall provide the following information for it and each of its sub-consultants, if any:

- 1) Legal name of firm.
- 2) Type of organization (partnership, corporation, etc.) and where incorporated, if applicable.
- 3) Firm's Officers.
- 4) Date firm was established.
- 5) Address of firm's headquarters.
- 6) Current number of people employed by the firm.
- 7) Name of consultant's parent company, if any.
- 8) Name of consultant's subsidiaries wholly owned or fractionally owned, if any.
- 9) List of companies associated with the consultant whose work on the design or construction of the projects may potentially give rise to a conflict of interest, if any.
- 10) List of contracts terminated for convenience or default within the past three (3) years, if any. Include contract value, description of work, client's name, and telephone number.

H. Consultant Experience and References

Consultant shall provide details of its experience working on similar projects over the last five (5) years. Consultant shall provide details of not more than five (5) similar projects. All projects shall have one or more proposed team members involved in the project. Provide projects from different owners, if possible.

Provide the following details:

- 1) Project name.
- 2) Project Owner and contact information.

- 3) Project description including total project cost and location.
- 4) Description of the consultant's role (Prime consultant or sub-consultant to Prime consultant's Name).
- 5) Description of professional design service provided.
- 6) Cost Control for professional design services: Describe the original and final contract amount and reasons for differences, if any.
- 7) Schedule Control for professional design services Contract: Original start date, actual start date, original end date, actual end date, description of reasons for differences. For dates, provide month and year.
- 8) Project Manager and other key personnel involved.
- 9) Sub-consultants on the proposed team that worked on the project, if any.

If consultant has a standard resume for projects, consultant may provide the standard resumes with supplemental project information on a separate sheet. Providing supplemental project information on a separate sheet will have no effect on the evaluation process.

The City will contact Project Owners to discuss the consultant's current and/or past performance. For Project Owner's contact information, provide Project Owner's name and address, the name of a contact with knowledge of consultant's performance, as well as contact's phone number and email address.

I. Project Team Experience and References

The construction management and support services team is key to delivering a successful project.

Consultant shall provide the following information regarding the proposed construction management and support team.

- 1) Provide a description of the team.
- 2) Provide a table detailing the following information for each team member: name, role, employer, certifications, years of experience, anticipated number of hours to be worked on the project, anticipated start date, anticipated end date, and anticipated percentage of time worked on-site.
- 3) Provide resumes for up to twelve (12) team members. The team members shall include proposed personnel with experience performing the following roles: Principal-In-Charge, Resident Engineer / Construction Manager, Office Engineer, Estimator, Scheduler, Lead Inspector, Storm Water Pollution Prevention Plan Reviewer, Inspector responsible for ensuring Contractor's adherence to Storm Water Pollution Prevention Plan, Reviewer of Contractor's Material Tests, and Lead Public Outreach Consultant. The roles listed above are most likely not the appropriate title for the proposed personnel (some roles may be performed by the same member). Please use appropriate title for the proposed personnel.
- 4) Provide references for the Resident Engineer / Construction Manager.

The City may contact owner representatives who are familiar with the Resident Engineer / Construction Manager's work to discuss their current and/or past performance. For each reference, list the proposed team member, project name, project owner, project owner's address, the name of contact with knowledge of performance, contact's phone number, and contact's email address. Provide references from different owners, if possible.

PART 2

J. Consultant Fee Schedule and Reimbursable Expenses

In a sealed envelope, provide two (2) copies of Consultant Fee Schedule(s) and list(s) of other reimbursable costs, such as supplies, materials, equipment, other services, and/or other expenses.

Provide two (2) copies in a sealed envelope, including the level of effort with reimbursable expenses and hourly rates schedule. The level of effort and reimbursable expenses shall be broken down with a summary table for the entire proposal and shall include an estimate of the number of hours by staff type to complete the work described in Attachment A, Draft Scope of Service, that is consistent with the schedule created as part of Section E in Part 1. Provide descriptions of assumptions made in developing the labor hours. The City and the selected consultant will endeavor to negotiate a consulting agreement which contains a not-to-exceed amount for professional services, reimbursable expenses, additional services, supplies, materials, and equipment.

Consultants shall bear all costs and assume all liability associated with developing and/or submitting proposals. The City shall bear no costs and/or assume no liability for developing and/or submitting proposals.

SECTION V. PROPOSAL SUBMITTAL REQUIREMENTS

Consultant shall submit its proposal in accordance with the following requirements:

- A. The City will only consider proposals received by City at or before the proposal submittal deadline of **Friday January 27, 2023 at 2 pm**. The City may extend the proposal submittal deadline if the City receives an inadequate response submitted. Interested consultants will be notified via an addendum.
- B. The City will only consider proposals from Prime Consultants who had a representative attend and sign in at the pre-proposal meeting.
- C. Consultant shall submit proposals to the following address:

City of Foster City

Public Works Department
Attn: Sophia Lee
Assistant Engineer
610 Foster City Blvd.
Foster City, CA 94404

- D. For mailed proposals, the City encourages each consultant to confirm that its proposal was received by the City at or before the proposal submittal deadline. Contact the Assistant Engineer, Ms. Sophia Lee at slee@fostercity.org to confirm City's receipt of the proposal.
- E. For hand-delivered proposals, consultant shall deliver the proposal to the information desk in the building lobby. Consultant shall ensure the proposal is time and date stamped by the attendant prior to leaving the building.

SECTION VI. CONSULTANT SELECTION PROCESS

The City will review proposals and may check references to rank which consultants best satisfy the evaluation criteria. The City may conduct consultant interviews to evaluate consultants. If interviews are conducted as part of the selection process, interviews are tentatively scheduled for the week of February 13, 2023.

Principle criteria used to evaluate Consultants will include the following:

- A. Quality, clarity and relevance of information contained in the proposal that exhibits Consultant's understanding of the work.
- B. Consultant's and sub-consultants' experience successfully providing construction management and support services on similar projects in the last five (5) years.
- C. Resident Engineer / Construction Manager's experience successfully providing construction management and support services in the same or a similar role on similar projects.
- D. Other Team Members' experience providing construction management and support services and/or other related work on similar projects.

The City may waive irregularities in any proposal, accept or reject all or any part of any proposal, or waive any requirements of the request for proposals, as may be deemed to be in the best interest of the City.

After final evaluation, the City will identify the highest ranked consultant, which appears to best meet the qualification criteria. The City will attempt to negotiate a contract with the selected consultant. If the highest ranked consultant and the City cannot reach agreement, the City will terminate negotiations and, at its option, negotiate with the next ranked consultant.

Consultants shall bear all costs and assume all liability associated with negotiating a consultant agreement. The City shall bear no costs and/or assume no liability for

developing and/or submitting proposals.

SECTION VII. RIGHT TO PROTEST

Respondents that the City otherwise determines are responsive and responsible have the right to protest; protests from any other Respondent will not be considered. Any protest must be delivered to City Hall located at 610 Foster City Boulevard, Foster City, CA, by 4:00 pm of the 7th calendar day following City staff's identification of the Selected Respondent to be recommended to the City Council, and satisfy the following requirements:

- a. The initial protest must contain a complete statement of the basis for the protest.
- b. The protest must refer to the specific portion of the document that forms the basis for the protest.
- c. The protest must include the name, address, and telephone number of the person representing the protesting party.
- d. The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other Respondents who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.
- e. The procedure and time limits set forth in this paragraph are mandatory and are a Respondent's sole and exclusive remedy in the event of a Proposal protest. Respondent's failure to comply with these procedures shall constitute a waiver of any right to further pursue the Proposal protest, including filing a Government Code Claim or legal proceedings. A Respondent may not rely on a protest submitted by another Respondent, but must timely pursue its own protest.

SECTION VIII. CONFIDENTIALITY

City has made a determination in accordance with Government Code Section 6255 that all Proposals submitted in response to this RFP shall not be made public by City until after City has executed a Professional Services Agreement with the Selected Respondent. In the event a Respondent wishes to claim portions of its Proposal exempt from disclosure under the Public Records Act, it is incumbent upon Respondent to clearly identify those portions with the word "confidential" printed on the lower right-hand corner of the page, along with a written justification as to why such information should be exempt from disclosure. However, City will make a decision based upon applicable laws.

City shall notify Respondent of any materials or information that City does not believe are entitled to exemption from the Public Records Act, and Respondent shall have five (5)

business days from such notice to:

- a. withdraw its Proposal;
- b. withdraw such information from its Proposal; or
- c. withdraw such information and replace it with substituted information for which Respondent does not claim an exemption.

Proprietary or confidential data must be readily separable from the Proposal in order to facilitate eventual public inspection of the non-confidential portion of the Proposal. Confidential data is normally restricted to confidential financial information. The cost of Services shall not be designated as proprietary or confidential information.

SECTION IX. SCOPE OF SERVICES

A. Scope of Services:

A general draft scope of services is given in **Attachment A**. A detailed Scope of Services will be developed during negotiations. The scope of services presented herein is a basis for completing the proposal and a starting point for negotiations.

In addition, consultant shall agree to perform the management and project controls specified in the Draft Scope of Services.

Consultant is encouraged to include in the proposal any additional tasks and/or deliverables beyond the Draft Scope of Services that the consultant may find necessary or beneficial in order to deliver a successful project.

The City reserves the right to enter into agreements for none, a portion, modified portions, or all of the work listed in this Request for Proposal. The City reserves the right to issue notice(s) to proceed for some or all the work up to 90 days after the City Council approves the agreement.

SECTION X. STANDARD PROFESSIONAL SERVICES AGREEMENT AND INSURANCE REQUIREMENTS

The standard professional services agreement is attached as **Attachment B**.

The insurance requirements are described in Section 12 Insurance of the City's Standard Professional Services Agreement. All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. The selected consultant shall agree to provide the City with a copy of said policies, certificates, and/or endorsements.

**ATTACHMENT A
DRAFT SCOPE OF SERVICES**

**FOR CONSTRUCTION MANAGEMENT AND SUPPORT SERVICES
FOR
THE RECREATION CENTER REPLACEMENT PROJECT (CIP 301-678)**

I. GENERAL SCOPE OF SERVICES

The scope of services describes the construction management and support services necessary to support the construction of the Project. The Scope of Services is divided into the following five (5) tasks.

- 1) Pre-Construction Phase
- 2) Plan Check and Bidding Phase
- 3) Construction Phase
- 4) Project Closeout and Post Construction Services; and
- 5) Warranty Inspections

II. TASK ORDER AGREEMENT

The scope of services is comprised of five (5) tasks. The City will issue a Notice to Proceed, in writing, to authorize work for each task. The City may issue written authorization to proceed for a task prior to the completion of a preceding task. Upon receipt of a written authorization to proceed for a task, Consultant shall begin work on the designated task and diligently execute the work to completion.

CONSULTANT and its sub-consultants, if any, shall track and report costs for each task.

TASK 1 – PRE-CONSTRUCTION PHASE

Upon receiving written Authorization to Proceed, Consultant shall perform all work required for the pre-construction phase including:

1. Construction Management Coordination/Value Engineering Review

Perform a constructability review of the Design Consultant's contract document submissions, provide input relative to means and methods of construction, duration of construction, and constructability; provide written comments on adherence to the City's program requirements, schedule, budget, value engineering recommendations, life cycle cost analyses, and the coordination of the various disciplines, including civil, grading, demolition, structural, architectural, mechanical, electrical, HVAC, plumbing, interior finishes, FF&E, and landscape. Continuous reviews shall be as determined by the City, the Design Consultant and the Construction Manager (CM). Formal submittals shall be reviewed according to the following schedule.

- 100% Schematic Design
- 100% Design Development
- Use Permit Submittal
- 50% Construction Documents
- 75% Construction Documents
- Final Construction Documents (includes Addenda)

2. Project Budgeting

Review and refine the current budget. CM shall work with the City and design team on updating the budget as work progresses.

3. Project Schedule

Develop, manage and maintain a detailed project schedule for the construction phase activities of the project utilizing a software program that is based on the critical path method of scheduling. The schedule shall reflect the project design and construction milestones. The CM shall identify the software they propose to utilize for the construction schedule in their proposal. The CM shall coordinate with the contractor to maintain a project schedule.

4. Monthly Report

Provide a detailed cash flow tracking system for the Project to be approved and accepted by the City. Update the cash flow spread sheet monthly or as otherwise required.

5. Professional Consultants

Assist the City, if required, in selecting and retaining the professional services of surveyors, special consultants and testing laboratories, roofing/waterproofing and other consultants as deemed necessary, and coordinate their services.

6. Temporary Facilities

Assist the City, if required, in researching and selecting temporary facilities for the continuation of programming and staff offices.

7. Storm Water Pollution Plan

Review the storm water pollution prevention plan, coordinate the required work, and monitor that the work is implemented in the field.

TASK 2 – PLAN CHECK AND BIDDING PHASE

Upon receiving written Authorization to Proceed, Consultant shall perform all work required for the plan check and bidding phase including:

1. Public Relations Activities

Assist the City in public relations including, but not limited to, preparation of Project information and attending internal and public meetings as required, including site meetings. CM shall provide their assumed level of effort (LOE) associated with

this task.

2. Addenda Review

Administer the addenda process and provide a review of each addendum during the bid phase for time, cost, and constructability impact, and make appropriate comments and recommendations.

3. Bid Review, Evaluation and Recommendations

In cooperation with the design team, the CM shall assist the City in pre-qualification process, the bid openings, and evaluation of the bids for completeness, full responsiveness and price, including alternate prices and unit prices (as applicable). Make a formal report to the City regarding the potential award of the Contracts, receive the bids, review the bids and prepare a bid evaluation and recommendations for the selection of bidders. Assemble and organize the Contracts as required to perform the work by the plans and specifications for the Project. All construction work for the Project shall be competitively bid when required by law and awarded in no more than 90 days in accordance with normal requirements for general contractors. If the Project is funded with any State or Federal funds, CM shall comply with all applicable requirements.

4. Rebidding

In the event the bids for a trade or item of work exceed the Project Budget for that trade and the City authorizes re-bidding of that trade, cooperate in revising the scope and the quality of work as required to reduce the construction costs for the Project.

TASK 3 – CONSTRUCTION PHASE

Upon receiving written Authorization to Proceed, CONSULTANT shall perform all work required to administer the construction contract and implement the Project, including the following:

1. Pre-Construction Setup

- Set up project office, as needed, including coordinating computer equipment with the City's IT Department. May require consultant to lease a space. Provide number of office spaces required and/or office space square footage required.
- Understand the City's Electronic Filing System for project documents.
- Recommend Construction Management System software for project.
- Set up both electronic and hard copy filing as agreed to with the City, and maintain project document files.
- Ensure CM personnel are trained to safely access the site and perform their duties.
- Perform field inspections and investigation as necessary to document the condition of the site prior to construction, including taking photographs,

measurements, videos, etc.

2. Pre-Construction Conference(s)

Conduct, in conjunction with the City and Design Team, pre-construction orientation conference(s) for the benefit of the successful contractors and orient the contractors to the various reporting procedures and site rules prior to the commencement of actual construction.

3. Contract Administration

In cooperation with the Design Team, administer the construction Contracts. Coordinate the preparation of construction staging areas on-site for the Project and coordinate the preparation of the site for construction, including, but not limited to, coordinating fencing, barricades or other items reasonably necessary for efficient construction. Coordinate the mobilization of all contractors and coordinate construction sequencing. In addition, provide management and related services as required to coordinate work of the contractors with each other and the activities and responsibilities of the Design Team and City to complete the Project in accordance with the contract documents.

4. Meetings

- Coordinate and conduct construction and weekly job-site progress meetings with the Contractors, design team and City.
- Record, transcribe and distribute meeting minutes to all attendees, the City, and all other appropriate parties.
- Assist in the resolution of any technical construction issues.

5. Submittal Procedures

Establish and implement procedures with the City and Consultant Team to coordinate and review shop drawing submittals, requests for information, samples, product data, change orders, payment requests, material delivery dates and other procedures. Create and maintain logs, files and other necessary documentation. Establish a procedure for and collect certified payroll from the Contractors for the Project.

6. Submittal Coordination

- Review submittals for compliance with contract documents (i.e., cover sheet, log, complete package).
- Facilitate submittal reviews by forwarding/coordinating with Design Team to perform detailed review (supplemental details and clarifications), resolution, and response.

• Request For Information (RFI) Coordination

- Review RFI's for compliance (i.e., cover sheet, log, complete package), and coordinate/forward to Design Team for detailed review (supplemental details and clarifications), resolution, and response.
- Log all RFIs and associated responses.

7. Quality Assurance/Quality Control (QA/QC)

Establish and implement a QA/QC management plan for the Project construction which includes steps to observe, verify and document the specified level of construction quality.

8. Third Party Construction Coordination

- Maintain log of third-party work, e.g., PG&E, AT&T, etc., after notice to proceed issuance for Task Order No. 1.
- Request third parties to perform construction work, as required.

9. Material Submittal Review and Material Verification Testing

Coordinate all testing required by the Contract Documents, Design Team or other third parties including:

- Review and comment on Contractor's material test submittals for conformance with contract requirements.
- Perform intermittent verification testing (spot check) of materials to verify materials meet contract requirements.
- If requested, assist the City in selecting any special consultants or testing laboratories.

10. Construction Observation/Inspection of Work Product

- Inspect Contractor's work daily for compliance with contract requirements.
- Observe that the materials and equipment being incorporated into the work are handled, stored and installed properly and adequately and are in compliance with the contract documents for the Project.
- Guard against defects and deficiencies and advise the City of any deviations, defects or deficiencies observed in the work.
- Track extra work performed at force account.
- Produce daily inspection reports, including photos, descriptions of daily activities, any corrective actions to be taken by Contractor, persons and equipment on site, and work to be completed the following day(s).
- Monitor record documents monthly to ensure property maintenance and completion by Contractor.
- Review contractor's compliance with health and safety standards and regulations and report non-compliance.

11. Non-Conforming Work

Review contractor's recommendations for corrective action on observed non-conforming work. Make recommendations to the City and Design Team in instances where the CM observes work that is defective or not in conformance with the contract documents. Observe the contractor's work to verify that all authorized changes are properly incorporated in the Project.

12. Exercise of Contract Prerogatives

Advise the City and make recommendations for exercising the City's Contract

prerogatives, such as giving the contractor notice to accelerate the progress when the schedule goals are in jeopardy due to contractor failings, withholding payment for cause and other prerogatives when required in an effort to achieve Contract compliance.

13. Endorsements of Insurance; Performance and Payment Bonds

Prior to contractors commencing any work on the project, the CM shall obtain from the contractors and review for compliance with the contract documents the required insurance policy endorsements, including additional insured endorsements, certificates of liability insurance and faithful performance and payment bonds and after review and correction of any deficiencies in these documents forward them to the City and the design team. Further, the CM shall insure that contractors maintain in effect the required insurance and bonds during their work on the project and shall review any subsequent renewals or changes in insurance or bonds.

14. Progress Review

- Keep a daily log containing a record of weather, the contractors working on the site, number of workers, work accomplished, problems encountered, and other relevant data or such additional data as the City may require.
- Activities shall be assigned percentage-complete values. The report shall reflect actual progress as compared to scheduled progress and note any variances.
- The CM shall identify problems encountered in accomplishing the work and recommend appropriate action to the City to resolve these problems with a minimum effect on the timely completion of the Project. If requested by the City, the CM shall assist the contractor(s) in preparing a recovery schedule. The recovery schedule shall reflect the corrective action costs (if any) and efforts to be undertaken by the contractor(s) to recapture lost time. This recovery schedule shall be distributed to the contractor(s), the City, design team and other appropriate parties. The report shall be delivered to the City upon completion of the Project.
- Produce Weekly Statement of Working (or Calendar) Days.
- Produce Resident Engineer / Construction Manager Monthly Report.

15. Maintain On-Site Records

Develop and implement a comprehensive document management program. Ensure that records are maintained by the Contractor at the Project site, on a current basis: a record copy of all Contracts, drawings, specifications, addenda, change orders and other modifications, in good order and marked to record all changes made during construction; shop drawings; product data; samples; submittals; purchases; materials; equipment; and applicable handbooks and are ready for review by design team; Titles 21 and 24 of the California Code of Regulations; the California Building Code; maintenance and operating manuals and instructions; other related documents and revisions which arise out of the Contracts. Maintain records in duplicate of principal building layout lines,

elevations for the bottom of footings, floor levels and key site elevations. At the completion of the Project, deliver all such records to the design team so the design team may review the record as-built drawings, after which the as-built drawings shall be delivered to the City.

16. Schedule of Values and Processing of Payments

- Review Contractor's schedule of values for each of the activities included in that contractor's schedule of events. Review with the design team, comment on, and approve Contractor's Request for Payments.
- Process Contractor's Approved Requests for Payments.
- Notify City immediately of stop notices.

17. Change Management

Evaluate contractors' costs for proposed change orders and make a recommendation to the City regarding the acceptance of any proposals for a change order. The City and the design team will assist the CM in negotiating any change order costs and time extensions.

- Maintain Log of Potential Change Orders.
- Maintain Log of Change Orders.
- Coordinate, review, and evaluate potential change orders and cost estimates/quotations.
- Inspect and evaluate site conditions that are perceived to be different than shown in the contract documents.
- Resolve and/or facilitate resolution of conflicts with plans and existing field conditions, as well as conflicts with contract documents, if any.
- If a contract change order is required, produce contract change order, change order memorandum, independent cost estimate, time impact analysis (if applicable) for the City's approval.
- Review, gather, and evaluate information for resolution of potential claims or disputes.
- Schedule Management.
- Review, comment on, and approve contractor's baseline schedule and updates, if any.
- Evaluate contractor's schedule for actual versus planned progress, and document all scheduling discrepancies and deviations.
- Review, comment on, and approve contractor's monthly schedule submittal.
- Review, comment on, and approve contractor's Time Impact Analyses (TIA) for change orders.
- Ensure that all changes to any of the Contracts between the City and a contractor shall be by change order executed by the City. Prepare and distribute change order reports on a monthly basis. Identify their effect on the Contract price and Master Project Schedule.

18. Contractor Claims

Review with City and design team all notices of claims and claims submitted by

contractors against the City for any alleged cause. Perform an evaluation of the contents of such claims and make recommendations to the City before the time period established by law for City response to such claims has lapsed. If requested by the City, prepare estimates and alternate estimates based on varying scenarios of the claim cause. These estimates shall be transferred to the City and shall be used in claim rulings and negotiations. If requested by the City, negotiate claims with the contractor(s) on behalf of the City.

19. Monthly Progress Reports

Prepare and distribute monthly a Project Status Report for public consumption, along with the month payment invoice. The report shall include:

- An update of all key items required to adequately manage the Project
- Overview of work accomplished, including representative photos
- Work to be completed the following month
- Updated narrative of schedule of work
- Explanation of any upcoming risks/problem areas and corrective action to be taken

20. Equipment, Facility, Electronics and Furniture Instruction Manuals, Warranties and Releases

Obtain all written materials such as operations and maintenance manuals, warranties, affidavits, releases, bonds, waivers and guarantees for all equipment installed in the Project. All such materials, including equipment instruction material, keys, and documents shall be reviewed and delivered to appropriate City personnel.

21. Completion of Contracts and Project

Notify and assist design team in preparing a list of incomplete or unsatisfactory items ("Punch-list") and prepare a schedule for their completion. Assist the design team in determining when the Project or a designated portion thereof is complete. Prepare a summary of the status of the work of each contractor, listing changes in the previously issued Punch-list and recommending the times within which contractors shall complete the uncompleted items on the Punch-list.

22. As-Built Documents

Coordinate and expedite functions in connection with the contractor's obligation to provide "as-built" documents and make recommendations for adequate withholding of retention in the event that a contractor fails to provide acceptable "as-built" documents.

23. Training Sessions

Coordinate and schedule training sessions, if necessary, for the City's personnel and require that the contractor's obligation in providing this training is fulfilled.

24. Accounting Records

Establish and administer an appropriate Project accounting system in conjunction

with the City and maintain cost accounting records on authorized work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

25. Cash Flow Projections

- Develop cash flow projections for all project spending, including spending by design consultants, construction management consultants, contractor, and other third parties, to determine optimum timing for drawdowns, and contingency management.
- Develop master schedule for project.
- Develop a funding model that considers project schedule changes to match available funding.
- Use refined estimates of costs to develop a cost-loaded critical path schedule that will allow for analysis of project timing and resultant cash flow needs.
- Monitor project-specific spending, provide an understanding of when funding will be required, and document expenditures.

26. Permits

Assist the City in obtaining all necessary permits for the Project, including without limitation, building, grading, and occupancy permits.

27. Initial Start-up and Testing

With the design team and the City's maintenance personnel, observe the contractors' proper installation of utilities, operational systems and equipment for readiness and assist in their initial start-up and testing for the Project. Coordinate and assist City in the move-in for the Project.

28. Community Outreach

- Create and mail construction advisory notices to residents and businesses near the construction site as appropriate.
- Create and hand out flyers to Recreation Center and park users.
- Create and install post-mounted outdoor brochure holders.
- Stock outdoor brochure holders with construction advisory notices.
- Create content about project for City's website and project website.
- Work with City Communications Team to create press releases and post periodic updates or specific information about the project on the City's social media sites.

29. Storm Water Pollution Plan

- Review storm water pollution prevention plan.
- Perform quality assurance inspections of best management practices implemented as part of an approved Storm Water Pollution Prevention Plan.
- Audit Contractor's storm water pollution prevention records.
- Review contractor's compliance with all permits, stormwater regulations

and permits (SWPPP), environmental documents, and mitigation measures.

- Achieve satisfactory performance from the Contractor(s) responsible for the installation and maintenance of storm water requirements. Recommend a course of action to the City when requirements of a contractor are not being fulfilled or promptly corrected.

30. Construction Site Access

Coordinate access to the site for inspections and site visits by the City staff and consultants.

TASK 4 – PROJECT CLOSEOUT AND POST CONSTRUCTION SERVICES

Upon receiving written authorization to proceed, Consultant shall perform all work required to close out the project, including the following:

1. Relocation

Assist the City to coordinate the arrival and installation of City furnished materials and fixtures, furnishings and equipment ("FF&E"). Coordinate schedules for City user relocations and occupancy.

2. User Training

The CM shall schedule and document all City training sessions and arrange for supplementary information where needed, and arrange for manufacturers to provide training for maintenance and operations personnel.

3. Punch Lists

- Perform site inspection(s) to determine that facilities are complete and in compliance with contract documents.
- In conjunction with design team and City, develop, schedule and verify completion of any outstanding punch list of incomplete or non-conforming work.

4. Project As-Builts, Close Out, and Warranties

- Review contractual requirements for as-builts, close out documentation and warranties, and obtain and compile all required documentation for delivery to the City.
- Review Contractor's as-built drawings for accuracy and completeness. Provide comments as necessary and verify that Contractor incorporated comments into as-built drawings. Coordinate final submittal of organized and complete record drawings in accordance with contract documents.
- Assist with preparing project closeout forms, including Closeout Memorandum, Capital Asset Infrastructure form, and Capital Asset Infrastructure Disposal form.
- Organize and verify completeness of project records.

5. Final Claims Releases

Obtain final claim releases, including release of any stop notices, from the Contractors as required by the contracts and State law.

6. Final Project Report and Payment

Verify contractor has made all payments and that all required releases including lien release and release of claims have been submitted by contractor. Prepare the final payment documentation for prime contractors, and provide a final report to the City that includes:

- a. A financial summary of all construction contracting, change orders, construction manager, consultant services, FF&E, and other costs associated with the Project.
- b. A construction summary with final schedule review and update.
- c. A final acceptance summary with signed receipts from City staff of all close out document submittals.
- d. A final acceptance of receipt of all FF&E.

7. User Complaints

Assist with response to initial post-occupancy complaints about missing or malfunctioning building components and equipment, and contractor/vendor warranty items.

TASK 5 – PERFORM WARRANTY INSPECTION

Upon receiving written authorization to proceed, Consultant shall perform all work required to perform the warranty inspection and oversee correction of the warranty items, including the following:

- Perform one-year warranty inspection prior to the anniversary date of Notice of Completion/expiration of the warranty period.
- Prepare a punch list identifying corrective action required under warranty at no additional cost to the City and ensure completion of noted items.
- Coordinate necessary repair work.
- Inspect repair work and document that repair work was completed.
- Recommend retention release to contractor.

III. MANAGEMENT AND PROJECT CONTROLS

In performing the Scope of Services, the Consultant shall, at a minimum, execute the management and project controls described below:

1. Consultant shall designate a Resident Engineer / Construction Manager acceptable to the City. The Resident Engineer / Construction Manager will be responsible for the work including developing work plans; implementing the project management procedures and controls; and maintaining effective communications

among the sub-consultants, the City, and other involved agencies and organizations for the duration of the project.

If Consultant wishes to propose a substitute at any time during the duration of the project, the City shall approve Consultant's Resident Engineer / Construction Manager.

2. The working interface between the Consultant and the City shall be defined as follows:

2.1. Within fifteen (15) calendar days after receipt of the Notice to Proceed, Consultant shall submit to the City a final work plan that shall include:

- a) Description of the Consultant's approach to performing the scope of services, including any constraints, specific strategies, or special considerations that apply.
- b) The roles and responsibilities of the project team members including sub-consultants.
- c) Procedures for maintaining quality control and, particularly, adherence to budget and schedule.
- d) A schedule that details activities of each sub-consultant's service in an appropriate time frame consistent with the duration of this Agreement.
- e) A control budget that is supported by monthly cost and resource forecasts for each task.

Consultant shall prepare a project work plan for each task in the degree and detail appropriate to each task. The project work plan shall be updated as the project progresses. The project work plan shall be approved by the City's Project Manager and shall provide the basis for determining timeliness and cost effectiveness of the Consultant's execution of the Scope of Services.

2.2. To support each invoice, the Consultant shall furnish project updates that shall include the following:

- a) A narrative progress report (Outreach bulletin per Task 2) of specific accomplishments during the reporting period, problems encountered, or anticipated accomplishments scheduled for the next reporting period, and results of quality control programs, technical evaluations, inspections, etc.
- b) A cost report for each specific engineer's service that shows:
 - b.1. The current period and cumulative expenditures to date.
 - b.2. The estimated cost to complete each task.
 - b.3. The estimated date to complete each task.
 - b.4. The approved budget.

- b.5. A comparison of the estimated cost with the approved budget to show any variance.

Payment shall be made upon the completion of each specific consultant service as delineated in the project schedule section of the work plan.

- c) A schedule report that compares actual to planned performance in terms of time and percent complete for each designated service. The control report may include, when appropriate, special submittals based upon productivity analyses or detailed performance projections as requested by the City's Project Manager.

- 2.3. Project control reports are to be submitted monthly, together with invoice submittal, unless directed otherwise by the City's Project Manager. The invoice shall be accompanied by a cost breakdown by discipline, in approved format. Failure of the Consultant to submit and update plans or furnish required reports as directed shall constitute cause for suspension of payment of invoices.
- 2.4. Consultant shall be available for consultation with the City's Project Manager at all reasonable times and shall immediately advise the project manager of requests, technical decisions, or problems that may materially affect a project's scope, quality, schedule, or cost.

ATTACHMENT B

PROFESSIONAL SERVICES AGREEMENT
FOR CONSTRUCTION MANAGEMENT AND SUPPORT SERVICES
FOR
THE RECREATION CENTER REPLACEMENT PROJECT (CIP 301-678)

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. **Employee Wages; Records; Apprentices:** Consultant shall pay prevailing wages to its employees on any agreement in excess of \$1,000.00. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Agreement, as determined by the Director of the State of California Department of Industrial Relations, are on file at the County's Capital Projects Office and may be obtained from the California Department of Industrial Relations website [<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>]. Consultant shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. Consultant and all subconsultants shall keep and maintain accurate employee payroll records for Work performed under the Agreement. The payroll records shall be certified and submitted as required by law, including Labor Code Sections 1771.4 (if applicable) and 1776, including to the Labor Commissioner no less frequently than monthly. Consultant shall comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to the Agreement. If the Agreement exceeds \$2,000 and is funded with federal funds, then Consultant shall pay federal Davis Bacon wages and comply with applicable federal requirements.

5. **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.

6. 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.
7. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
8. 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.

9. 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.
10. 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.

11. 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.

12. 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 Sections 2782 and 2782.8 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.

13. 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.

14. 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.
15. 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.

16. 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)

17. Non-Assignment. This Agreement is not assignable either in whole or in part.
18. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
19. 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.
20. 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.
21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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: _____

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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk

APPROVED AS TO FORM

Dated: _____

Benjamin Stock, City Attorney

CONSULTANT

Dated: _____

Type Name & Title of CONSULTANT
Authorized to Sign

EXHIBIT A

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS AND SCHEDULE, AND DELIVERABLES FOR

THE RECREATION CENTER REPLACEMENT PROJECT (CIP 301-678)

[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 DISTRICT 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

CONSULTANT'S 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 four million dollars (\$4,000,000) 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.

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.

1.1 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.

3.2 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.

3.3 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.

3.4 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.

3.5 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.

3.6 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.

3.7 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

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.		
Other:		
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.		
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



FOSTER CITY RECREATION CENTER

DRAFT WORK PLAN 2022-11-01

