

MASTER PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

This Agreement is made and entered into as of the 19 day of September, 2023 by and between the City of Foster City hereinafter called "CITY" and Circlepoint hereinafter called "CONSULTANT".

RECITALS

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

WHEREAS, CITY desires to retain CONSULTANT to provide professional environmental review and consulting services on development applications and long-range projects and related services;

WHEREAS, It is anticipated that, as a need arises for CONSULTANT to provide services, CITY will issue Task Orders to CONSULTANT (in a form substantially similar to that set forth in Exhibit "A," attached hereto and incorporated by reference which more particularly describes the scope of services to be performed);

WHEREAS, In reliance upon CONSULTANT's documentation of its qualifications, the CITY finds that CONSULTANT has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

WHEREAS, That CONSULTANT is specially trained, experienced and competent to perform and has agreed to provide such services;

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 each Task Order and Exhibit "B," Scope of Services, 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 B and each Task Order is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto , for changes in the Scope of Services or otherwise, 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 B and in each Task Order.

1. 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. Initial contract period shall be from September 19, 2023 and expires on September 19, 2028. Renewal shall be by mutual consent of CONSULTANT AND CITY as approved by the City Council Board. CONSULTANT shall not commence Services or work until a Notice to Proceed is issued by CITY.

(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, upon thirty (30) days' notice in writing, 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.

2. 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 "C" 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 total

amount identified in all Task Orders issued by the City against this agreement. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. No overhead or other expenses can be recovered for interim periods when the Consultant's services are not utilized by the City. Invoices for amounts in excess of each Task Order 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 CITY's Manager (for contracts less than \$50,000) or CITY Board (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. CITY agreed to pay CONSULTANT within 30 days of invoice receipt. 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 B and each Task Order.

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 B and each Task Order, 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.

CITY will not withhold any Federal or State income taxes or Social Security tax from any payments made by CITY to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONSULTANT. CITY has no responsibility or liability for payment of CONSULTANT's taxes or assessments.

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.

4. Performance of Services. No work shall be performed under this Agreement except to the extent the CONSULTANT receives a Task Order from the CITY's Authorized Representative. The CITY will request proposals from the CONSULTANT for each Task Order when services are needed. CONSULTANT shall respond with a scope and cost proposal in a reasonably prompt manner, no later than fifteen (15) calendar days after CITY's request. Such proposal 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. Upon the approval of the terms of the proposal by CITY's Manager (for contracts less than \$50,000) or CITY Council (for contracts \$50,000 or more) by motion duly made and carried, the CITY's Authorized Representative shall issue a Task Order against this agreement. CONSULTANT shall commence performance and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.
5. Records and Audit. 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.

CONSULTANT shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

Any authorized representative of CITY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by CONSULTANT. Further, CITY has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement. Notwithstanding the foregoing, the CITY's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

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

7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit B 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 B.

CONSULTANT represents that it possesses all necessary training, licenses, certificates, and permits required by the federal, state, CITY or municipal governments to perform the Services. Such licenses, certificates and permits must be valid at the time CONSULTANT enters into this Agreement and must be maintained during the term of this Agreement in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to CITY.

CONSULTANT represents 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.

CITY shall furnish all information and technical data in CITY's possession and not subject to the attorney-client privilege or some other privilege under its possession and control and reasonably required for CONSULTANT's proper performance of the Services prior to CONSULTANT's commencement of the Services and at such other times as CITY and CONSULTANT mutually agree. CONSULTANT is entitled to reasonably rely upon the accuracy and completeness of information and data provided by CITY.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, collectively ("documents"), as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit B; 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 in accordance with a mutually agreed upon schedule.

11. Indemnity.

(a) To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CONSULTANT shall defend, indemnify, and hold harmless City of Foster City, its officers, directors, officials, agents, employees, and volunteers (collectively, “**Indemnitees**”) from and against any and all claims, suits, expenses, liability, cause of action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively “**Liabilities**”), 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. CONSULTANT’s obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

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

(b) Intellectual Property Indemnification. CONSULTANT represents that professional services provided by CONSULTANT pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. CONSULTANT shall defend, indemnify and hold harmless CITY from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to CONSULTANT’s services provided to CITY under this Agreement.

(c) CONSULTANT shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of CITY and the Indemnitees in the exact form and substance as those contained in this Agreement.

(d) CITY acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the any Project site is outside of CONSULTANT's responsibilities and is not included in the scope of Services CONSULTANT is to perform nor included in CONSULTANT's insurance. CITY shall hire hazardous materials consultant if the Project requires the testing or remediation of hazardous substances. CONSULTANT shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. CONSULTANT shall, however, be responsible for the coordination of CONSULTANT's services and work with the work of CITY's hazardous materials consultants.

(e) Duty to Cooperate. CONSULTANT shall notify CITY immediately in writing of any claim or damage related to activities or services performed under this Agreement. CONSULTANT shall cooperate with CITY in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Any additional services or work under this paragraph shall be compensated as Additional Services.

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

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

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

performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.

20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
22. Liability of CITY. Except as provided in Exhibit B, Services to be Provided by CONSULTANT and Exhibit D, 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 either party be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

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

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

23. Confidentiality. Any information, whether proprietary or not, made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement for CITY, will be kept confidential and not be disclosed to any other person. CONSULTANT 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 this Agreement. The restrictions on the use and disclosure of the confidential information shall not apply to information which (a) was known to the CONSULTANT before receipt of same from the CITY; or (b) becomes publicly known other than through the CONSULTANT; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order, but only to the extent required to comply with the said requirements of the government authority or judicial order.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to CITY hereunder.

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. Entire Agreement. This Agreement, including Exhibits A, B, C, D and E, 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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk Secretary

APPROVED AS TO FORM

Dated: _____

Benjamin Stock,
City Attorney Legal Counsel

CONSULTANT

Dated: _____

Audrey Zagazeta, President and CEO

EXHIBIT A

SAMPLE TASK ORDER

TASK ORDER NO. [INSERT TASK No.]

TO MASTER ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES AGREEMENT

This Task Order No. _____ ("Task Order") is made and entered into by and between the City of Foster City ("City") and [_____] ("Consultant").

RECITAL

A. City and Consultant entered into an agreement entitled [_____] ("Agreement"), by which the Consultant agreed to perform _____ services in accordance with Task Orders issued by the City.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **INCORPORATION BY REFERENCE.** This Task Order hereby incorporates by reference all items and conditions set forth in the Agreement.
2. **SCOPE OF TASK ORDER.** Consultant shall perform the services described in Exhibit "B," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
3. **PAYMENT.** For services performed by Consultant in accordance with this Task Order, City will compensate Consultant in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$_____ (including all hourly billings as well as reimbursable costs).
4. **SIGNATURES.** The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

City of Foster City

Consultant

By: _____

By: [_____]

Title: **City Manager if < \$50,000**
Mayor/President if > \$50,000

Title: [_____]

Date: _____

Date: _____

Tax ID No.: _____

EXHIBIT B

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS, AND SCHEDULE, FOR ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

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

SERVICES TO BE PROVIDED

This is an Exhibit attached to and made a part of and incorporated by reference to the Agreement dated [September 18, 2023](#), by and between [_____], hereinafter referred to as "CONSULTANT" and the City of Foster City, hereinafter referred to as "CITY" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

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

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 \(IF APPLICABLE\)](#)

END OF EXHIBIT B

EXHIBIT C
FEE SCHEDULE

EXHIBIT D INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified 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 19 day of September, 2023, by and between Circlepoint hereinafter referred to as "**Consultant**", and City of Foster City, hereinafter referred to as "**City**", providing for professional services.

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

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

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

Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

Workers' Compensation Insurance

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

Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) 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 of Foster City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise

indicated herein. Each insurance policy supplied by consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

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

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

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

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

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

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

ATTACHED

1. Insurance Coverage Form

EXHIBIT 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 (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:		
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:** _____

END OF EXHIBIT D

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

This COVID-19 Amendment/Attachment amends the Agreement between the City of Foster City hereinafter called "CITY" and Circlepoint ("Consultant") dated 19 day of September, 2023.

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 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 costs attributable to COVID-19, and which are not included in the schedule of values, only if the cost is an Unknown COVID-19 Cost.

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.

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

CONSULTANT:

CITY:

Signature

Signature

Audrey Zagazeta, President

Jon Froomin, Mayor

END OF EXHIBIT E

MASTER PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

This Agreement is made and entered into as of the 19 day of September, 2023 by and between the City of Foster City hereinafter called "CITY" and AECOM hereinafter called "CONSULTANT".

RECITALS

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

WHEREAS, CITY desires to retain CONSULTANT to provide professional environmental review and consulting services on development applications and long-range projects and related services;

WHEREAS, It is anticipated that, as a need arises for CONSULTANT to provide services, CITY will issue Task Orders to CONSULTANT (in a form substantially similar to that set forth in Exhibit "A," attached hereto and incorporated by reference which more particularly describes the scope of services to be performed);

WHEREAS, In reliance upon CONSULTANT's documentation of its qualifications, the CITY finds that CONSULTANT has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

WHEREAS, That CONSULTANT is specially trained, experienced and competent to perform and has agreed to provide such services;

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 each Task Order and Exhibit "B," Scope of Services, 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 B and each Task Order is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto, for changes in the Scope of Services or otherwise, 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 B and in each Task Order.

1. 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. Initial contract period shall be from September 19, 2023 and expires on September 19, 2028. Renewal shall be by mutual consent of CONSULTANT AND CITY as approved by the City Council Board. CONSULTANT shall not commence Services or work until a Notice to Proceed is issued by CITY.

(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, upon thirty (30) days' notice in writing, 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.

2. 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 "C" 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 total amount identified in all Task Orders issued by the City against this agreement. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. No overhead or other expenses

can be recovered for interim periods when the Consultant's services are not utilized by the City. Invoices for amounts in excess of each Task Order 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 CITY's Manager (for contracts less than \$50,000) or CITY Board (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. CITY agreed to pay CONSULTANT within 30 days of invoice receipt. 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 B and each Task Order.

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 B and each Task Order, 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.

CITY will not withhold any Federal or State income taxes or Social Security tax from any payments made by CITY to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONSULTANT. CITY has no responsibility or liability for payment of CONSULTANT's taxes or assessments.

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.

4. Performance of Services. No work shall be performed under this Agreement except to the extent the CONSULTANT receives a Task Order from the CITY's Authorized Representative. The CITY will request proposals from the CONSULTANT for each Task Order when services are needed. CONSULTANT shall respond with a scope and cost proposal in a reasonably prompt manner, no later than fifteen (15) calendar days after CITY's request. Such proposal 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. Upon the approval of the terms of the proposal by CITY's Manager (for contracts less than \$50,000) or CITY Council (for contracts \$50,000 or more) by motion duly made and carried, the CITY's Authorized Representative shall issue a Task Order against this agreement. CONSULTANT shall commence performance and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.

5. Records and Audit. 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.

CONSULTANT shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible

thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

Any authorized representative of CITY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by CONSULTANT. Further, CITY has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement. Notwithstanding the foregoing, the CITY's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required in accordance with the Standard of Care 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 consulting services exercised by members of the same profession practicing in the same location at the same time under comparable circumstances and providing similar to those to be performed by CONSULTANT hereunder (Standard of Care).

CONSULTANT represents that it has reviewed Exhibit B and that in its professional judgment, based on information available to CONSULTANT at the time of execution of this Agreement and excluding any unanticipated or unforeseen events or circumstances beyond the reasonable control of CONSULTANT, 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 B.

CONSULTANT represents that it possesses all necessary training, licenses, certificates, and permits required by the federal, state, CITY or municipal governments to perform the Services. Such licenses, certificates and permits must be valid at the time CONSULTANT enters into this Agreement and must be maintained during the term of this Agreement in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to CITY.

CONSULTANT represents that its performance of the Services will conform to the Standards of Care.

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.

CITY shall furnish all information and technical data in CITY's possession and not subject to the attorney-client privilege or some other privilege under its possession and control and reasonably required for CONSULTANT's proper performance of the Services prior to CONSULTANT's commencement of the Services and at such other times as CITY and CONSULTANT mutually agree. CONSULTANT is entitled to reasonably rely upon the accuracy and completeness of information and data provided by CITY.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, collectively ("documents"), as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit B; provided, that CITY shall grant reasonable extensions of time for the performance of such services occasioned by governmental reviews of CONSULTANT's work product, Force Majeure (as defined below), or other unavoidable or unanticipated 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 in accordance with a mutually agreed upon schedule.

11. Indemnity.
 - (a) To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CONSULTANT shall defend, indemnify, and hold harmless City of Foster City, its officers, directors, officials, agents, employees, and volunteers (collectively, "**Indemnitees**") from and against any and all claims, suits, expenses, liability, cause of action, loss, cost,

damage, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively "**Liabilities**"), 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. CONSULTANT's obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

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

(b) Intellectual Property Indemnification. CONSULTANT represents that professional services provided by CONSULTANT pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. CONSULTANT shall defend, indemnify and hold harmless CITY from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to CONSULTANT's services provided to CITY under this Agreement, except to the extent such infringement is based on the willful or indirect infringement by CITY or the combination of any Services provided by CONSULTANT under the Agreement with any method, step, process, product, apparatus, system, technology, or intellectual property not provided by CONSULTANT pursuant to the Agreement.

(c) CONSULTANT shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of CITY and the Indemnitees in the exact form and substance as those contained in this Agreement.

(d) CITY acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the any Project site is outside of

CONSULTANT's responsibilities and is not included in the scope of Services CONSULTANT is to perform nor included in CONSULTANT's insurance. CITY shall hire hazardous materials consultant if the Project requires the testing or remediation of hazardous substances. CONSULTANT shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. CONSULTANT shall, however, be responsible for the coordination of CONSULTANT's services and work with the work of CITY's hazardous materials consultants.

(e) Duty to Cooperate. CONSULTANT shall notify CITY immediately in writing of any claim or damage related to activities or services performed under this Agreement. CONSULTANT shall cooperate with CITY in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Any additional services or work under this paragraph shall be compensated as Additional Services.

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

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

13. WORKERS' COMPENSATION. CONSULTANT certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and CONSULTANT certifies that he will comply with such provisions before commencing the performance of the work of this agreement.
14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex or national origin.

Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

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

CITY: City of Foster City
610 Foster City Boulevard
Foster City, CA 94404-2299
Attention: Thai-Chau Le

CONSULTANT: AECOM Technical Services, Inc.,
150 California St. Ste 200
San Francisco, CA 94111
Attention: Rod Jeung

- 16. Assignment. This is an agreement for the personal services of CONSULTANT. CITY has relied upon the skills, knowledge, experience and training of CONSULTANT and the CONSULTANT's firm, associates and employees as an inducement to enter into this Agreement. CONSULTANT shall not assign or subcontract this Agreement without CITY's express written consent. Further, CONSULTANT shall not assign any monies due or to become due under this Agreement without CITY's prior written consent.
- 17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
- 18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 19. Governing Law. This Agreement shall be deemed to have been executed in the County of San Mateo, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the

Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.

20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
22. Liability of CITY. Except as provided in Exhibit B, Services to be Provided by CONSULTANT and Exhibit D, 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 either party be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

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

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

23. Confidentiality. Any information, whether proprietary or not, made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement for CITY, will be kept confidential and not be disclosed to any other person. CONSULTANT 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 this Agreement. The restrictions on the use and disclosure of the confidential information shall not apply to information which (a) was known to the CONSULTANT before receipt of same from the CITY; or (b) becomes publicly known other than through the CONSULTANT; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order, but only to the extent required to comply with the said requirements of the government authority or judicial order.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to CITY hereunder.

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. Entire Agreement. This Agreement, including Exhibits A, B, C, D and E, 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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk Secretary

APPROVED AS TO FORM

Dated: _____

Benjamin Stock,
City Attorney Legal Counsel

CONSULTANT

Dated: _____

Rod Jeung
Associate VP/Env. Plng Director

EXHIBIT A

SAMPLE TASK ORDER
TASK ORDER NO. [INSERT TASK No.]
TO MASTER ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES
AGREEMENT

This Task Order No. _____ ("Task Order") is made and entered into by and between the City of Foster City ("City") and [_____] ("Consultant").

RECITAL

A. City and Consultant entered into an agreement entitled [_____] ("Agreement"), by which the Consultant agreed to perform _____ services in accordance with Task Orders issued by the City.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. INCORPORATION BY REFERENCE. This Task Order hereby incorporates by reference all items and conditions set forth in the Agreement.
2. SCOPE OF TASK ORDER. Consultant shall perform the services described in Exhibit "B," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
3. PAYMENT. For services performed by Consultant in accordance with this Task Order, City will compensate Consultant in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$ _____ (including all hourly billings as well as reimbursable costs).
4. SIGNATURES. The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

City of Foster City

Consultant

By: _____

By: [_____]

Title: **City Manager if < \$50,000**
Mayor/President if > \$50,000

Title: [_____]

Date: _____

Date: _____

Tax ID No.: _____

EXHIBIT B

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS, AND SCHEDULE, FOR ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

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

SERVICES TO BE PROVIDED

This is an Exhibit attached to and made a part of and incorporated by reference to the Agreement dated [September 18, 2023](#), by and between [_____], hereinafter referred to as "CONSULTANT" and the City of Foster City, hereinafter referred to as "CITY" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

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

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 \(IF APPLICABLE\)](#)

END OF EXHIBIT B

EXHIBIT C
FEE SCHEDULE

EXHIBIT D INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified 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 19 day of September, 2023, by and between AECOM hereinafter referred to as "**Consultant**", and City of Foster City, hereinafter referred to as "**City**", providing for professional services.

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

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

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

Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

Workers' Compensation Insurance

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

Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) 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 of Foster City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise

indicated herein. Each insurance policy supplied by consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

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

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

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

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

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

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

ATTACHED

1. Insurance Coverage Form

EXHIBIT 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 (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:		
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:** _____

END OF EXHIBIT D

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

This COVID-19 Amendment/Attachment amends the Agreement between the City of Foster City hereinafter called "CITY" and AECOM ("Consultant") dated 19 day of September, 2023.

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 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 costs attributable to COVID-19, and which are not included in the schedule of values, only if the cost is an Unknown COVID-19 Cost.

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.

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

CONSULTANT:

CITY:

Signature

Signature

Rod Jeung, Associate VP

Jon Froomin, Mayor

END OF EXHIBIT E

MASTER PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

This Agreement is made and entered into as of the 19 day of September, 2023 by and between the City of Foster City hereinafter called "CITY" and EMC Planning Group Inc. hereinafter called "CONSULTANT".

RECITALS

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

WHEREAS, CITY desires to retain CONSULTANT to provide professional environmental review and consulting services on development applications and long-range projects and related services;

WHEREAS, It is anticipated that, as a need arises for CONSULTANT to provide services, CITY will issue Task Orders to CONSULTANT (in a form substantially similar to that set forth in Exhibit "A," attached hereto and incorporated by reference which more particularly describes the scope of services to be performed);

WHEREAS, In reliance upon CONSULTANT's documentation of its qualifications, the CITY finds that CONSULTANT has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

WHEREAS, That CONSULTANT is specially trained, experienced and competent to perform and has agreed to provide such services;

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 each Task Order and Exhibit "B," Scope of Services, 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 B and each Task Order is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto, for changes in the Scope of Services or otherwise, 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 B and in each Task Order.

1. 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. Initial contract period shall be from September 19, 2023 and expires on September 19, 2028. Renewal shall be by mutual consent of CONSULTANT AND CITY as approved by the City Council Board. CONSULTANT shall not commence Services or work until a Notice to Proceed is issued by CITY.

(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, upon thirty (30) days' notice in writing, 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.

2. 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 "C" 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 total

amount identified in all Task Orders issued by the City against this agreement. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. No overhead or other expenses can be recovered for interim periods when the Consultant's services are not utilized by the City. Invoices for amounts in excess of each Task Order 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 CITY's Manager (for contracts less than \$50,000) or CITY Board (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. CITY agreed to pay CONSULTANT within 30 days of invoice receipt. 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 B and each Task Order.

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 B and each Task Order, 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.

CITY will not withhold any Federal or State income taxes or Social Security tax from any payments made by CITY to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONSULTANT. CITY has no responsibility or liability for payment of CONSULTANT's taxes or assessments.

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.

4. Performance of Services. No work shall be performed under this Agreement except to the extent the CONSULTANT receives a Task Order from the CITY's Authorized Representative. The CITY will request proposals from the CONSULTANT for each Task Order when services are needed. CONSULTANT shall respond with a scope and cost proposal in a reasonably prompt manner,. Such proposal 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. Upon the approval of the terms of the proposal by CITY's Manager (for contracts less than \$50,000) or CITY Council (for contracts \$50,000 or more) by motion duly made and carried, the CITY's Authorized Representative shall issue a Task Order against this agreement. CONSULTANT shall commence performance and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.
5. Records and Audit. 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.

CONSULTANT shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

Any authorized representative of CITY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by CONSULTANT. Further, CITY has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement. Notwithstanding the foregoing, the CITY's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit B 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 B.

CONSULTANT represents that it possesses all necessary training, licenses, certificates, and permits required by the federal, state, CITY or municipal governments to perform the Services. Such licenses, certificates and permits must be valid at the time CONSULTANT enters into this Agreement and must be maintained during the term of this Agreement in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to CITY.

CONSULTANT represents 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.

CITY shall furnish all information and technical data in CITY's possession and not subject to the attorney-client privilege or some other privilege under its possession and control and reasonably required for CONSULTANT's proper performance of the Services prior to CONSULTANT's commencement of the Services and at such other times as CITY and CONSULTANT mutually agree. CONSULTANT is entitled to reasonably rely upon the accuracy and completeness of information and data provided by CITY.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, collectively ("documents"), as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit B; 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 in accordance with a mutually agreed upon schedule.

11. Indemnity.

(a) To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CONSULTANT shall defend, indemnify, and hold harmless City of Foster City, its officers, directors, officials, agents, employees, and volunteers (collectively, “**Indemnitees**”) from and against any and all claims, suits, expenses, liability, cause of action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively “**Liabilities**”), 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. CONSULTANT’s obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

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

(b) Intellectual Property Indemnification. CONSULTANT represents that professional services provided by CONSULTANT pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. CONSULTANT shall defend, indemnify and hold harmless CITY from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to CONSULTANT’s services provided to CITY under this Agreement.

(c) CONSULTANT shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of CITY and the Indemnitees in the exact form and substance as those contained in this Agreement.

(d) CITY acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other

hazardous substances which may presently exist at the any Project site is outside of CONSULTANT's responsibilities and is not included in the scope of Services CONSULTANT is to perform nor included in CONSULTANT's insurance. CITY shall hire hazardous materials consultant if the Project requires the testing or remediation of hazardous substances. CONSULTANT shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. CONSULTANT shall, however, be responsible for the coordination of CONSULTANT's services and work with the work of CITY's hazardous materials consultants.

(e) Duty to Cooperate. CONSULTANT shall notify CITY immediately in writing of any claim or damage related to activities or services performed under this Agreement. CONSULTANT shall cooperate with CITY in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Any additional services or work under this paragraph shall be compensated as Additional Services.

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

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

13. WORKERS' COMPENSATION. CONSULTANT certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and CONSULTANT certifies that he will comply with such provisions before commencing the performance of the work of this agreement.
14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion,

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

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

CITY: City of Foster City
610 Foster City Boulevard
Foster City, CA 94404-2299
Attention: Thai-Chau Le

CONSULTANT: EMC Planning Group
601 Abrego Street
Monterey, CA 93940
Attention: Michael J. Groves

- 16. Assignment. This is an agreement for the personal services of CONSULTANT. CITY has relied upon the skills, knowledge, experience and training of CONSULTANT and the CONSULTANT's firm, associates and employees as an inducement to enter into this Agreement. CONSULTANT shall not assign or subcontract this Agreement without CITY's express written consent. Further, CONSULTANT shall not assign any monies due or to become due under this Agreement without CITY's prior written consent.
- 17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
- 18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 19. Governing Law. This Agreement shall be deemed to have been executed in the County of San Mateo, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State

of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.

20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
22. Liability of CITY. Except as provided in Exhibit B, Services to be Provided by CONSULTANT and Exhibit D, 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 either party be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

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

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

23. Confidentiality. Any information, whether proprietary or not, made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement for CITY, will be kept confidential and not be disclosed to any other person. CONSULTANT 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 this Agreement. The restrictions on the use and disclosure of the confidential information shall not apply to information which (a) was known to the CONSULTANT before receipt of same from the CITY; or (b) becomes publicly known other than through the CONSULTANT; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order, but only to the extent required to comply with the said requirements of the government authority or judicial order.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to CITY hereunder.

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. Entire Agreement. This Agreement, including Exhibits A, B, C, D and E, 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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk Secretary

APPROVED AS TO FORM

Dated: _____

Benjamin Stock,
City Attorney Legal Counsel

CONSULTANT

Dated: _____

Michael J. Groves, AICP
President/Senior Principal
EMC Planning Group

EXHIBIT A

SAMPLE TASK ORDER

TASK ORDER NO. [INSERT TASK No.]

TO MASTER ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES AGREEMENT

This Task Order No. _____ ("Task Order") is made and entered into by and between the City of Foster City ("City") and [_____] ("Consultant").

RECITAL

A. City and Consultant entered into an agreement entitled [_____] ("Agreement"), by which the Consultant agreed to perform _____ services in accordance with Task Orders issued by the City.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. INCORPORATION BY REFERENCE. This Task Order hereby incorporates by reference all items and conditions set forth in the Agreement.
2. SCOPE OF TASK ORDER. Consultant shall perform the services described in Exhibit "B," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
3. PAYMENT. For services performed by Consultant in accordance with this Task Order, City will compensate Consultant in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$_____ (including all hourly billings as well as reimbursable costs).
4. SIGNATURES. The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

City of Foster City

Consultant

By: _____

By: [_____]

Title: **City Manager if < \$50,000**
Mayor/President if > \$50,000

Title: [_____]

Date: _____

Date: _____

Tax ID No.: _____

EXHIBIT B

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS, AND SCHEDULE, FOR ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

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

SERVICES TO BE PROVIDED

This is an Exhibit attached to and made a part of and incorporated by reference to the Agreement dated [September 18, 2023](#), by and between [_____], hereinafter referred to as "CONSULTANT" and the City of Foster City, hereinafter referred to as "CITY" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

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

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 \(IF APPLICABLE\)](#)

END OF EXHIBIT B

EXHIBIT C
FEE SCHEDULE

EXHIBIT D INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified 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 19 day of September, 2023, by and between EMC Planning Group Inc., hereinafter referred to as "**Consultant**", and City of Foster City, hereinafter referred to as "**City**", providing for professional services.

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

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

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

Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

Workers' Compensation Insurance

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

Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) 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 of Foster City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise

indicated herein. Each insurance policy supplied by consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

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

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

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

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

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

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

ATTACHED

1. Insurance Coverage Form

EXHIBIT 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 (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:		
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:** _____

END OF EXHIBIT D

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

This COVID-19 Amendment/Attachment amends the Agreement between the City of Foster City hereinafter called "CITY" and EMC Planning Group ("Consultant") dated 19 day of September, 2023.

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 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 costs attributable to COVID-19, and which are not included in the schedule of values, only if the cost is an Unknown COVID-19 Cost.

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.

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

CONSULTANT:

CITY:

Signature

Signature

Michael J. Groves, AICP
President/Senior Principal
EMC Planning Group

Jon Froomin, Mayor

END OF EXHIBIT E

MASTER PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

This Agreement is made and entered into as of the 19 day of September, 2023 by and between the City of Foster City hereinafter called "CITY" and David J. Powers and Associates, Inc. hereinafter called "CONSULTANT".

RECITALS

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

WHEREAS, CITY desires to retain CONSULTANT to provide professional environmental review and consulting services on development applications and long-range projects and related services;

WHEREAS, It is anticipated that, as a need arises for CONSULTANT to provide services, CITY will issue Task Orders to CONSULTANT (in a form substantially similar to that set forth in Exhibit "A," attached hereto and incorporated by reference which more particularly describes the scope of services to be performed);

WHEREAS, In reliance upon CONSULTANT's documentation of its qualifications, the CITY finds that CONSULTANT has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

WHEREAS, That CONSULTANT is specially trained, experienced and competent to perform and has agreed to provide such services;

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 each Task Order and Exhibit "B," Scope of Services, 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 B and each Task Order is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto, for changes in the Scope of Services or otherwise, 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 B and in each Task Order.

1. 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. Initial contract period shall be from September 19, 2023 and expires on September 19, 2028. Renewal shall be by mutual consent of CONSULTANT AND CITY as approved by the City Council Board. CONSULTANT shall not commence Services or work until a Notice to Proceed is issued by CITY.

(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, upon thirty (30) days' notice in writing, 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.

2. 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 "C" 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 total

amount identified in all Task Orders issued by the City against this agreement. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. No overhead or other expenses can be recovered for interim periods when the Consultant's services are not utilized by the City. Invoices for amounts in excess of each Task Order 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 CITY's Manager (for contracts less than \$50,000) or CITY Board (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. CITY agreed to pay CONSULTANT within 30 days of invoice receipt. 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 B and each Task Order.

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 B and each Task Order, 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 shall 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.

CITY will not withhold any Federal or State income taxes or Social Security tax from any payments made by CITY to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONSULTANT. CITY has no responsibility or liability for payment of CONSULTANT's taxes or assessments.

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.

4. Performance of Services. No work shall be performed under this Agreement except to the extent the CONSULTANT receives a Task Order from the CITY's Authorized Representative. The CITY will request proposals from the CONSULTANT for each Task Order when services are needed. CONSULTANT shall respond with a scope and cost proposal in a reasonably prompt manner, no later than fifteen (15) calendar days after CITY's request. Such proposal 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. Upon the approval of the terms of the proposal by CITY's Manager (for contracts less than \$50,000) or CITY Council (for contracts \$50,000 or more) by motion duly made and carried, the CITY's Authorized Representative shall issue a Task Order against this agreement. CONSULTANT shall commence performance and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.

5. Records and Audit. 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.

CONSULTANT shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

Any authorized representative of CITY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by CONSULTANT. Further, CITY has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement. Notwithstanding the foregoing, the CITY's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

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

7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit B 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 B.

CONSULTANT represents that it possesses all necessary training, licenses, certificates, and permits required by the federal, state, CITY or municipal governments to perform the Services. Such licenses, certificates and permits must be valid at the time CONSULTANT enters into this Agreement and must be maintained during the term of this Agreement in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to CITY.

CONSULTANT represents 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.

CITY shall furnish all information and technical data in CITY's possession and not subject to the attorney-client privilege or some other privilege under its possession and control and reasonably required for CONSULTANT's proper performance of the Services prior to CONSULTANT's commencement of the Services and at such other times as CITY and CONSULTANT mutually agree. CONSULTANT is entitled to reasonably rely upon the accuracy and completeness of information and data provided by CITY.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, collectively ("documents"), as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit B; 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 in accordance with a mutually agreed upon schedule.

11. Indemnity.

(a) To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CONSULTANT shall defend, indemnify, and hold harmless City of Foster City, its officers, directors, officials, agents, employees, and volunteers (collectively, “**Indemnitees**”) from and against any and all claims, suits, expenses, liability, cause of action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively “**Liabilities**”), 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. CONSULTANT’s obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

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

(b) Intellectual Property Indemnification. CONSULTANT represents that professional services provided by CONSULTANT pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. CONSULTANT shall defend, indemnify and hold harmless CITY from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to CONSULTANT’s services provided to CITY under this Agreement.

(c) CONSULTANT shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of CITY and the Indemnitees in the exact form and substance as those contained in this Agreement.

(d) CITY acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other

hazardous substances which may presently exist at the any Project site is outside of CONSULTANT's responsibilities and is not included in the scope of Services CONSULTANT is to perform nor included in CONSULTANT's insurance. CITY shall hire hazardous materials consultant if the Project requires the testing or remediation of hazardous substances. CONSULTANT shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. CONSULTANT shall, however, be responsible for the coordination of CONSULTANT's services and work with the work of CITY's hazardous materials consultants.

(e) Duty to Cooperate. CONSULTANT shall notify CITY immediately in writing of any claim or damage related to activities or services performed under this Agreement. CONSULTANT shall cooperate with CITY in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Any additional services or work under this paragraph shall be compensated as Additional Services.

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

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

13. WORKERS' COMPENSATION. CONSULTANT certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and CONSULTANT certifies that he will comply with such provisions before commencing the performance of the work of this agreement.
14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion,

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

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

CITY: City of Foster City
610 Foster City Boulevard
Foster City, CA 94404-2299
Attention: Thai-Chau Le

CONSULTANT: David J. Powers & Associates, Inc.
1736 Franklin Street, Suite 400
Oakland, CA 94612
Attention: Will Burns

- 16. Assignment. This is an agreement for the personal services of CONSULTANT. CITY has relied upon the skills, knowledge, experience and training of CONSULTANT and the CONSULTANT's firm, associates and employees as an inducement to enter into this Agreement. CONSULTANT shall not assign or subcontract this Agreement without CITY's express written consent. Further, CONSULTANT shall not assign any monies due or to become due under this Agreement without CITY's prior written consent.
- 17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
- 18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 19. Governing Law. This Agreement shall be deemed to have been executed in the County of San Mateo, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State

of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.

20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
22. Liability of CITY. Except as provided in Exhibit B, Services to be Provided by CONSULTANT and Exhibit D, 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 either party be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

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

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

23. Confidentiality. Any information, whether proprietary or not, made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement for CITY, will be kept confidential and not be disclosed to any other person. CONSULTANT 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 this Agreement. The restrictions on the use and disclosure of the confidential information shall not apply to information which (a) was known to the CONSULTANT before receipt of same from the CITY; or (b) becomes publicly known other than through the CONSULTANT; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order, but only to the extent required to comply with the said requirements of the government authority or judicial order.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to CITY hereunder.

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. Entire Agreement. This Agreement, including Exhibits A, B, C, D and E, 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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk Secretary

APPROVED AS TO FORM

Dated: _____

Benjamin Stock,
City Attorney Legal Counsel

CONSULTANT

Dated: _____

Will Burns, Vice President

EXHIBIT A

SAMPLE TASK ORDER

TASK ORDER NO. [INSERT TASK No.]

TO MASTER ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES AGREEMENT

This Task Order No. _____ ("Task Order") is made and entered into by and between the City of Foster City ("City") and [_____] ("Consultant").

RECITAL

A. City and Consultant entered into an agreement entitled [_____] ("Agreement"), by which the Consultant agreed to perform _____ services in accordance with Task Orders issued by the City.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. INCORPORATION BY REFERENCE. This Task Order hereby incorporates by reference all items and conditions set forth in the Agreement.
2. SCOPE OF TASK ORDER. Consultant shall perform the services described in Exhibit "B," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
3. PAYMENT. For services performed by Consultant in accordance with this Task Order, City will compensate Consultant in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$_____ (including all hourly billings as well as reimbursable costs).
4. SIGNATURES. The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

City of Foster City

Consultant

By: _____

By: [_____]

Title: **City Manager if < \$50,000**
Mayor/President if > \$50,000

Title: [_____]

Date: _____

Date: _____

Tax ID No.: _____

EXHIBIT B

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS, AND SCHEDULE, FOR ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

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

SERVICES TO BE PROVIDED

This is an Exhibit attached to and made a part of and incorporated by reference to the Agreement dated [September 18, 2023](#), by and between [_____], hereinafter referred to as "CONSULTANT" and the City of Foster City, hereinafter referred to as "CITY" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

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

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 \(IF APPLICABLE\)](#)

END OF EXHIBIT B

EXHIBIT C
FEE SCHEDULE

EXHIBIT D INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified 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 19 day of September, 2023, by and between David J. Powers and Associates, Inc. ,hereinafter referred to as "**Consultant**", and City of Foster City, hereinafter referred to as "**City**", providing for professional services.

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

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

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

Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

Workers' Compensation Insurance

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

Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) aggregate.

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

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall

immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

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

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

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

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

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

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

ATTACHED

1. Insurance Coverage Form

EXHIBIT 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 (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:		
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:** _____

END OF EXHIBIT D

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

This COVID-19 Amendment/Attachment amends the Agreement between the City of Foster City hereinafter called "CITY" and David J. Powers & Associates ("Consultant") dated 19 day of September, 2023.

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 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 costs attributable to COVID-19, and which are not included in the schedule of values, only if the cost is an Unknown COVID-19 Cost.

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. A COVID-19 outbreak is defined as three or more employee COVID-19 cases within an exposed group visited the workplace during their infectious period at any time during a 14-day period, unless a CDPH regulation or order defines outbreak using a different number of COVID-19 cases and/or a different time period. 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.

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

CONSULTANT:

CITY:

Signature

Signature

Will Burns, Vice President

Jon Froomin, Mayor

END OF EXHIBIT E

MASTER PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

This Agreement is made and entered into as of the 19 day of September, 2023 by and between the City of Foster City hereinafter called "CITY" and Kimley-Horn hereinafter called "CONSULTANT".

RECITALS

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

WHEREAS, CITY desires to retain CONSULTANT to provide professional environmental review and consulting services on development applications and long-range projects and related services;

WHEREAS, It is anticipated that, as a need arises for CONSULTANT to provide services, CITY will issue Task Orders to CONSULTANT (in a form substantially similar to that set forth in Exhibit "A," attached hereto and incorporated by reference which more particularly describes the scope of services to be performed);

WHEREAS, In reliance upon CONSULTANT's documentation of its qualifications, the CITY finds that CONSULTANT has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

WHEREAS, That CONSULTANT is specially trained, experienced and competent to perform and has agreed to provide such services;

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 each Task Order and Exhibit "B," Scope of Services, 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 B and each Task Order is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto, for changes in the Scope of Services or otherwise, 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 B and in each Task Order.

1. 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. Initial contract period shall be from September 19, 2023 and expires on September 19, 2028. Renewal shall be by mutual consent of CONSULTANT AND CITY as approved by the City Council Board. CONSULTANT shall not commence Services or work until a Notice to Proceed is issued by CITY.

(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, upon thirty (30) days' notice in writing, 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.

2. 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 "C" 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 total

amount identified in all Task Orders issued by the City against this agreement. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. No overhead or other expenses can be recovered for interim periods when the Consultant's services are not utilized by the City. Invoices for amounts in excess of each Task Order 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 CITY's Manager (for contracts less than \$50,000) or CITY Board (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. CITY agreed to pay CONSULTANT within 30 days of invoice receipt. 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 B and each Task Order.

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 B and each Task Order, 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.

CITY will not withhold any Federal or State income taxes or Social Security tax from any payments made by CITY to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONSULTANT. CITY has no responsibility or liability for payment of CONSULTANT's taxes or assessments.

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.

4. Performance of Services. No work shall be performed under this Agreement except to the extent the CONSULTANT receives a Task Order from the CITY's Authorized Representative. The CITY will request proposals from the CONSULTANT for each Task Order when services are needed. CONSULTANT shall respond with a scope and cost proposal in a reasonably prompt manner, no later than fifteen (15) calendar days after CITY's request. Such proposal 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. Upon the approval of the terms of the proposal by CITY's Manager (for contracts less than \$50,000) or CITY Council (for contracts \$50,000 or more) by motion duly made and carried, the CITY's Authorized Representative shall issue a Task Order against this agreement. CONSULTANT shall commence performance and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.

5. Records and Audit. 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.

CONSULTANT shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

Any authorized representative of CITY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by CONSULTANT. Further, CITY has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement. Notwithstanding the foregoing, the CITY's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit B 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 B.

CONSULTANT represents that it possesses all necessary training, licenses, certificates, and permits required by the federal, state, CITY or municipal governments to perform the Services. Such licenses, certificates and permits must be valid at the time CONSULTANT enters into this Agreement and must be maintained during the term of this Agreement in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to CITY.

CONSULTANT represents 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.

CITY shall furnish all information and technical data in CITY's possession and not subject to the attorney-client privilege or some other privilege under its possession and control and reasonably required for CONSULTANT's proper performance of the Services prior to CONSULTANT's commencement of the Services and at such other times as CITY and CONSULTANT mutually agree. CONSULTANT is entitled to reasonably rely upon the accuracy and completeness of information and data provided by CITY.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, collectively ("documents"), as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit B; 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 in accordance with a mutually agreed upon schedule.

11. Indemnity.

(a) To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CONSULTANT shall defend, indemnify, and hold harmless City of Foster City, its officers, directors, officials, agents, employees, and volunteers (collectively, “**Indemnitees**”) from and against any and all claims, suits, expenses, liability, cause of action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively “**Liabilities**”), 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. CONSULTANT’s obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

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

(b) Intellectual Property Indemnification. CONSULTANT represents that professional services provided by CONSULTANT pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. CONSULTANT shall defend, indemnify and hold harmless CITY from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to CONSULTANT’s services provided to CITY under this Agreement.

(c) CONSULTANT shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of CITY and the Indemnitees in the exact form and substance as those contained in this Agreement.

(d) CITY acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the any Project site is outside of CONSULTANT's responsibilities and is not included in the scope of Services CONSULTANT is to perform nor included in CONSULTANT's insurance. CITY shall hire hazardous materials consultant if the Project requires the testing or remediation of hazardous substances. CONSULTANT shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. CONSULTANT shall, however, be responsible for the coordination of CONSULTANT's services and work with the work of CITY's hazardous materials consultants.

(e) Duty to Cooperate. CONSULTANT shall notify CITY immediately in writing of any claim or damage related to activities or services performed under this Agreement. CONSULTANT shall cooperate with CITY in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Any additional services or work under this paragraph shall be compensated as Additional Services.

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

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

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

performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.

20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
22. Liability of CITY. Except as provided in Exhibit B, Services to be Provided by CONSULTANT and Exhibit D, 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 either party be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

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

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

23. Confidentiality. Any information, whether proprietary or not, made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement for CITY, will be kept confidential and not be disclosed to any other person. CONSULTANT 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 this Agreement. The restrictions on the use and disclosure of the confidential information shall not apply to information which (a) was known to the CONSULTANT before receipt of same from the CITY; or (b) becomes publicly known other than through the CONSULTANT; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order, but only to the extent required to comply with the said requirements of the government authority or judicial order.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to CITY hereunder.

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. Entire Agreement. This Agreement, including Exhibits A, B, C, D and E, 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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk Secretary

APPROVED AS TO FORM

Dated: _____

Benjamin Stock,
City Attorney Legal Counsel

CONSULTANT

Dated: _____

Adam Dankberg
Kimley-Horn and Associates, Inc.

EXHIBIT A

SAMPLE TASK ORDER
TASK ORDER NO. [INSERT TASK No.]
TO MASTER ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES
AGREEMENT

This Task Order No. _____ ("Task Order") is made and entered into by and between the City of Foster City ("City") and [_____] ("Consultant").

RECITAL

A. City and Consultant entered into an agreement entitled [_____] ("Agreement"), by which the Consultant agreed to perform _____ services in accordance with Task Orders issued by the City.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. INCORPORATION BY REFERENCE. This Task Order hereby incorporates by reference all items and conditions set forth in the Agreement.
2. SCOPE OF TASK ORDER. Consultant shall perform the services described in Exhibit "B," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
3. PAYMENT. For services performed by Consultant in accordance with this Task Order, City will compensate Consultant in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$ _____ (including all hourly billings as well as reimbursable costs).
4. SIGNATURES. The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

City of Foster City

Consultant

By: _____

By: [_____]

Title: **City Manager if < \$50,000**
Mayor/President if > \$50,000

Title: [_____]

Date: _____

Date: _____

Tax ID No.: _____

EXHIBIT B

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS, AND SCHEDULE, FOR ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

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

SERVICES TO BE PROVIDED

This is an Exhibit attached to and made a part of and incorporated by reference to the Agreement dated [September 18, 2023](#), by and between [_____], hereinafter referred to as "CONSULTANT" and the City of Foster City, hereinafter referred to as "CITY" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

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

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 \(IF APPLICABLE\)](#)

END OF EXHIBIT B

EXHIBIT C
FEE SCHEDULE

EXHIBIT D INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified 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 19 day of September, 2023, by and between Kimley-Horn , hereinafter referred to as "**Consultant**", and City of Foster City, hereinafter referred to as "**City**", providing for professional services.

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

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

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

Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

Workers' Compensation Insurance

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

Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) 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 of Foster City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise

indicated herein. Each insurance policy supplied by consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

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

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

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

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

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

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

ATTACHED

1. Insurance Coverage Form

EXHIBIT 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 (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:		
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:** _____

END OF EXHIBIT D

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

This COVID-19 Amendment/Attachment amends the Agreement between the City of Foster City hereinafter called "CITY" and Kimley-Horn ("Consultant") dated 19 day of September, 2023.

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 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 costs attributable to COVID-19, and which are not included in the schedule of values, only if the cost is an Unknown COVID-19 Cost.

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.

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

CONSULTANT:

CITY:

Signature

Signature

Adam Dankberg
Kimley-Horn and Associates, Inc.

Jon Froomin, Mayor

END OF EXHIBIT E

MASTER PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

This Agreement is made and entered into as of the 19 day of September, 2023 by and between the City of Foster City hereinafter called "CITY" and LSA hereinafter called "CONSULTANT".

RECITALS

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

WHEREAS, CITY desires to retain CONSULTANT to provide professional environmental review and consulting services on development applications and long-range projects and related services;

WHEREAS, It is anticipated that, as a need arises for CONSULTANT to provide services, CITY will issue Task Orders to CONSULTANT (in a form substantially similar to that set forth in Exhibit "A," attached hereto and incorporated by reference which more particularly describes the scope of services to be performed);

WHEREAS, In reliance upon CONSULTANT's documentation of its qualifications, the CITY finds that CONSULTANT has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

WHEREAS, That CONSULTANT is specially trained, experienced and competent to perform and has agreed to provide such services;

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 each Task Order and Exhibit "B," Scope of Services, 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 B and each Task Order is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto, for changes in the Scope of Services or otherwise, 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 B and in each Task Order.

1. 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. Initial contract period shall be from September 19, 2023 and expires on September 19, 2028. Renewal shall be by mutual consent of CONSULTANT AND CITY as approved by the City Council Board. CONSULTANT shall not commence Services or work until a Notice to Proceed is issued by CITY.

(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, upon thirty (30) days' notice in writing, 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.

2. 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 "C" 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 total

amount identified in all Task Orders issued by the City against this agreement. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. No overhead or other expenses can be recovered for interim periods when the Consultant's services are not utilized by the City. Invoices for amounts in excess of each Task Order 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 CITY's Manager (for contracts less than \$50,000) or CITY Board (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. CITY agreed to pay CONSULTANT within 30 days of invoice receipt. 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 B and each Task Order.

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 B and each Task Order, 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.

CITY will not withhold any Federal or State income taxes or Social Security tax from any payments made by CITY to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONSULTANT. CITY has no responsibility or liability for payment of CONSULTANT's taxes or assessments.

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.

4. Performance of Services. No work shall be performed under this Agreement except to the extent the CONSULTANT receives a Task Order from the CITY's Authorized Representative. The CITY will request proposals from the CONSULTANT for each Task Order when services are needed. CONSULTANT shall respond with a scope and cost proposal in a reasonably prompt manner, no later than fifteen (15) calendar days after CITY's request. Such proposal 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. Upon the approval of the terms of the proposal by CITY's Manager (for contracts less than \$50,000) or CITY Council (for contracts \$50,000 or more) by motion duly made and carried, the CITY's Authorized Representative shall issue a Task Order against this agreement. CONSULTANT shall commence performance and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.

5. Records and Audit. 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.

CONSULTANT shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

Any authorized representative of CITY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by CONSULTANT. Further, CITY has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement. Notwithstanding the foregoing, the CITY's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

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

7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit B 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 B.

CONSULTANT represents that it possesses all necessary training, licenses, certificates, and permits required by the federal, state, CITY or municipal governments to perform the Services. Such licenses, certificates and permits must be valid at the time CONSULTANT enters into this Agreement and must be maintained during the term of this Agreement in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to CITY.

CONSULTANT represents 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.

CITY shall furnish all information and technical data in CITY's possession and not subject to the attorney-client privilege or some other privilege under its possession and control and reasonably required for CONSULTANT's proper performance of the Services prior to CONSULTANT's commencement of the Services and at such other times as CITY and CONSULTANT mutually agree. CONSULTANT is entitled to reasonably rely upon the accuracy and completeness of information and data provided by CITY.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, collectively ("documents"), as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit B; 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 in accordance with a mutually agreed upon schedule.

11. Indemnity.

(a) To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CONSULTANT shall defend, indemnify, and hold harmless City of Foster City, its officers, directors, officials, agents, employees, and volunteers (collectively, “**Indemnitees**”) from and against any and all claims, suits, expenses, liability, cause of action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively “**Liabilities**”), 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. CONSULTANT’s obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

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

(b) Intellectual Property Indemnification. CONSULTANT represents that professional services provided by CONSULTANT pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. CONSULTANT shall defend, indemnify and hold harmless CITY from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to CONSULTANT’s services provided to CITY under this Agreement.

(c) CONSULTANT shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of CITY and the Indemnitees in the exact form and substance as those contained in this Agreement.

(d) CITY acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the any Project site is outside of CONSULTANT's responsibilities and is not included in the scope of Services CONSULTANT is to perform nor included in CONSULTANT's insurance. CITY shall hire hazardous materials consultant if the Project requires the testing or remediation of hazardous substances. CONSULTANT shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. CONSULTANT shall, however, be responsible for the coordination of CONSULTANT's services and work with the work of CITY's hazardous materials consultants.

(e) Duty to Cooperate. CONSULTANT shall notify CITY immediately in writing of any claim or damage related to activities or services performed under this Agreement. CONSULTANT shall cooperate with CITY in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Any additional services or work under this paragraph shall be compensated as Additional Services.

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

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

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

performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.

20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
22. Liability of CITY. Except as provided in Exhibit B, Services to be Provided by CONSULTANT and Exhibit D, 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 either party be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

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

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

23. Confidentiality. Any information, whether proprietary or not, made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement for CITY, will be kept confidential and not be disclosed to any other person. CONSULTANT 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 this Agreement. The restrictions on the use and disclosure of the confidential information shall not apply to information which (a) was known to the CONSULTANT before receipt of same from the CITY; or (b) becomes publicly known other than through the CONSULTANT; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order, but only to the extent required to comply with the said requirements of the government authority or judicial order.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to CITY hereunder.

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. Entire Agreement. This Agreement, including Exhibits A, B, C, D and E, 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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk Secretary

APPROVED AS TO FORM

Dated: _____

Benjamin Stock,
City Attorney Legal Counsel

CONSULTANT

Dated: _____

Anthony Petros, CEO

EXHIBIT A

SAMPLE TASK ORDER
TASK ORDER NO. [INSERT TASK No.]
TO MASTER ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES
AGREEMENT

This Task Order No. _____ ("Task Order") is made and entered into by and between the City of Foster City ("City") and [_____] ("Consultant").

RECITAL

A. City and Consultant entered into an agreement entitled [_____] ("Agreement"), by which the Consultant agreed to perform _____ services in accordance with Task Orders issued by the City.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. INCORPORATION BY REFERENCE. This Task Order hereby incorporates by reference all items and conditions set forth in the Agreement.
2. SCOPE OF TASK ORDER. Consultant shall perform the services described in Exhibit "B," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
3. PAYMENT. For services performed by Consultant in accordance with this Task Order, City will compensate Consultant in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$ _____ (including all hourly billings as well as reimbursable costs).
4. SIGNATURES. The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

City of Foster City

Consultant

By: _____

By: [_____]

Title: **City Manager if < \$50,000**
Mayor/President if > \$50,000

Title: [_____]

Date: _____

Date: _____

Tax ID No.: _____

EXHIBIT B

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS, AND SCHEDULE, FOR ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

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

SERVICES TO BE PROVIDED

This is an Exhibit attached to and made a part of and incorporated by reference to the Agreement dated [September 18, 2023](#), by and between [_____], hereinafter referred to as "CONSULTANT" and the City of Foster City, hereinafter referred to as "CITY" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

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

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 \(IF APPLICABLE\)](#)

END OF EXHIBIT B

EXHIBIT C
FEE SCHEDULE

EXHIBIT D INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified 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 19 day of September, 2023, by and between LSA, hereinafter referred to as "**Consultant**", and City of Foster City, hereinafter referred to as "**City**", providing for professional services.

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

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

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

Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

Workers' Compensation Insurance

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

Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) 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 of Foster City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise

indicated herein. Each insurance policy supplied by consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

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

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

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

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

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

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

ATTACHED

1. Insurance Coverage Form

EXHIBIT 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 (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:		
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:** _____

END OF EXHIBIT D

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

This COVID-19 Amendment/Attachment amends the Agreement between the City of Foster City hereinafter called "CITY" and LSA ("Consultant") dated 19 day of September, 2023.

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 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 costs attributable to COVID-19, and which are not included in the schedule of values, only if the cost is an Unknown COVID-19 Cost.

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.

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

CONSULTANT:

CITY:

Signature

Signature

Anthony Petros, CEO

Jon Froomin, Mayor

END OF EXHIBIT E

MASTER PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

This Agreement is made and entered into as of the 19 day of September, 2023 by and between the City of Foster City hereinafter called "CITY" and Dudek hereinafter called "CONSULTANT".

RECITALS

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

WHEREAS, CITY desires to retain CONSULTANT to provide professional environmental review and consulting services on development applications and long-range projects and related services;

WHEREAS, It is anticipated that, as a need arises for CONSULTANT to provide services, CITY will issue Task Orders to CONSULTANT (in a form substantially similar to that set forth in Exhibit "A," attached hereto and incorporated by reference which more particularly describes the scope of services to be performed);

WHEREAS, In reliance upon CONSULTANT's documentation of its qualifications, the CITY finds that CONSULTANT has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

WHEREAS, That CONSULTANT is specially trained, experienced and competent to perform and has agreed to provide such services;

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 each Task Order and Exhibit "B," Scope of Services, 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 B and each Task Order is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto, for changes in the Scope of Services or otherwise, 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 B and in each Task Order.

1. 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. Initial contract period shall be from September 19, 2023 and expires on September 19, 2028. Renewal shall be by mutual consent of CONSULTANT AND CITY as approved by the City Council Board. CONSULTANT shall not commence Services or work until a Notice to Proceed is issued by CITY.

(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, upon thirty (30) days' notice in writing, 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.

2. 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 "C" 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 total

amount identified in all Task Orders issued by the City against this agreement. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. No overhead or other expenses can be recovered for interim periods when the Consultant's services are not utilized by the City. Invoices for amounts in excess of each Task Order 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 CITY's Manager (for contracts less than \$50,000) or CITY Board (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. CITY agreed to pay CONSULTANT within 30 days of invoice receipt. 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 B and each Task Order.

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 B and each Task Order, 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.

CITY will not withhold any Federal or State income taxes or Social Security tax from any payments made by CITY to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONSULTANT. CITY has no responsibility or liability for payment of CONSULTANT's taxes or assessments.

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.

4. Performance of Services. No work shall be performed under this Agreement except to the extent the CONSULTANT receives a Task Order from the CITY's Authorized Representative. The CITY will request proposals from the CONSULTANT for each Task Order when services are needed. CONSULTANT shall respond with a scope and cost proposal in a reasonably prompt manner, no later than fifteen (15) calendar days after CITY's request. Such proposal 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. Upon the approval of the terms of the proposal by CITY's Manager (for contracts less than \$50,000) or CITY Council (for contracts \$50,000 or more) by motion duly made and carried, the CITY's Authorized Representative shall issue a Task Order against this agreement. CONSULTANT shall commence performance and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.
5. Records and Audit. 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.

CONSULTANT shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

Any authorized representative of CITY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by CONSULTANT. Further, CITY has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement. Notwithstanding the foregoing, the CITY's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit B 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 B.

CONSULTANT represents that it possesses all necessary training, licenses, certificates, and permits required by the federal, state, CITY or municipal governments to perform the Services. Such licenses, certificates and permits must be valid at the time CONSULTANT enters into this Agreement and must be maintained during the term of this Agreement in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to CITY.

CONSULTANT represents 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.

CITY shall furnish all information and technical data in CITY's possession and not subject to the attorney-client privilege or some other privilege, under its possession and control and reasonably required for CONSULTANT's proper performance of the Services prior to CONSULTANT's commencement of the Services and at such other times as CITY and CONSULTANT mutually agree. CONSULTANT is entitled to reasonably rely upon the accuracy and completeness of information and data provided by CITY.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, collectively ("documents"), as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit B; 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 in accordance with a mutually agreed upon schedule.

11. Indemnity.

(a) To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CONSULTANT shall defend, indemnify, and hold harmless City of Foster City, its officers, directors, officials, agents, employees, and volunteers (collectively, “**Indemnitees**”) from and against any and all claims, suits, expenses, liability, cause of action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively “**Liabilities**”), 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. CONSULTANT’s obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

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

(b) Intellectual Property Indemnification. CONSULTANT represents that professional services provided by CONSULTANT pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. CONSULTANT shall defend, indemnify and hold harmless CITY from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to CONSULTANT’s services provided to CITY under this Agreement.

(c) CONSULTANT shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of CITY and the Indemnitees in the exact form and substance as those contained in this Agreement.

(d) CITY acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the any Project site is outside of CONSULTANT's responsibilities and is not included in the scope of Services CONSULTANT is to perform nor included in CONSULTANT's insurance. CITY shall hire hazardous materials consultant if the Project requires the testing or remediation of hazardous substances. CONSULTANT shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. CONSULTANT shall, however, be responsible for the coordination of CONSULTANT's services and work with the work of CITY's hazardous materials consultants.

(e) Duty to Cooperate. CONSULTANT shall notify CITY immediately in writing of any claim or damage related to activities or services performed under this Agreement. CONSULTANT shall cooperate with CITY in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Any additional services or work under this paragraph shall be compensated as Additional Services.

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

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

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

14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.
15. Notice. All notices required by this Agreement shall be given to the CITY and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:
- CITY: City of Foster City
610 Foster City Boulevard
Foster City, CA 94404-2299
Attention: Thai-Chau Le
- CONSULTANT: Dudek
605 3rd Street
Encinitas, CA 92024
Attention: Katherine Waugh
16. Assignment. This is an agreement for the personal services of CONSULTANT. CITY has relied upon the skills, knowledge, experience and training of CONSULTANT and the CONSULTANT's firm, associates and employees as an inducement to enter into this Agreement. CONSULTANT shall not assign or subcontract this Agreement without CITY's express written consent. Further, CONSULTANT shall not assign any monies due or to become due under this Agreement without CITY's prior written consent.
17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

19. Governing Law. This Agreement shall be deemed to have been executed in the County of San Mateo, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
22. Liability of CITY. Except as provided in Exhibit B, Services to be Provided by CONSULTANT and Exhibit D, 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 either party be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

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

whether such damage be to the CONSULTANT, its employees, CITY employees or third parties, or to property belonging to any of the above.

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

23. Confidentiality. Any information, whether proprietary or not, made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement for CITY, will be kept confidential and not be disclosed to any other person. CONSULTANT 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 this Agreement. The restrictions on the use and disclosure of the confidential information shall not apply to information which (a) was known to the CONSULTANT before receipt of same from the CITY; or (b) becomes publicly known other than through the CONSULTANT; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order, but only to the extent required to comply with the said requirements of the government authority or judicial order.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to CITY hereunder.

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. Entire Agreement. This Agreement, including Exhibits A, B, C, D and E, 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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk Secretary

APPROVED AS TO FORM

Dated: _____

Benjamin Stock,
City Attorney Legal Counsel

CONSULTANT

Dated: _____

Joseph Monaco, CEO

EXHIBIT A

SAMPLE TASK ORDER

TASK ORDER NO. [INSERT TASK No.]

TO MASTER ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES AGREEMENT

This Task Order No. _____ ("Task Order") is made and entered into by and between the City of Foster City ("City") and [_____] ("Consultant").

RECITAL

A. City and Consultant entered into an agreement entitled [_____] ("Agreement"), by which the Consultant agreed to perform _____ services in accordance with Task Orders issued by the City.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **INCORPORATION BY REFERENCE.** This Task Order hereby incorporates by reference all items and conditions set forth in the Agreement.
2. **SCOPE OF TASK ORDER.** Consultant shall perform the services described in Exhibit "B," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
3. **PAYMENT.** For services performed by Consultant in accordance with this Task Order, City will compensate Consultant in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$_____ (including all hourly billings as well as reimbursable costs).
4. **SIGNATURES.** The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

City of Foster City

Consultant

By: _____

By: [_____]

Title: **City Manager if < \$50,000**
Mayor/President if > \$50,000

Title: [_____]

Date: _____

Date: _____

Tax ID No.: _____

EXHIBIT B

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS, AND SCHEDULE, FOR ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

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

SERVICES TO BE PROVIDED

This is an Exhibit attached to and made a part of and incorporated by reference to the Agreement dated [September 18, 2023](#), by and between [_____], hereinafter referred to as "CONSULTANT" and the City of Foster City, hereinafter referred to as "CITY" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

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

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 \(IF APPLICABLE\)](#)

END OF EXHIBIT B

EXHIBIT C
FEE SCHEDULE

EXHIBIT D INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified 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 19 day of September, 2023, by and between Dudek hereinafter referred to as "**Consultant**", and City of Foster City, hereinafter referred to as "**City**", providing for professional services.

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

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

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

Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

Workers' Compensation Insurance

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

Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) 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 of Foster City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise

indicated herein. Each insurance policy supplied by consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

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

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

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

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

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

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

ATTACHED

1. Insurance Coverage Form

EXHIBIT 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 (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:		
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:** _____

END OF EXHIBIT D

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

This COVID-19 Amendment/Attachment amends the Agreement between the City of Foster City hereinafter called "CITY" and Dudek ("Consultant") dated 19 day of September, 2023.

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 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 costs attributable to COVID-19, and which are not included in the schedule of values, only if the cost is an Unknown COVID-19 Cost.

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.

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

CONSULTANT:

CITY:

Signature

Signature

Joseph Monaco, CEO

Jon Froomin, Mayor

END OF EXHIBIT E

MASTER PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

This Agreement is made and entered into as of the 19 day of September, 2023 by and between the City of Foster City hereinafter called "CITY" and PlaceWorks hereinafter called "CONSULTANT".

RECITALS

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

WHEREAS, CITY desires to retain CONSULTANT to provide professional environmental review and consulting services on development applications and long-range projects and related services;

WHEREAS, It is anticipated that, as a need arises for CONSULTANT to provide services, CITY will issue Task Orders to CONSULTANT (in a form substantially similar to that set forth in Exhibit "A," attached hereto and incorporated by reference which more particularly describes the scope of services to be performed);

WHEREAS, In reliance upon CONSULTANT's documentation of its qualifications, the CITY finds that CONSULTANT has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

WHEREAS, That CONSULTANT is specially trained, experienced and competent to perform and has agreed to provide such services;

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 each Task Order and Exhibit "B," Scope of Services, 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 B and each Task Order is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto, for changes in the Scope of Services or otherwise, 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 B and in each Task Order.

1. 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. Initial contract period shall be from September 19, 2023 and expires on September 19, 2028. Renewal shall be by mutual consent of CONSULTANT AND CITY as approved by the City Council Board. CONSULTANT shall not commence Services or work until a Notice to Proceed is issued by CITY.

(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, upon thirty (30) days' notice in writing, 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.

2. 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 "C" 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 total

amount identified in all Task Orders issued by the City against this agreement. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. No overhead or other expenses can be recovered for interim periods when the Consultant's services are not utilized by the City. Invoices for amounts in excess of each Task Order 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 CITY's Manager (for contracts less than \$50,000) or CITY Board (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. CITY agreed to pay CONSULTANT within 30 days of invoice receipt. 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 B and each Task Order.

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 B and each Task Order, 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.

CITY will not withhold any Federal or State income taxes or Social Security tax from any payments made by CITY to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONSULTANT. CITY has no responsibility or liability for payment of CONSULTANT's taxes or assessments.

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.

4. Performance of Services. No work shall be performed under this Agreement except to the extent the CONSULTANT receives a Task Order from the CITY's Authorized Representative. The CITY will request proposals from the CONSULTANT for each Task Order when services are needed. CONSULTANT shall respond with a scope and cost proposal in a reasonably prompt manner, no later than fifteen (15) calendar days after CITY's request. Such proposal 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. Upon the approval of the terms of the proposal by CITY's Manager (for contracts less than \$50,000) or CITY Council (for contracts \$50,000 or more) by motion duly made and carried, the CITY's Authorized Representative shall issue a Task Order against this agreement. CONSULTANT shall commence performance and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.

5. Records and Audit. 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.

CONSULTANT shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

Any authorized representative of CITY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by CONSULTANT. Further, CITY has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement. Notwithstanding the foregoing, the CITY's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit B 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 B.

CONSULTANT represents that it possesses all necessary training, licenses, certificates, and permits required by the federal, state, CITY or municipal governments to perform the Services. Such licenses, certificates and permits must be valid at the time CONSULTANT enters into this Agreement and must be maintained during the term of this Agreement in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to CITY.

CONSULTANT represents 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.

CITY shall furnish all information and technical data in CITY's possession and not subject to the attorney-client privilege or some other privilege, under its possession and control and reasonably required for CONSULTANT's proper performance of the Services prior to CONSULTANT's commencement of the Services and at such other times as CITY and CONSULTANT mutually agree. CONSULTANT is entitled to reasonably rely upon the accuracy and completeness of information and data provided by CITY.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, collectively ("documents"), as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit B; 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 in accordance with a mutually agreed upon schedule.

11. Indemnity.

(a) To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CONSULTANT shall defend, indemnify, and hold harmless City of Foster City, its officers, directors, officials, agents, employees, and volunteers (collectively, “**Indemnitees**”) from and against any and all claims, suits, expenses, liability, cause of action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively “**Liabilities**”), 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. CONSULTANT’s obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

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

(b) Intellectual Property Indemnification. CONSULTANT represents that professional services provided by CONSULTANT pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. CONSULTANT shall defend, indemnify and hold harmless CITY from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to CONSULTANT’s services provided to CITY under this Agreement.

(c) CONSULTANT shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of CITY and the Indemnitees in the exact form and substance as those contained in this Agreement.

(d) CITY acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the any Project site is outside of CONSULTANT's responsibilities and is not included in the scope of Services CONSULTANT is to perform nor included in CONSULTANT's insurance. CITY shall hire hazardous materials consultant if the Project requires the testing or remediation of hazardous substances. CONSULTANT shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. CONSULTANT shall, however, be responsible for the coordination of CONSULTANT's services and work with the work of CITY's hazardous materials consultants.

(e) Duty to Cooperate. CONSULTANT shall notify CITY immediately in writing of any claim or damage related to activities or services performed under this Agreement. CONSULTANT shall cooperate with CITY in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Any additional services or work under this paragraph shall be compensated as Additional Services.

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

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

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

14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.
15. Notice. All notices required by this Agreement shall be given to the CITY and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:
- CITY: City of Foster City
610 Foster City Boulevard
Foster City, CA 94404-2299
Attention: Thai-Chau Le
- CONSULTANT: PlaceWorks, Inc._
3 MacArthur Place Suite 1100
Santa Ana, CA 92707
Attn: Kara L Kosel
16. Assignment. This is an agreement for the personal services of CONSULTANT. CITY has relied upon the skills, knowledge, experience and training of CONSULTANT and the CONSULTANT's firm, associates and employees as an inducement to enter into this Agreement. CONSULTANT shall not assign or subcontract this Agreement without CITY's express written consent. Further, CONSULTANT shall not assign any monies due or to become due under this Agreement without CITY's prior written consent.
17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

19. Governing Law. This Agreement shall be deemed to have been executed in the County of San Mateo, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
22. Liability of CITY. Except as provided in Exhibit B, Services to be Provided by CONSULTANT and Exhibit D, 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 either party be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

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

whether such damage be to the CONSULTANT, its employees, CITY employees or third parties, or to property belonging to any of the above.

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

23. Confidentiality. Any information, whether proprietary or not, made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement for CITY, will be kept confidential and not be disclosed to any other person. CONSULTANT 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 this Agreement. The restrictions on the use and disclosure of the confidential information shall not apply to information which (a) was known to the CONSULTANT before receipt of same from the CITY; or (b) becomes publicly known other than through the CONSULTANT; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order, but only to the extent required to comply with the said requirements of the government authority or judicial order.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to CITY hereunder.

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. Entire Agreement. This Agreement, including Exhibits A, B, C, D and E, 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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk Secretary

APPROVED AS TO FORM

Dated: _____

Benjamin Stock,
City Attorney Legal Counsel

CONSULTANT

Dated: _____

Randal W. Jackson, President

EXHIBIT A

SAMPLE TASK ORDER

TASK ORDER NO. [INSERT TASK No.]

TO MASTER ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES AGREEMENT

This Task Order No. _____ ("Task Order") is made and entered into by and between the City of Foster City ("City") and [_____] ("Consultant").

RECITAL

A. City and Consultant entered into an agreement entitled [_____] ("Agreement"), by which the Consultant agreed to perform _____ services in accordance with Task Orders issued by the City.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **INCORPORATION BY REFERENCE.** This Task Order hereby incorporates by reference all items and conditions set forth in the Agreement.
2. **SCOPE OF TASK ORDER.** Consultant shall perform the services described in Exhibit "B," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
3. **PAYMENT.** For services performed by Consultant in accordance with this Task Order, City will compensate Consultant in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$_____ (including all hourly billings as well as reimbursable costs).
4. **SIGNATURES.** The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

City of Foster City

Consultant

By: _____

By: [_____]

Title: **City Manager if < \$50,000**
Mayor/President if > \$50,000

Title: [_____]

Date: _____

Date: _____

Tax ID No.: _____

EXHIBIT B

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS, AND SCHEDULE, FOR ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

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

SERVICES TO BE PROVIDED

This is an Exhibit attached to and made a part of and incorporated by reference to the Agreement dated [September 18, 2023](#), by and between [_____], hereinafter referred to as "CONSULTANT" and the City of Foster City, hereinafter referred to as "CITY" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

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

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 \(IF APPLICABLE\)](#)

END OF EXHIBIT B

EXHIBIT C
FEE SCHEDULE

EXHIBIT D INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified 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 19 day of September, 2023, by and between PlaceWorks hereinafter referred to as "**Consultant**", and City of Foster City, hereinafter referred to as "**City**", providing for professional services.

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

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

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

Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

Workers' Compensation Insurance

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

Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) 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 of Foster City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise

indicated herein. Each insurance policy supplied by consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

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

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

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

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

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

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

ATTACHED

1. Insurance Coverage Form

EXHIBIT 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 (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:		
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:** _____

END OF EXHIBIT D

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

This COVID-19 Amendment/Attachment amends the Agreement between the City of Foster City hereinafter called "CITY" and PlaceWorks ("Consultant") dated 19 day of September, 2023.

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 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 costs attributable to COVID-19, and which are not included in the schedule of values, only if the cost is an Unknown COVID-19 Cost.

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.

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

CONSULTANT:

CITY:

Signature

Signature

Randal W. Jackson, President

Jon Froomin, Mayor

END OF EXHIBIT E

MASTER PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

This Agreement is made and entered into as of the 19 day of September, 2023 by and between the City of Foster City hereinafter called "CITY" and First Carbon Solutions, FCS International, Inc. hereinafter called "CONSULTANT".

RECITALS

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

WHEREAS, CITY desires to retain CONSULTANT to provide professional environmental review and consulting services on development applications and long-range projects and related services;

WHEREAS, It is anticipated that, as a need arises for CONSULTANT to provide services, CITY will issue Task Orders to CONSULTANT (in a form substantially similar to that set forth in Exhibit "A," attached hereto and incorporated by reference which more particularly describes the scope of services to be performed);

WHEREAS, In reliance upon CONSULTANT's documentation of its qualifications, the CITY finds that CONSULTANT has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

WHEREAS, That CONSULTANT is specially trained, experienced and competent to perform and has agreed to provide such services;

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 each Task Order and Exhibit "B," Scope of Services, 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 B and each Task Order is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto, for changes in the Scope of Services or otherwise, 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 B and in each Task Order.

1. 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. Initial contract period shall be from September 19, 2023 and expires on September 19, 2028. Renewal shall be by mutual consent of CONSULTANT AND CITY as approved by the City Council Board. CONSULTANT shall not commence Services or work until a Notice to Proceed is issued by CITY.

(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, upon thirty (30) days' notice in writing, 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.

2. 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 "C" 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 total

amount identified in all Task Orders issued by the City against this agreement. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. No overhead or other expenses can be recovered for interim periods when the Consultant's services are not utilized by the City. Invoices for amounts in excess of each Task Order 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 CITY's Manager (for contracts less than \$50,000) or CITY Board (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. CITY agreed to pay CONSULTANT within 30 days of invoice receipt. 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 B and each Task Order.

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 B and each Task Order, 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.

CITY will not withhold any Federal or State income taxes or Social Security tax from any payments made by CITY to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONSULTANT. CITY has no responsibility or liability for payment of CONSULTANT's taxes or assessments.

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.

4. Performance of Services. No work shall be performed under this Agreement except to the extent the CONSULTANT receives a Task Order from the CITY's Authorized Representative. The CITY will request proposals from the CONSULTANT for each Task Order when services are needed. CONSULTANT shall respond with a scope and cost proposal in a reasonably prompt manner, no later than fifteen (15) calendar days after CITY's request. Such proposal 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. Upon the approval of the terms of the proposal by CITY's Manager (for contracts less than \$50,000) or CITY Council (for contracts \$50,000 or more) by motion duly made and carried, the CITY's Authorized Representative shall issue a Task Order against this agreement. CONSULTANT shall commence performance and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.

5. Records and Audit. 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.

CONSULTANT shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

Any authorized representative of CITY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by CONSULTANT. Further, CITY has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement. Notwithstanding the foregoing, the CITY's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

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

7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit B 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 B.

CONSULTANT represents that it possesses all necessary training, licenses, certificates, and permits required by the federal, state, CITY or municipal governments to perform the Services. Such licenses, certificates and permits must be valid at the time CONSULTANT enters into this Agreement and must be maintained during the term of this Agreement in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to CITY.

CONSULTANT represents 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.

CITY shall furnish all information and technical data in CITY's possession and not subject to the attorney-client privilege or some other privilege, under its possession and control and reasonably required for CONSULTANT's proper performance of the Services prior to CONSULTANT's commencement of the Services and at such other times as CITY and CONSULTANT mutually agree. CONSULTANT is entitled to reasonably rely upon the accuracy and completeness of information and data provided by CITY.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, collectively ("documents"), as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit B; 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 in accordance with a mutually agreed upon schedule.

11. Indemnity.

(a) To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CONSULTANT shall defend, indemnify, and hold harmless City of Foster City, its officers, directors, officials, agents, employees, and volunteers (collectively, “**Indemnitees**”) from and against any and all claims, suits, expenses, liability, cause of action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively “**Liabilities**”), 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. CONSULTANT’s obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

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

(b) Intellectual Property Indemnification. CONSULTANT represents that professional services provided by CONSULTANT pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. CONSULTANT shall defend, indemnify and hold harmless CITY from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to CONSULTANT’s services provided to CITY under this Agreement.

(c) CONSULTANT shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of CITY and the Indemnitees in the exact form and substance as those contained in this Agreement.

(d) CITY acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the any Project site is outside of CONSULTANT's responsibilities and is not included in the scope of Services CONSULTANT is to perform nor included in CONSULTANT's insurance. CITY shall hire hazardous materials consultant if the Project requires the testing or remediation of hazardous substances. CONSULTANT shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. CONSULTANT shall, however, be responsible for the coordination of CONSULTANT's services and work with the work of CITY's hazardous materials consultants.

(e) Duty to Cooperate. CONSULTANT shall notify CITY immediately in writing of any claim or damage related to activities or services performed under this Agreement. CONSULTANT shall cooperate with CITY in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Any additional services or work under this paragraph shall be compensated as Additional Services.

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

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

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

14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.
15. Notice. All notices required by this Agreement shall be given to the CITY and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:
- CITY: City of Foster City
610 Foster City Boulevard
Foster City, CA 94404-2299
Attention: Thai-Chau Le
- CONSULTANT: FCS International, Inc.
DBA FirstCarbon Solutions
2999 Oak Road, Suite 250
Walnut Creek, CA 94597
Attention: Mary Bean
16. Assignment. This is an agreement for the personal services of CONSULTANT. CITY has relied upon the skills, knowledge, experience and training of CONSULTANT and the CONSULTANT's firm, associates and employees as an inducement to enter into this Agreement. CONSULTANT shall not assign or subcontract this Agreement without CITY's express written consent. Further, CONSULTANT shall not assign any monies due or to become due under this Agreement without CITY's prior written consent.
17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

19. Governing Law. This Agreement shall be deemed to have been executed in the County of San Mateo, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
22. Liability of CITY. Except as provided in Exhibit B, Services to be Provided by CONSULTANT and Exhibit D, 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 either party be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

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

whether such damage be to the CONSULTANT, its employees, CITY employees or third parties, or to property belonging to any of the above.

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

23. Confidentiality. Any information, whether proprietary or not, made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement for CITY, will be kept confidential and not be disclosed to any other person. CONSULTANT 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 this Agreement. The restrictions on the use and disclosure of the confidential information shall not apply to information which (a) was known to the CONSULTANT before receipt of same from the CITY; or (b) becomes publicly known other than through the CONSULTANT; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order, but only to the extent required to comply with the said requirements of the government authority or judicial order.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to CITY hereunder.

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. Entire Agreement. This Agreement, including Exhibits A, B, C, D and E, 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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk Secretary

APPROVED AS TO FORM

Dated: _____

Benjamin Stock,
City Attorney Legal Counsel

CONSULTANT

Dated: _____

FCS International, Inc. dba FirstCarbon
Solutions

EXHIBIT A

SAMPLE TASK ORDER

TASK ORDER NO. [INSERT TASK No.]

TO MASTER ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES AGREEMENT

This Task Order No. _____ ("Task Order") is made and entered into by and between the City of Foster City ("City") and [_____] ("Consultant").

RECITAL

A. City and Consultant entered into an agreement entitled [_____] ("Agreement"), by which the Consultant agreed to perform _____ services in accordance with Task Orders issued by the City.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **INCORPORATION BY REFERENCE.** This Task Order hereby incorporates by reference all items and conditions set forth in the Agreement.
2. **SCOPE OF TASK ORDER.** Consultant shall perform the services described in Exhibit "B," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
3. **PAYMENT.** For services performed by Consultant in accordance with this Task Order, City will compensate Consultant in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$ _____ (including all hourly billings as well as reimbursable costs).
4. **SIGNATURES.** The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

City of Foster City

Consultant

By: _____

By: [_____]

Title: **City Manager if < \$50,000**
Mayor/President if > \$50,000

Title: [_____]

Date: _____

Date: _____

Tax ID No.: _____

EXHIBIT B

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS, AND SCHEDULE, FOR ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

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

SERVICES TO BE PROVIDED

This is an Exhibit attached to and made a part of and incorporated by reference to the Agreement dated [September 18, 2023](#), by and between [_____], hereinafter referred to as "CONSULTANT" and the City of Foster City, hereinafter referred to as "CITY" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

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

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 \(IF APPLICABLE\)](#)

END OF EXHIBIT B

EXHIBIT C
FEE SCHEDULE

EXHIBIT D INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified 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 19 day of September, 2023, by and between First Carbon Solutions, FCS International, Inc. hereinafter referred to as "**Consultant**", and City of Foster City, hereinafter referred to as "**City**", providing for professional services.

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

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

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

Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

Workers' Compensation Insurance

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

Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) 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 of Foster City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise

indicated herein. Each insurance policy supplied by consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

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

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

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

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

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

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

ATTACHED

1. Insurance Coverage Form

EXHIBIT 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 (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:		
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:** _____

END OF EXHIBIT D

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

This COVID-19 Amendment/Attachment amends the Agreement between the City of Foster City hereinafter called "CITY" and First Carbon Solutions, FCS International, Inc.] ("Consultant") dated 19 day of September, 2023.

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 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 costs attributable to COVID-19, and which are not included in the schedule of values, only if the cost is an Unknown COVID-19 Cost.

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.

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

CONSULTANT:

CITY:

Signature

Signature

FCS International, Inc.

Jon Froomin, Mayor

END OF EXHIBIT E

MASTER PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

This Agreement is made and entered into as of the 19 day of September, 2023 by and between the City of Foster City hereinafter called "CITY" and MIG hereinafter called "CONSULTANT".

RECITALS

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

WHEREAS, CITY desires to retain CONSULTANT to provide professional environmental review and consulting services on development applications and long-range projects and related services;

WHEREAS, It is anticipated that, as a need arises for CONSULTANT to provide services, CITY will issue Task Orders to CONSULTANT (in a form substantially similar to that set forth in Exhibit "A," attached hereto and incorporated by reference which more particularly describes the scope of services to be performed);

WHEREAS, In reliance upon CONSULTANT's documentation of its qualifications, the CITY finds that CONSULTANT has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

WHEREAS, That CONSULTANT is specially trained, experienced and competent to perform and has agreed to provide such services;

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 each Task Order and Exhibit "B," Scope of Services, 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 B and each Task Order is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto, for changes in the Scope of Services or otherwise, 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 B and in each Task Order.

1. 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. Initial contract period shall be from September 19, 2023 and expires on September 19, 2028. Renewal shall be by mutual consent of CONSULTANT AND CITY as approved by the City Council Board. CONSULTANT shall not commence Services or work until a Notice to Proceed is issued by CITY.

(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, upon thirty (30) days' notice in writing, 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.

2. 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 "C" 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 total

amount identified in all Task Orders issued by the City against this agreement. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. No overhead or other expenses can be recovered for interim periods when the Consultant's services are not utilized by the City. Invoices for amounts in excess of each Task Order 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 CITY's Manager (for contracts less than \$50,000) or CITY Board (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. CITY agreed to pay CONSULTANT within 30 days of invoice receipt. 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 B and each Task Order.

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 B and each Task Order, 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.

CITY will not withhold any Federal or State income taxes or Social Security tax from any payments made by CITY to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONSULTANT. CITY has no responsibility or liability for payment of CONSULTANT's taxes or assessments.

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.

4. Performance of Services. No work shall be performed under this Agreement except to the extent the CONSULTANT receives a Task Order from the CITY's Authorized Representative. The CITY will request proposals from the CONSULTANT for each Task Order when services are needed. CONSULTANT shall respond with a scope and cost proposal in a reasonably prompt manner, no later than fifteen (15) calendar days after CITY's request. Such proposal 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. Upon the approval of the terms of the proposal by CITY's Manager (for contracts less than \$50,000) or CITY Council (for contracts \$50,000 or more) by motion duly made and carried, the CITY's Authorized Representative shall issue a Task Order against this agreement. CONSULTANT shall commence performance and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.
5. Records and Audit. 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.

CONSULTANT shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

Any authorized representative of CITY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by CONSULTANT. Further, CITY has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement. Notwithstanding the foregoing, the CITY's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit B 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 B.

CONSULTANT represents that it possesses all necessary training, licenses, certificates, and permits required by the federal, state, CITY or municipal governments to perform the Services. Such licenses, certificates and permits must be valid at the time CONSULTANT enters into this Agreement and must be maintained during the term of this Agreement in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to CITY.

CONSULTANT represents 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.

CITY shall furnish all information and technical data in CITY's possession and not subject to the attorney-client privilege or some other privilege, under its possession and control and reasonably required for CONSULTANT's proper performance of the Services prior to CONSULTANT's commencement of the Services and at such other times as CITY and CONSULTANT mutually agree. CONSULTANT is entitled to reasonably rely upon the accuracy and completeness of information and data provided by CITY.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, collectively ("documents"), as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit B; 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 in accordance with a mutually agreed upon schedule.

11. Indemnity.

(a) To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CONSULTANT shall defend, indemnify, and hold harmless City of Foster City, its officers, directors, officials, agents, employees, and volunteers (collectively, “**Indemnitees**”) from and against any and all claims, suits, expenses, liability, cause of action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively “**Liabilities**”), 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. CONSULTANT’s obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

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

(b) Intellectual Property Indemnification. CONSULTANT represents that professional services provided by CONSULTANT pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. CONSULTANT shall defend, indemnify and hold harmless CITY from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to CONSULTANT’s services provided to CITY under this Agreement.

(c) CONSULTANT shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of CITY and the Indemnitees in the exact form and substance as those contained in this Agreement.

(d) CITY acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the any Project site is outside of CONSULTANT's responsibilities and is not included in the scope of Services CONSULTANT is to perform nor included in CONSULTANT's insurance. CITY shall hire hazardous materials consultant if the Project requires the testing or remediation of hazardous substances. CONSULTANT shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. CONSULTANT shall, however, be responsible for the coordination of CONSULTANT's services and work with the work of CITY's hazardous materials consultants.

(e) Duty to Cooperate. CONSULTANT shall notify CITY immediately in writing of any claim or damage related to activities or services performed under this Agreement. CONSULTANT shall cooperate with CITY in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Any additional services or work under this paragraph shall be compensated as Additional Services.

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

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

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

14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.
15. Notice. All notices required by this Agreement shall be given to the CITY and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:
- CITY: City of Foster City
610 Foster City Boulevard
Foster City, CA 94404-2299
Attention: Thai-Chau Le
- CONSULTANT: Moore Iacofano Goltsman, Inc.
800 Hearst Ave
Berkeley, CA 94710
16. Assignment. This is an agreement for the personal services of CONSULTANT. CITY has relied upon the skills, knowledge, experience and training of CONSULTANT and the CONSULTANT's firm, associates and employees as an inducement to enter into this Agreement. CONSULTANT shall not assign or subcontract this Agreement without CITY's express written consent. Further, CONSULTANT shall not assign any monies due or to become due under this Agreement without CITY's prior written consent.
17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
19. Governing Law. This Agreement shall be deemed to have been executed in the County of San Mateo, California. The formation, interpretation and

performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.

20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
22. Liability of CITY. Except as provided in Exhibit B, Services to be Provided by CONSULTANT and Exhibit D, 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 either party be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

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

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

23. Confidentiality. Any information, whether proprietary or not, made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement for CITY, will be kept confidential and not be disclosed to any other person. CONSULTANT 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 this Agreement. The restrictions on the use and disclosure of the confidential information shall not apply to information which (a) was known to the CONSULTANT before receipt of same from the CITY; or (b) becomes publicly known other than through the CONSULTANT; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order, but only to the extent required to comply with the said requirements of the government authority or judicial order.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to CITY hereunder.

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. Entire Agreement. This Agreement, including Exhibits A, B, C, D and E, 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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk Secretary

APPROVED AS TO FORM

Dated: _____

Benjamin Stock,
City Attorney Legal Counsel

CONSULTANT

Dated: _____

Daniel Iacofano, President and CEO
Moore Iacofano Goltsman, Inc.

EXHIBIT A

SAMPLE TASK ORDER

TASK ORDER NO. [INSERT TASK No.]

TO MASTER ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES AGREEMENT

This Task Order No. _____ ("Task Order") is made and entered into by and between the City of Foster City ("City") and [_____] ("Consultant").

RECITAL

A. City and Consultant entered into an agreement entitled [_____] ("Agreement"), by which the Consultant agreed to perform _____ services in accordance with Task Orders issued by the City.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. INCORPORATION BY REFERENCE. This Task Order hereby incorporates by reference all items and conditions set forth in the Agreement.
2. SCOPE OF TASK ORDER. Consultant shall perform the services described in Exhibit "B," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
3. PAYMENT. For services performed by Consultant in accordance with this Task Order, City will compensate Consultant in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$ _____ (including all hourly billings as well as reimbursable costs).
4. SIGNATURES. The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

City of Foster City

Consultant

By: _____

By: [_____]

Title: **City Manager if < \$50,000**
Mayor/President if > \$50,000

Title: [_____]

Date: _____

Date: _____

Tax ID No.: _____

EXHIBIT B

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS, AND SCHEDULE, FOR ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

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

SERVICES TO BE PROVIDED

This is an Exhibit attached to and made a part of and incorporated by reference to the Agreement dated [September 18, 2023](#), by and between [_____], hereinafter referred to as "CONSULTANT" and the City of Foster City, hereinafter referred to as "CITY" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

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

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 \(IF APPLICABLE\)](#)

END OF EXHIBIT B

EXHIBIT C
FEE SCHEDULE

EXHIBIT D INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified 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 19 day of September, 2023, by and between MIG , hereinafter referred to as "**Consultant**", and City of Foster City, hereinafter referred to as "**City**", providing for professional services.

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

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

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

Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

Workers' Compensation Insurance

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

Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) 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 of Foster City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise

indicated herein. Each insurance policy supplied by consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

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

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

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

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

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

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

ATTACHED

1. Insurance Coverage Form

EXHIBIT 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 (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:		
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:** _____

END OF EXHIBIT D

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

This COVID-19 Amendment/Attachment amends the Agreement between the City of Foster City hereinafter called "CITY" and MIG ("Consultant") dated 19 day of September, 2023.

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 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 costs attributable to COVID-19, and which are not included in the schedule of values, only if the cost is an Unknown COVID-19 Cost.

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.

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

CONSULTANT:

CITY:

Signature

Signature

Daniel Iacofano, President and CEO
Moore Iacofano Goltsman, Inc.

Jon Froomin, Mayor

END OF EXHIBIT E

MASTER PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

This Agreement is made and entered into as of the 19 day of September, 2023 by and between the City of Foster City hereinafter called "CITY" and Stantec Consulting Services Inc. hereinafter called "CONSULTANT".

RECITALS

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

WHEREAS, CITY desires to retain CONSULTANT to provide professional environmental review and consulting services on development applications and long-range projects and related services;

WHEREAS, It is anticipated that, as a need arises for CONSULTANT to provide services, CITY will issue Task Orders to CONSULTANT (in a form substantially similar to that set forth in Exhibit "A," attached hereto and incorporated by reference which more particularly describes the scope of services to be performed);

WHEREAS, In reliance upon CONSULTANT's documentation of its qualifications, the CITY finds that CONSULTANT has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

WHEREAS, That CONSULTANT is specially trained, experienced and competent to perform and has agreed to provide such services;

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 each Task Order and Exhibit "B," Scope of Services, 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 B and each Task Order is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto, for changes in the Scope of Services or otherwise, 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 B and in each Task Order.

1. 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. Initial contract period shall be from September 19, 2023 and expires on September 19, 2028. Renewal shall be by mutual consent of CONSULTANT AND CITY as approved by the City Council Board. CONSULTANT shall not commence Services or work until a Notice to Proceed is issued by CITY.

(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, upon thirty (30) days' notice in writing, 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.

2. 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 "C" 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 total

amount identified in all Task Orders issued by the City against this agreement. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. No overhead or other expenses can be recovered for interim periods when the Consultant's services are not utilized by the City. Invoices for amounts in excess of each Task Order 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 CITY's Manager (for contracts less than \$50,000) or CITY Board (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. CITY agreed to pay CONSULTANT within 30 days of invoice receipt. 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 B and each Task Order.

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 B and each Task Order, 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.

CITY will not withhold any Federal or State income taxes or Social Security tax from any payments made by CITY to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONSULTANT. CITY has no responsibility or liability for payment of CONSULTANT's taxes or assessments.

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.

4. Performance of Services. No work shall be performed under this Agreement except to the extent the CONSULTANT receives a Task Order from the CITY's Authorized Representative. The CITY will request proposals from the CONSULTANT for each Task Order when services are needed. CONSULTANT shall respond with a scope and cost proposal in a reasonably prompt manner, no later than fifteen (15) calendar days after CITY's request. Such proposal 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. Upon the approval of the terms of the proposal by CITY's Manager (for contracts less than \$50,000) or CITY Council (for contracts \$50,000 or more) by motion duly made and carried, the CITY's Authorized Representative shall issue a Task Order against this agreement. CONSULTANT shall commence performance and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.

5. Records and Audit. 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.

CONSULTANT shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

Any authorized representative of CITY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by CONSULTANT. Further, CITY has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement. Notwithstanding the foregoing, the CITY's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

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

7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit B 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 B.

CONSULTANT represents that it possesses all necessary training, licenses, certificates, and permits required by the federal, state, CITY or municipal governments to perform the Services. Such licenses, certificates and permits must be valid at the time CONSULTANT enters into this Agreement and must be maintained during the term of this Agreement in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to CITY.

CONSULTANT represents 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.

CITY shall furnish all information and technical data in CITY's possession and not subject to the attorney-client privilege or some other privilege under its possession and control and reasonably required for CONSULTANT's proper performance of the Services prior to CONSULTANT's commencement of the Services and at such other times as CITY and CONSULTANT mutually agree. CONSULTANT is entitled to reasonably rely upon the accuracy and completeness of information and data provided by CITY.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, collectively ("documents"), as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit B; 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 in accordance with a mutually agreed upon schedule.

11. Indemnity.

(a) To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CONSULTANT shall defend, indemnify, and hold harmless City of Foster City, its officers, directors, officials, agents, employees, and volunteers (collectively, “**Indemnitees**”) from and against any and all claims, suits, expenses, liability, cause of action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively “**Liabilities**”), 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. CONSULTANT’s obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

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

(b) Intellectual Property Indemnification. CONSULTANT represents that professional services provided by CONSULTANT pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. CONSULTANT shall defend, indemnify and hold harmless CITY from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to CONSULTANT’s services provided to CITY under this Agreement.

(c) CONSULTANT shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of CITY and the Indemnitees in the exact form and substance as those contained in this Agreement.

(d) CITY acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the any Project site is outside of CONSULTANT's responsibilities and is not included in the scope of Services CONSULTANT is to perform nor included in CONSULTANT's insurance. CITY shall hire hazardous materials consultant if the Project requires the testing or remediation of hazardous substances. CONSULTANT shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. CONSULTANT shall, however, be responsible for the coordination of CONSULTANT's services and work with the work of CITY's hazardous materials consultants.

(e) Duty to Cooperate. CONSULTANT shall notify CITY immediately in writing of any claim or damage related to activities or services performed under this Agreement. CONSULTANT shall cooperate with CITY in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Any additional services or work under this paragraph shall be compensated as Additional Services.

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

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

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

14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.
15. Notice. All notices required by this Agreement shall be given to the CITY and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:
- CITY: City of Foster City
610 Foster City Boulevard
Foster City, CA 94404-2299
Attention: Thai-Chau Le
- CONSULTANT: Stantec Consulting Services Inc.
1340 Treat Blvd, Suite 300
Walnut Creek, CA 94597
Attention: Trevor Macenski
16. Assignment. This is an agreement for the personal services of CONSULTANT. CITY has relied upon the skills, knowledge, experience and training of CONSULTANT and the CONSULTANT's firm, associates and employees as an inducement to enter into this Agreement. CONSULTANT shall not assign or subcontract this Agreement without CITY's express written consent. Further, CONSULTANT shall not assign any monies due or to become due under this Agreement without CITY's prior written consent.
17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

19. Governing Law. This Agreement shall be deemed to have been executed in the County of San Mateo, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
22. Liability. Except as provided in Exhibit B, Services to be Provided by CONSULTANT and Exhibit D, 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,

Neither CITY nor CONSULTANT shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this Agreement or the performance of the services on this Project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies.

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

attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the CONSULTANT, its employees, CITY employees or third parties, or to property belonging to any of the above.

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

23. Confidentiality. Any information, whether proprietary or not, made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement for CITY, will be kept confidential and not be disclosed to any other person. CONSULTANT 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 this Agreement. The restrictions on the use and disclosure of the confidential information shall not apply to information which (a) was known to the CONSULTANT before receipt of same from the CITY; or (b) becomes publicly known other than through the CONSULTANT; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order, but only to the extent required to comply with the said requirements of the government authority or judicial order.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to CITY hereunder.

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. Entire Agreement. This Agreement, including Exhibits A, B, C, D and E, 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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk Secretary

APPROVED AS TO FORM

Dated: _____

Benjamin Stock,
City Attorney Legal Counsel

CONSULTANT

Dated: _____

Trevor Macenski, Senior Principal
Stantec Consulting Services

EXHIBIT A

SAMPLE TASK ORDER
TASK ORDER NO. [INSERT TASK No.]
TO MASTER ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES
AGREEMENT

This Task Order No. _____ ("Task Order") is made and entered into by and between the City of Foster City ("City") and [_____] ("Consultant").

RECITAL

A. City and Consultant entered into an agreement entitled [_____] ("Agreement"), by which the Consultant agreed to perform _____ services in accordance with Task Orders issued by the City.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. INCORPORATION BY REFERENCE. This Task Order hereby incorporates by reference all items and conditions set forth in the Agreement.
2. SCOPE OF TASK ORDER. Consultant shall perform the services described in Exhibit "B," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
3. PAYMENT. For services performed by Consultant in accordance with this Task Order, City will compensate Consultant in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$ _____ (including all hourly billings as well as reimbursable costs).
4. SIGNATURES. The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

City of Foster City

Consultant

By: _____

By: [_____]

Title: **City Manager if < \$50,000**
Mayor/President if > \$50,000

Title: [_____]

Date: _____

Date: _____

Tax ID No.: _____

EXHIBIT B

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS, AND SCHEDULE, FOR ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

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

SERVICES TO BE PROVIDED

This is an Exhibit attached to and made a part of and incorporated by reference to the Agreement dated [September 18, 2023](#), by and between [_____], hereinafter referred to as "CONSULTANT" and the City of Foster City, hereinafter referred to as "CITY" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

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

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 \(IF APPLICABLE\)](#)

END OF EXHIBIT B

EXHIBIT C
FEE SCHEDULE

EXHIBIT D INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified 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 19 day of September, 2023, by and between Stantec Consulting Services Inc. hereinafter referred to as "**Consultant**", and City of Foster City, hereinafter referred to as "**City**", providing for professional services.

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

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

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

Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

Workers' Compensation Insurance

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

Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) 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 of Foster City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise

indicated herein. Each insurance policy supplied by consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

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

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

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

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

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

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

ATTACHED

1. Insurance Coverage Form

EXHIBIT 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 (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:		
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:** _____

END OF EXHIBIT D

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

This COVID-19 Amendment/Attachment amends the Agreement between the City of Foster City hereinafter called "CITY" and Stantec Consulting Services Inc. ("Consultant") dated 19 day of September, 2023.

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 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 costs attributable to COVID-19, and which are not included in the schedule of values, only if the cost is an Unknown COVID-19 Cost.

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.

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

CONSULTANT:

CITY:

Signature

Signature

Trevor Macenski, Senior Principal

Jon Froomin, Mayor

END OF EXHIBIT E

MASTER PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

This Agreement is made and entered into as of the 19 day of September, 2023 by and between the City of Foster City hereinafter called "CITY" and Urban Planning Partners, Inc. hereinafter called "CONSULTANT".

RECITALS

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

WHEREAS, CITY desires to retain CONSULTANT to provide professional environmental review and consulting services on development applications and long-range projects and related services;

WHEREAS, It is anticipated that, as a need arises for CONSULTANT to provide services, CITY will issue Task Orders to CONSULTANT (in a form substantially similar to that set forth in Exhibit "A," attached hereto and incorporated by reference which more particularly describes the scope of services to be performed);

WHEREAS, In reliance upon CONSULTANT's documentation of its qualifications, the CITY finds that CONSULTANT has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

WHEREAS, That CONSULTANT is specially trained, experienced and competent to perform and has agreed to provide such services;

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 each Task Order and Exhibit "B," Scope of Services, 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 B and each Task Order is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto, for changes in the Scope of Services or otherwise, 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 B and in each Task Order.

1. 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. Initial contract period shall be from September 19, 2023 and expires on September 19, 2028. Renewal shall be by mutual consent of CONSULTANT AND CITY as approved by the City Council Board. CONSULTANT shall not commence Services or work until a Notice to Proceed is issued by CITY.

(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, upon thirty (30) days' notice in writing, 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.

2. 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 "C" 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 total

amount identified in all Task Orders issued by the City against this agreement. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. No overhead or other expenses can be recovered for interim periods when the Consultant's services are not utilized by the City. Invoices for amounts in excess of each Task Order 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 CITY's Manager (for contracts less than \$50,000) or CITY Board (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. CITY agreed to pay CONSULTANT within 30 days of invoice receipt. 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 B and each Task Order.

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 B and each Task Order, 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.

CITY will not withhold any Federal or State income taxes or Social Security tax from any payments made by CITY to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONSULTANT. CITY has no responsibility or liability for payment of CONSULTANT's taxes or assessments.

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.

4. Performance of Services. No work shall be performed under this Agreement except to the extent the CONSULTANT receives a Task Order from the CITY's Authorized Representative. The CITY will request proposals from the CONSULTANT for each Task Order when services are needed. CONSULTANT shall respond with a scope and cost proposal in a reasonably prompt manner, no later than fifteen (15) calendar days after CITY's request. Such proposal 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. Upon the approval of the terms of the proposal by CITY's Manager (for contracts less than \$50,000) or CITY Council (for contracts \$50,000 or more) by motion duly made and carried, the CITY's Authorized Representative shall issue a Task Order against this agreement. CONSULTANT shall commence performance and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.

5. Records and Audit. 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.

CONSULTANT shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

Any authorized representative of CITY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by CONSULTANT. Further, CITY has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement. Notwithstanding the foregoing, the CITY's right to inspect, copy and audit shall not extend to the composition of the CONSULTANT's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

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

7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit B 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 B.

CONSULTANT represents that it possesses all necessary training, licenses, certificates, and permits required by the federal, state, CITY or municipal governments to perform the Services. Such licenses, certificates and permits must be valid at the time CONSULTANT enters into this Agreement and must be maintained during the term of this Agreement in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to CITY.

CONSULTANT represents 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.

CITY shall furnish all information and technical data in CITY's possession and not subject to the attorney-client privilege or some other privilege, under its possession and control and reasonably required for CONSULTANT's proper performance of the Services prior to CONSULTANT's commencement of the Services and at such other times as CITY and CONSULTANT mutually agree. CONSULTANT is entitled to reasonably rely upon the accuracy and completeness of information and data provided by CITY.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, collectively ("documents"), as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit B; 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 in accordance with a mutually agreed upon schedule.

11. Indemnity.

(a) To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CONSULTANT shall defend, indemnify and hold harmless City of Foster City, its officers, directors, officials, agents, employees, and volunteers (collectively, “**Indemnitees**”) from and against any and all claims, suits, expenses, liability, cause of action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively “**Liabilities**”), 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. CONSULTANT’s obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

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

(b) Intellectual Property Indemnification. CONSULTANT represents that professional services provided by CONSULTANT pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. CONSULTANT shall defend, indemnify and hold harmless CITY from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to CONSULTANT’s services provided to CITY under this Agreement.

(c) CONSULTANT shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of CITY and the Indemnitees in the exact form and substance as those contained in this Agreement.

(d) CITY acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the any Project site is outside of CONSULTANT's responsibilities and is not included in the scope of Services CONSULTANT is to perform nor included in CONSULTANT's insurance. CITY shall hire hazardous materials consultant if the Project requires the testing or remediation of hazardous substances. CONSULTANT shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. CONSULTANT shall, however, be responsible for the coordination of CONSULTANT's services and work with the work of CITY's hazardous materials consultants.

(e) Duty to Cooperate. CONSULTANT shall notify CITY immediately in writing of any claim or damage related to activities or services performed under this Agreement. CONSULTANT shall cooperate with CITY in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Any additional services or work under this paragraph shall be compensated as Additional Services.

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

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

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

14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.
15. Notice. All notices required by this Agreement shall be given to the CITY and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:
- CITY: City of Foster City
610 Foster City Boulevard
Foster City, CA 94404-2299
Attention: Thai-Chau Le
- CONSULTANT: Urban Planning Partners
388 17th Street, Suite 230
Oakland, CA 94612
16. Assignment. This is an agreement for the personal services of CONSULTANT. CITY has relied upon the skills, knowledge, experience and training of CONSULTANT and the CONSULTANT's firm, associates and employees as an inducement to enter into this Agreement. CONSULTANT shall not assign or subcontract this Agreement without CITY's express written consent. Further, CONSULTANT shall not assign any monies due or to become due under this Agreement without CITY's prior written consent.
17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
19. Governing Law. This Agreement shall be deemed to have been executed in the County of San Mateo, California. The formation, interpretation and

performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.

20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
22. Liability of CITY. Except as provided in Exhibit B, Services to be Provided by CONSULTANT and Exhibit D, 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 either party be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

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

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

23. Confidentiality. Any information, whether proprietary or not, made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement for CITY, will be kept confidential and not be disclosed to any other person. CONSULTANT 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 this Agreement. The restrictions on the use and disclosure of the confidential information shall not apply to information which (a) was known to the CONSULTANT before receipt of same from the CITY; or (b) becomes publicly known other than through the CONSULTANT; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order, but only to the extent required to comply with the said requirements of the government authority or judicial order.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to CITY hereunder.

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. Entire Agreement. This Agreement, including Exhibits A, B, C, D and E, 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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk Secretary

APPROVED AS TO FORM

Dated: _____

Benjamin Stock,
City Attorney Legal Counsel

CONSULTANT

Dated: _____

Lynette Dias,
President

EXHIBIT A

SAMPLE TASK ORDER

TASK ORDER NO. [INSERT TASK No.]

TO MASTER ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES AGREEMENT

This Task Order No. _____ ("Task Order") is made and entered into by and between the City of Foster City ("City") and [_____] ("Consultant").

RECITAL

A. City and Consultant entered into an agreement entitled [_____] ("Agreement"), by which the Consultant agreed to perform _____ services in accordance with Task Orders issued by the City.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **INCORPORATION BY REFERENCE.** This Task Order hereby incorporates by reference all items and conditions set forth in the Agreement.
2. **SCOPE OF TASK ORDER.** Consultant shall perform the services described in Exhibit "B," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
3. **PAYMENT.** For services performed by Consultant in accordance with this Task Order, City will compensate Consultant in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$_____ (including all hourly billings as well as reimbursable costs).
4. **SIGNATURES.** The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Consultant and the City.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

City of Foster City

Consultant

By: _____

By: [_____]

Title: **City Manager if < \$50,000**
Mayor/President if > \$50,000

Title: [_____]

Date: _____

Date: _____

Tax ID No.: _____

EXHIBIT B

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS, AND SCHEDULE, FOR ON-CALL ENVIRONMENTAL REVIEW AND CONSULTING SERVICES

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

SERVICES TO BE PROVIDED

This is an Exhibit attached to and made a part of and incorporated by reference to the Agreement dated [September 18, 2023](#), by and between [_____], hereinafter referred to as "CONSULTANT" and the City of Foster City, hereinafter referred to as "CITY" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

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

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 \(IF APPLICABLE\)](#)

END OF EXHIBIT B

EXHIBIT C
FEE SCHEDULE

EXHIBIT D INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified 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 19 day of September, 2023, by and between Urban Planning Partners, Inc., hereinafter referred to as "**Consultant**", and City of Foster City, hereinafter referred to as "**City**", providing for professional services.

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

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

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

Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

Workers' Compensation Insurance

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

Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) 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 of Foster City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise

indicated herein. Each insurance policy supplied by consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

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

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

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

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

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

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

ATTACHED

1. Insurance Coverage Form

EXHIBIT 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 (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:		
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:** _____

END OF EXHIBIT D

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

This COVID-19 Amendment/Attachment amends the Agreement between the City of Foster City hereinafter called "CITY" and Urban Planning Partners, Inc. ("Consultant") dated 19 day of September, 2023.

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 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 costs attributable to COVID-19, and which are not included in the schedule of values, only if the cost is an Unknown COVID-19 Cost.

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.

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

CONSULTANT:

CITY:

Signature

Signature

Lynette Dias, President

Jon Froomin, Mayor

END OF EXHIBIT E