

VENDOR AGREEMENT FOR PRODUCTS AND/OR SERVICES
FOR
NUTANIX HARDWARE AND SOFTWARE 2024

This Agreement is made and entered into as of the 15th day of July, 2024 by and between the City of Foster City hereinafter called "CITY" and Roundstone Solutions Inc. hereinafter called "VENDOR".

RECITALS

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

- A. That CITY desires to engage VENDOR to provide a product and/or services to the CITY;
- B. That VENDOR is specially trained, experienced and competent to perform and has agreed to provide the product and/or services to the CITY and;
- C. That the CITY has elected to engage VENDOR upon the terms and conditions as hereinafter set forth.

- 1. A. Services. The services to be performed by VENDOR under this Agreement are 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 VENDOR 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.

- B. Product. The product to be supplied by VENDOR under this Agreement is 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.

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

VENDOR's obligation to provide the product includes but is not limited to, the provision of all labor, equipment, materials, testing and any other

required work or services or costs of any type incidental to the supply of the product.

2. Term; Termination. (a) The term of this Agreement shall commence upon the date hereinabove written and shall expire upon the date enumerated in Exhibit A, delivery of the product or completion of performance of services hereunder by VENDOR, whichever date shall first occur.
(b) Notwithstanding the provisions of (a) above, CITY may with or without cause, direct VENDOR 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 VENDOR 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 VENDOR demanding such cure, in which case VENDOR 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 VENDOR 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. VENDOR shall continue its work throughout the course of any dispute, and VENDOR's failure to continue work during a dispute shall be a material breach of this Agreement.
3. Compensation; Expenses; Payment. CITY shall compensate VENDOR for all products supplied or services performed by VENDOR hereunder as shown in Exhibit B 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 One Hundred Thousand Two Hundred Fifty Two Dollars and Ninety cents (\$100,252.90). Invoices for amounts in excess of One Hundred Thousand Two Hundred Fifty Two Dollars and Ninety cents (\$100,252.90) shall not be paid unless additional amounts have been approved in advance of supplying the product, performing the services or incurring the costs and expenses by CITY's 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 VENDOR meeting contract milestones as defined in

Exhibit B. Billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed.

4. Additional Services. In the event CITY desires the delivery of additional products or performance of additional services not otherwise included within Exhibit A, such products or services shall be authorized in advance by CITY's 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 product to be delivered or 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. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.
5. Records. VENDOR shall keep and maintain accurate records of products delivered or of all time expended in performing services and costs and expenses incurred relating thereto. Said records shall be available to CITY for review and copying during regular business hours at VENDOR's place of business or as otherwise agreed upon by the parties.
6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by VENDOR pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY
8. Relationship of Parties. VENDOR is an independent Contractor and does not act as CITY's agent in any capacity, whatsoever. VENDOR 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 VENDOR's provision of Services, not the means, methods, or scheduling of the VENDOR's work. VENDOR shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Services under this Agreement. VENDOR 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.
9. Schedule. VENDOR shall adhere to the schedule set forth in Exhibit A; provided, that CITY shall grant reasonable extensions of time for the delivery of products or performance of services occasioned by

governmental reviews of VENDOR'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, VENDOR's officers or employees.

VENDOR acknowledges the importance to CITY of timely delivery of products or services and agrees to put forth its best professional efforts to perform in a manner consistent with that schedule.

10. Force Majeure. Except for defaults of subcontractors at any tier, VENDOR 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 VENDOR, 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").

11. VENDOR's Liability for Injury to Persons or Damage to Property.
 - a. VENDOR shall be liable for damages arising out of injury to the person and/or damage to City property, City employees, persons designated by City for training, or any other person(s) other than VENDOR's agents or employees, designated by City for any purpose prior to, during, or subsequent to delivery, installation, acceptance, and use of the Products either at VENDOR's site or at City's place of business, provided that the injury or damage was caused by VENDOR's fault or negligence.
 - b. VENDOR shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by VENDOR, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Products in accordance with the Agreement.
12. Indemnity. To the fullest extent allowed by law, VENDOR 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 VENDOR or its Subcontractors), 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 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 VENDOR, any Subcontractor, 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 VENDOR shall meet and confer with other parties regarding unpaid defense costs.

The duty of VENDOR 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 VENDOR to indemnify CITY and Estero Municipal Improvement District, its Council, boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

VENDOR'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. Patent, Copyright and Trade Secret Indemnity.

- a. VENDOR shall hold City, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.
- b. VENDOR may be required to furnish a bond to City against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c. VENDOR, at its own expense, shall defend any action brought against City to the extent that such action is based upon a claim that the Products supplied by VENDOR or the operation of such Products pursuant to a current version of VENDOR supplied operating software infringes a patent or copyright or violates a trade secret. VENDOR shall pay those costs and damages finally awarded against City in any such action. Such defense and payment shall be conditioned on the following:

- i. That VENDOR shall be notified within a reasonable time in writing by City of any notice of such claim; and
 - ii. That VENDOR shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, City shall have the option to participate in such action at its own expense.
 - d. Should the Products, or the operation thereof, become, or in VENDOR's opinion are likely to become, the subject of a claim of infringement of a patent or copyright or a trade secret, City shall permit VENDOR at its option and expense either to procure for City the right to continue using the Products, or to replace or modify the same so that they become non infringing. If none of these options can reasonably be taken, or if the use of such Products by City shall be prevented by injunction, VENDOR agrees to take back such Products and make every reasonable effort to assist City in procuring substitute Products. If, in the sole opinion of City, the return of such infringing Products makes the retention of other Products acquired from VENDOR under the Agreement impractical, City shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge. VENDOR agrees to take back such Products and refund any sums City has paid VENDOR less any reasonable amount for use or damage.
 - e. VENDOR shall have no liability to City under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon.
 - i. The combination or utilization of Products furnished hereunder with equipment or devices not made or furnished by VENDOR; or
 - ii. The operation of equipment furnished by VENDOR under the control of any operating software other than, or in addition to, the current version of VENDOR supplied operating software; or
 - iii. The modification by City of the equipment of software furnished hereunder; or
 - iv. The combination or utilization of software furnished hereunder with non-VENDOR supplied software.
 - f. VENDOR certifies that it has appropriate systems and controls in place to ensure that City funds will not be used in the performance of the Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
14. Insurance. Prior to execution of this Agreement, VENDOR shall furnish to CITY Certificates of Insurance showing satisfactory proof that it maintains the insurance required by this Agreement as set forth in EXHIBIT D,

Insurance, which are attached and made a part of this Agreement. VENDOR shall maintain all required insurance throughout the term of this Agreement and as otherwise provided in EXHIBIT D. In the event VENDOR 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 VENDOR under this Agreement (or VENDOR shall promptly reimburse CITY for such expense).

VENDOR 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 VENDOR 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 VENDOR.

15. WORKERS' COMPENSATION. VENDOR 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 VENDOR certifies that he will comply with such provisions before commencing the performance of the work of this agreement.
16. NON-DISCRIMINATION. The VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The VENDOR 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 VENDOR 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 VENDOR 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.
17. Notice. All notices required by this Agreement shall be given to the CITY and VENDOR 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: Rob Lasky

VENDOR: Roundstone Solutions Inc.
120 Village Square, #65
Orinda, CA 94563
Attention: Tim Joyce
Email Address: tim@roundstonesolutions.com

18. Non-Assignment. This Agreement is not assignable either in whole or in part.
19. Substitutions. VENDOR may not substitute any Products or Services without City's advance written consent. VENDOR shall not use any specification in lieu of those contained in the Agreement without City's advance written consent.
20. Warranty. Unless otherwise specified, the warranties contained in the Agreement begin after acceptance has occurred.
 - a. VENDOR warrants that all Products and Services furnished hereunder will conform to the requirements of the Agreement (including all descriptions, specifications and drawings made a part hereof). All Products will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by City, free from defects in design. No approval of designs, specifications or other Services furnished by VENDOR shall relieve VENDOR of its obligations under this warranty.
 - b. All warranties, including special warranties specified elsewhere herein, shall inure to City, its successors and assigns, and any users of the Products or Services.
21. Samples.
 - a. City may require samples of items inspection and specification testing and must be furnished free of expense to City. The samples furnished must be identical in all respects to the products bid and/or specified in the Agreement.
 - b. Samples, if not destroyed by tests, may, upon VENDOR's request made at the time the sample is furnished, be returned at VENDOR's expense.
22. Newly Manufactured Products. All Products shall be newly manufactured products; used or reconditioned products are prohibited, unless otherwise specified.

23. Packing and Shipment.

- a. All Products shall be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i. show the number of the container and the total number of containers in the shipment; and
 - ii. the number of the container in which the packing sheet has been enclosed.
- b. All shipments by VENDOR or its subcontractors must include packing sheets identifying City's Contract number; item number; quantity and unit of measure; description of the Products shipped; and appropriate evidence of inspection, if required.
- c. Shipments must be made as specified in the Agreement, as it may be amended, or otherwise directed in writing by City.

24. Transportation Costs and Other Fees or Expenses. No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by City unless expressly authorized by and itemized in the Agreement. Unless otherwise directed by City in writing, all Products and components thereof shall be delivered f.o.b. Point of Delivery. VENDOR shall select the means and methods of transportation.

25. Inspection, Acceptance and Rejection.

- a. VENDOR and its subcontractors shall provide and maintain a quality assurance system acceptable to City covering Products and Services under the Agreement and will tender to City only Products that have been inspected and found to conform to all requirements. VENDOR will keep records evidencing inspections and their result, and will make these records available to City during the Agreement performance and for three years after final payment. VENDOR shall permit City to review procedures, practices, processes and related documents to determine the acceptability of VENDOR's quality assurance system or other business practices related to performance of the Agreement.
- b. All Products may be subject to inspection and test by City or its authorized representatives.
- c. VENDOR and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to City. VENDOR shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.

- d. All Products may be subject to final inspection, test and acceptance by City, notwithstanding any payment or other inspection.
 - e. City shall give written notice of rejection of Products delivered or Services performed within a reasonable time after receipt of such Products or performance of such Services. Such notice of rejection will state the respects in which the items do not substantially conform to their specifications. If City does not provide such notice of rejection within thirty (30) days of delivery, unless otherwise specified in the Agreement, such Products and Services will be deemed to have been accepted. Acceptance shall not be construed to waive any warranty rights that City might have at law or by express reservation in the Agreement with respect to any nonconformity, or any other rights provided by law.
26. Compliance With Statutes and Regulations. VENDOR covenants that in the performance of the Agreement it will comply with all applicable statutes, rules, regulations and orders of the United States, the State and City, and shall defend, indemnify and hold the City harmless against any loss, cost, damage or liability by reason of VENDOR's violation of this provision.
27. National Labor Relations Board Certification. VENDOR swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against VENDOR within the immediately preceding two-year period because of VENDOR's failure to comply with an order of the National Labor Relations Board.
28. Covenant Against Gratuities. VENDOR warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by VENDOR, or any agent or representative of VENDOR, to any officer or employee of City with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, City shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by City in procuring on the open market any items which VENDOR agreed to supply shall be borne and paid for by VENDOR. The rights and remedies of City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
29. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
30. 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.

31. Governing Law. This Agreement shall be deemed to have been executed in the County of San Mateo, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
32. 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.
33. Conflict of Interest. VENDOR 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, VENDOR represents to and agrees with CITY that VENDOR 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) VENDOR may presently have, or will have in the future, with respect to any other person or entity (including but not limited to potential VENDORS, consultants, contractors, or regulatory agency) which may have an interest in the subject matter of the Services.
34. Confidentiality. Any information, whether proprietary or not, made known to or discovered by VENDOR during the performance of or in connection with the Agreement for City, will be kept confidential and not be disclosed to any other person. VENDOR will immediately notify City in writing if it is requested to disclose any information made known to or discovered by during the performance of or in connection with the Agreement. These confidentiality provisions and limitations shall remain fully effective indefinitely after VENDOR's completion of the Agreement.

35. 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.

36. Entire Agreement. This Agreement, including Exhibits A, B C, D, E and F, 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: _____

_____, Mayor
(for contracts \$50,000 or more)

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk

APPROVED AS TO FORM

Dated: _____

Benjamin Stock, City Attorney

VENDOR

Dated: _____

Tim Joyce, President and CEO

EXHIBIT A

SCOPE OF WORK and SCHEDULE FOR NUTANIX HARDWARE AND SOFTWARE 2024

Scope of Deliverables:

Nutanix Cloud Infrastructure (NCI) Pro Software Subscription, for 60 cores

NX-1365-G9, 3 node, consisting of:

6 total - Intel/Xeon-Silver 4410T processor (2.7GHz/10-core/150W,Sapphire Rapids)

36 total - 64 GB Memory Module

6 total – 18TB 3.5” HDD

3 total – 7.68TB SSD

3 total – LOM Module, Broadcom 10GbE 2-port, Base-T

6 total – Mellanox 25/10GbE, 2-port NIC

2 total – C13/C14 10A 4ft power cord

3 total – TPM 2.0 Module Unprovisioned

Scope of Services:

36 months 24/7 Production Level HW Support for Nutanix cluster

Project Schedule

Hardware will be shipped within 4 weeks of signed agreement. Project will be complete once hardware is received, however Nutanix will continue to provide the prepaid 36 months hardware support.

EXHIBIT B

VENDOR'S FEES and PAYMENT MILESTONES

Itemized Fees

Description	Price	Quantity	Extended Price
Nutanix Cloud Infrastructure (NCI) Pro Software Subscription, for 60 cores	\$60,809	36 months	\$60,809 (non-taxable)
NX-1365-G9, 3 node, consisting of: <ul style="list-style-type: none"> • 6 total - Intel/Xeon-Silver 4410T processor (2.7GHz/10-core/150W, Sapphire Rapids) • 36 total - 64 GB Memory Module • 6 total – 18TB 3.5" HDD • 3 total – 7.68TB SSD • 3 total – LOM Module, Broadcom 10GbE 2-port, Base-T • 6 total – Mellanox 25/10GbE, 2-port NIC • 2 total – C13/C14 10A 4ft power cord • 3 total – TPM 2.0 Module Unprovisioned 	\$33,067	1	\$33,067
24/7 Production Level HW Support for Nutanix cluster	\$2,996	36 months	\$2,996
		SUBTOTAL:	\$ 96,872.00
		TAX (9.375%)	\$ 3,380.90
		GRAND TOTAL:	\$100,252.90

Upon receipt of hardware, a Net30 invoice will be issued for payment of fees.

EXHIBIT C
ADDITIONAL TERMS and CONDITIONS

EXHIBIT D INSURANCE

VENDOR 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 [Vendor Name](#), hereinafter referred to as "**Vendor**", and the City of Foster City, hereinafter referred to as "**City**", providing for professional services.

1. **Vendor's Duty to Show Proof of Insurance.** Vendor, 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 Vendor's acts, errors, or omissions in connection with the performance of Vendor's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Vendor shall not perform any work under this Agreement until Vendor 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, Vendor 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, Vendor 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. Vendor shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Vendor 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 Vendor'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. Vendor 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 VENDOR. 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

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

Professional Liability Insurance

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

Installation Floater

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

Cyber Liability Insurance

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

1.2 Self-Insured Retention

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

1.3 Claims-Made Basis Coverage

If any of the insurance coverages required under this Agreement is written on a claims-made basis, Vendor, at Vendor'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 Vendor'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 Vendor shall be maintained until the completion of all of Vendor's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by Vendor shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Vendor 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. Vendor shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

3.3 If Vendor is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Vendor 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 Vendor is equivalent to the above-required coverages.

3.4 For any claims related to the Agreement, the Vendor'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 Vendor's insurance and shall not contribute with it.

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

3.6 Failure by Vendor to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Vendor. City, at its sole option, may terminate this Agreement and obtain damages from Vendor resulting from said breach. Alternatively, City may purchase such required insurance coverage, and without further notice to Vendor, City shall deduct from sums due to Vendor any premiums and associated costs advanced or paid by City for such insurance. If the balance of monies obligated to Vendor pursuant to this Agreement are insufficient to reimburse City for the premiums and any associated costs, Vendor 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 Vendor of its obligation to obtain and maintain the insurance coverages required by this Agreement.

3.7 Should any of the required insurance (other than errors and omissions insurance) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defenses costs be included in such general aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limit specified above.

3.8 City may (but is under no obligation to) secure project-specific insurance, wrap-up insurance, or administer an owner controlled insurance program ("OCIP"), in which case Vendor and its subcontractors shall communicate this fact to their insurance carriers and request that the risk of this project be excluded from their practice policies. Vendor's fees under this Agreement (and the fee of its subcontractors under subcontractor agreements) shall be reduced by the amount of insurance premiums that may be avoided by Vendor and its subcontractors 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 Vendor's and subcontractors policies. Construction Manager and its subcontractors 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 D

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

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

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

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

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

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

Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.

SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

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

SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required)

ORGANIZATION: _____ **TITLE:** _____

ADDRESS: _____

TELEPHONE: () _____

DATE ISSUED: _____

EXHIBIT E
SPECIAL TERMS and CONDITIONS

EXHIBIT F

**COVID-19 AMENDMENT/ATTACHMENT
(Vendor Agreement Form)**

This COVID-19 Amendment/Attachment amends the Agreement between _____ (“City”) and _____ (“Vendor”) 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 Vendor (which for purposes herein includes all subcontractors) 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 Vendor 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. Vendor acknowledges that those orders, directives and guidance may require the Project to shut down or otherwise increase the Vendor’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 Vendor shall follow the most applicable, restrictive and newest COVID-19 Proclamations.

D. An “**Unknown COVID-19 Condition**” is a COVID-19 Condition the Vendor did not know about, and reasonably should not have known about, as of the date the Vendor submitted its proposal. The requirements contained in COVID-19 Proclamations issued before submission of a proposal are not Unknown COVID-19 Conditions, and the Vendor 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 Vendor’s failure to comply with the contract documents or a COVID-19 Proclamation; and (iv) is not the result of a subcontractors failure to comply with a COVID-19 Proclamation in connection with the performance of the Services.

2. COVID-19 Conditions and Proposal. Vendor 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 Vendor’s price and schedule. In order to be

entitled to any relief from a COVID-19 Condition, the Vendor must demonstrate that the issue, cost or delay is due to an Unknown COVID-19 Condition.

3. Compliance with COVID-19 Proclamations.

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

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

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

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

7. Safe Work Practices. Vendor shall implement safe work practices recommended by CDC or OSHA or Cal/OSHA, which may include, inter alia, screening all employees, subcontractors, 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. Vendor 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 Vendor 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. Vendor shall immediately report to City any outbreaks of COVID-19 among its workers. The Vendor 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.

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

VENDOR:

CITY:

Signature

Signature

Print Name & Title

Print Name & Title