

PROFESSIONAL SERVICES AGREEMENT
FOR
BUSINESS LICENSE SERVICES

This Agreement is made and entered into as of the 16th day of October, 2023 by and between the City of Foster City hereinafter called "CITY" and Hinderliter De Llamas & Associates (aka HdL) hereinafter called "CONSULTANT". CITY and CONSULTANT shall be collectively referred to as "Parties".

RECITALS

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

WHEREAS, CITY desires to engage CONSULTANT to provide professional services in the CITY;

WHEREAS, CONSULTANT is qualified to provide such services to the CITY and;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. Services. The services to be performed by CONSULTANT under this Agreement shall include those services set forth in Exhibit A, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein. Performance of the work specified in said Exhibit A is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties. Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

1.2 CONSULTANT warrants that it will perform the Services in a professional manner in accordance with professional standards. In performing the Services, CONSULTANT is acting as an independent CONSULTANT (and not as an agent or employee of CITY).

1.3 CITY acknowledges and agrees that any other public agency (including, without limitation, any participating government agency) located within or outside of the State (e.g., city, municipality, county, district, public authority or other political subdivision) may procure services for fees and other terms and conditions that are substantially similar to any of the Services, Fees and other terms and conditions set forth in this Agreement, provided that such other public agency executes a separate agreement

with CONSULTANT wherein the services rendered to such other public agency, the fees payable by such other public agency, and the other terms and conditions of such separate agreement are the responsibility of CONSULTANT and such other public agency and not CITY.

1.4 This Agreement does not limit the right of CONSULTANT to enter into additional contracts with CITY or to contract with other persons or entities (that are not CITY) to provide them with merchandise or services of any kind whatsoever, including, but not limited to, services similar to the Services.

2. Term; Termination. (a) The initial term of this Agreement commences as of the Agreement Date and, unless terminated earlier pursuant to any of this Agreement's express provisions, will continue in effect until twelve (12) months from such date (the "Initial Term"). This Agreement will automatically renew for successive twelve (12) month terms unless earlier terminated as set forth herein or either party gives the other party written notice of non-renewal at least one hundred twenty (120) days prior to the expiration of the then-current term (each a "Renewal Term" and, collectively, together with the Initial Term, the "Term"). (b) Notwithstanding the provisions of (a) above, CITY may with or without cause, direct CONSULTANT to suspend, delay or interrupt Services, in whole or in part, for such periods of time as CITY may determine in its sole discretion. (c) CITY may terminate performance of the Services under this Agreement in whole, or from time to time in part, for default, should CONSULTANT commit a material breach of this Agreement, or part thereof, and not cure such breach within ten (10) calendar days of the date of CITY's written notice to CONSULTANT demanding such cure, in which case CONSULTANT shall be liable to CITY for all loss, cost, expense, damage and liability resulting from such breach and termination. (d) CITY may terminate performance of the Services under this Agreement in whole, or from time to time in part, for convenience, whenever CITY determines that such termination is in CITY's best interests, in which case CONSULTANT shall be entitled to recover its costs expended up to the termination date plus reasonable profit thereon to the termination date as this Agreement would otherwise provide, but may recover no other cost, damage or expense. CONSULTANT shall continue its work throughout the course of any dispute, and CONSULTANT's failure to continue work during a dispute shall be a material breach of this Agreement.
3. Compensation; Expenses; Payment. CITY shall compensate CONSULTANT for all services performed by CONSULTANT hereunder in accordance with the description of Fees for Services identified in the Fee

Schedule marked as Exhibit "B", attached hereto and by this reference incorporated herein.

Notwithstanding the foregoing, the combined total of compensation and reimbursement of costs payable hereunder shall not exceed the sum of THIRTY THREE THOUSAND NINE HUNDRED DOLLARS (\$33,900) plus a contingency fee of 40% for their discovery and audit services as described in Exhibit B. Invoices for amounts in excess of the amounts provided herein shall not be paid unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by the City Manager (for contracts less than \$50,000) or City Council (for contracts \$50,000 or more) evidenced by motion duly made and carried and a written contract amendment having been executed.

3.2 Compensation and reimbursement of costs and expenses hereunder shall be payable upon monthly billing therefor by CONSULTANT to CITY, which billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of CITY including, without limitation, CONSULTANT's transmittal of all deliverables to CITY required by EXHIBIT A.

3.3 CITY shall not incur any charges under this Agreement, nor shall any payments become due to CONSULTANT for any payment period on the Project, until CITY receives all deliverables required under Exhibit A, SCOPE OF WORK AND SCHEDULE, for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where CONSULTANT has partially completed one or more deliverables due during a payment period, and if CONSULTANT demonstrates diligent progress thereon, then CITY may make a partial progress payment based upon percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon CITY. CITY shall not be liable for, and CONSULTANT shall not be entitled to, any payment for Services performed before this Agreement's execution.

3.4 CONSULTANT may increase the Fees from time to time. CONSULTANT may notify CITY of a request that such Fee increase and CITY may request that the Fee increase be modified or revoked and, if CONSULTANT fails to do so to CITY'S satisfaction within thirty (30) days after the receipt of such request, CITY may terminate this Agreement without cause pursuant to Section 2.

4. Additional Services. In the event CITY desires the performance of additional services not otherwise included within the services described in Exhibit A, such services shall be authorized in advance of the performance thereof by the City Manager (for contracts less than \$50,000) or City Council (for contracts \$50,000 or more) by motion duly made and carried. Such amendment to this Agreement shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefor, the time of performance thereof, and such other matters as the parties deem appropriate for the accomplishment of such services. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.
5. Records. CONSULTANT shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to services to be performed by CONSULTANT hereunder. Said records shall be available to CITY for review and copying during regular business hours at CONSULTANT's place of business or as otherwise agreed upon by the parties.
6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit A and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Exhibit A and within the times specified for each individual Project.

CONSULTANT represents that it possesses all necessary training, licenses and permits to perform the Services and that its performance of the Services will conform to the standards of practice of a professional having experience and expertise in performing professional services of like nature and complexity of the Services working on similar, successfully completed projects.

The granting of any progress payment by CITY, or the receipt thereof by CONSULTANT, or any inspection, review, approval or oral statement by

any representative of CITY or any other governmental entity, shall in no way waive or limit the obligations in this Paragraph 7 or lessen the liability of CONSULTANT for unsatisfactory Services, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.

9. CITY Support.

9.1 CITY will promptly provide in writing to CONSULTANT all data and other information relating to or which may be necessary for CONSULTANT's performance of the Services. Without limiting the foregoing, CITY will keep CONSULTANT informed on a timely basis in writing as to the existence and amendments of the laws, ordinances and/or regulations under which CONSULTANT is performing the Services (including any adopted by CITY). CONSULTANT will be permitted to rely on the accuracy, timeliness and completeness of the information provided by CITY, and in no event will CONSULTANT be liable to CITY or others as a result of such reliance.

9.2 CITY will examine all of CONSULTANT'S reports, specifications, notices, proposals and other documents. In the event that a decision is required of CITY in order for CONSULTANT to perform the Services, CITY will render such decision in writing in a timely manner.

9.3 Promptly following any request from CONSULTANT, CITY will adopt and maintain in full force and effect resolutions in forms acceptable to CITY and in accordance with applicable law authorizing CONSULTANT to examine the confidential sales tax and other relevant records of CITY throughout the Term and, for so long as any Fees are still accruing pursuant to this Agreement, after the Term.

9.4 CITY will assist CONSULTANT in obtaining such licenses, permits and approvals as may be required by law for performing the Services, and CITY will pay all fees, assessments and taxes related to the application, issuance and maintenance thereof.

9.5 The Services do not include services that CONSULTANT may be required or requested to provide to support, prepare, document, bring, defend or assist in litigation undertaken or defended by CITY ("Litigation

Services"). If CONSULTANT agrees with CITY or is required to perform Litigation Services, CITY will promptly pay CONSULTANT for all of CONSULTANT'S costs and expenses related to Litigation Services at CONSULTANT's actual cost, plus ten percent (10%) thereof (all of which are deemed to be additional Fees).

10. Relationship of Parties. CONSULTANT is an independent CONSULTANT and does not act as City's agent in any capacity, whatsoever. CONSULTANT is not entitled to any benefits that CITY provides to CITY employees, including, without limitation, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within this Agreement regarding direction apply to and concern the result of the CONSULTANT's provision of Services, not the means, methods, or scheduling of the CONSULTANT's work. CONSULTANT shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Services under this Agreement. CONSULTANT shall pay all payroll taxes imposed by any governmental entity and shall pay all other taxes not specifically identified in this Agreement as CITY's responsibility.
11. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit A; provided, that CITY shall grant reasonable extensions of time for the performance of such services occasioned by governmental reviews of CONSULTANT's work product or other unavoidable delays; provided, further, that such unavoidable delay shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, CONSULTANT's officers or employees.

CONSULTANT acknowledges the importance to CITY of CITY's Project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule.

12. Indemnity. To the fullest extent allowed by law, CONSULTANT hereby agrees to defend, indemnify, and save harmless CITY, its Council, boards, commissions, officers, employees, directors, volunteers and agents, from and against any and all claims, suits, actions liability, loss, damage, expense, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its SubCONSULTANTS), cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, at law or equity, which may be brought against, or suffered or sustained by, City of Foster City, its Council, boards, commissions, officers, employees, directors, volunteers or agents that arise out of, pertain to, or relate to any negligence, recklessness, or willful misconduct of CONSULTANT, any SubCONSULTANT, anyone directly or indirectly employed or retained by them, or anyone that they control. In the event one or more defendants is

unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the CONSULTANT shall meet and confer with other parties regarding unpaid defense costs.

The duty of CONSULTANT to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require CONSULTANT to indemnify City of Foster City, its Council, boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

CONSULTANT's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement.

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

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

14. Workers' Compensation. CONSULTANT certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code,

and CONSULTANT certifies that he will comply with such provisions before commencing the performance of the work of this agreement.

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

16. Confidentiality; Software Use and Warranty; Records.

16.1 CONSULTANT will comply with the requirements of the applicable laws, ordinances and/or regulations concerning the confidentiality of tax records of which it has been informed by CITY pursuant to Section 9.

16.2 As used herein, the term "proprietary information" means all information, techniques, processes, services or material that has or could have commercial value or other utility in CONSULTANT's Business, including without limitation: CONSULTANT's (i) software, computer or data processing programs; (ii) data processing applications, routines, subroutines, techniques or systems; (iii) desktop or web-based software; (iv) audit, tax or fee collection/administration or business processes, methods or routines; (v) marketing plans, analyses and strategies; and (vi) materials, techniques and intellectual property used. Except as otherwise required by law, CITY must hold in confidence and may not use (except as expressly authorized by this Agreement) or disclose to any other party any proprietary information provided, learned of or obtained by CITY in connection with this Agreement. The terms of this Section 16.2 do not apply to any information that is public information.

16.3 If access to any software which CONSULTANT owns is provided to CITY as part of this Agreement (including, without limitation, if CITY chooses to subscribe to such software and reports option as part of the Services) (such CONSULTANT-owned software is, collectively, the "Software"), CONSULTANT hereby provides a limited, non-exclusive, non-transferable license to CITY for the use by such of CITY's staff as may be

designated from time to time by CITY and approved by CONSULTANT in writing to use the Software pursuant to and during the Term of this Agreement. The Software must only be used by such authorized CITY staff, and CITY must not sublicense, sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of the Software. The license granted hereunder does not imply ownership by CITY or any of CITY's staff of the Software nor any rights of CITY or any of CITY's staff to sublicense, transfer or sell the Software, or rights to use the Software for the benefit of others. CITY may not create (or allow the creation of) any derivative work or product based on or derived from the Software or documentation, nor modify (or allow the modification of) the Software or documentation without the prior written consent of CONSULTANT. In the event of a breach of this provision (and without limiting CONSULTANT's remedies), such modification, derivative work or product based on the Software or documentation is hereby deemed assigned to CONSULTANT. Upon termination of this Agreement or this Software license, this Software license will be deemed to have expired and CITY must immediately deactivate, cease using and remove, delete and destroy all the Software (including, without limitation, from CITY's computers and network). CONSULTANT warrants that the Software will perform in accordance with the Software's documentation.

16.4 All documents, preliminary drafts, communications and any and all other work product related to the Services and provided by CONSULTANT to CITY either in hard copy or electronically are the property of CITY. This does not include any software, programs, methodologies or systems used in the creation of such work product, nor does it include any drafts, notes or internal communications prepared by CONSULTANT in the course of performing the Services that were not otherwise provided to CITY in either hardcopy or electronic form, all of which may be protected by CONSULTANT or others' copyrights or other intellectual property. It is possible that any documents, drafts, communications or other work product provided to CITY may be considered public records under applicable law and/or may be discoverable through litigation. CONSULTANT may publicly state that it performs the Services for CITY.

16.5 Subject to applicable law, CONSULTANT is responsible for retaining all final documents and other final work product related to the Services for a period of not less than three (3) years from the date provided to CITY. Retention of any other documents, preliminary drafts, communications and any and all other work product provided to CITY by CONSULTANT is the responsibility of CITY. CONSULTANT has no responsibility to retain any drafts, notes, communications, emails or other writings created or received by CITY in the course of performing the Services (other than the final documents and other final work product

related to the Services and provided to CITY for the term of years referenced above).

17. 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: City Manager
Email: manager@fostercity.org

CONSULTANT: Hinderliter De Llamas & Associates (HdL)
120 State College Boulevard
Brea, CA 92821
Attn: George Bonnin,
Email: gbonnin@hdlcompanies.com;

18. Non-Assignment. This Agreement is not assignable either in whole or in part.
19. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
20. 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.
21. 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.
22. 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.

23. Conflict of Interest. CONSULTANT represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of work and services required under this Agreement. Without limitation, CONSULTANT represents to and agrees with CITY that CONSULTANT has disclosed any potential conflict of interest, and will have no future conflict of interest, in providing CITY services hereunder, including but not limited to, any interest (financial, share ownership, shared management, shared directors, or reporting responsibilities) CONSULTANT may presently have, or will have in the future, with respect to any other person or entity (including but not limited to potential suppliers, vendors, , CONSULTANT's, or regulatory agency) which may have an interest in the subject matter of the Services.

24. Liability of CITY. Except as provided in Exhibit A, Services to be Provided by CONSULTANT and Exhibit C, Insurance, CITY's obligations under this Agreement shall be limited to the payment of the compensation provided for in Paragraphs 1, 3, and 4 of this Agreement,

Notwithstanding any other provision of this Agreement, in no event shall CITY be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

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

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

25. 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.
26. Force Majeure. Except for defaults of subCONSULTANTS at any tier, CONSULTANT shall not be liable for any excess costs if the failure to perform the Agreement arises from causes beyond the control and without the fault or negligence of CONSULTANT, including without limitation failure to reasonably mitigate any adverse impacts (Force Majeure). Force Majeure events include the following:

Acts of God, fires, floods, earthquake, other natural disasters, epidemics and pandemics (other than COVID-19 or variants), abnormal weather conditions beyond the parameters otherwise set forth in this Article, nuclear accidents, strikes, lockouts, freight embargos, interruptions in service by a regulated utility, or governmental statutes or regulations enacted or imposed after the fact (together, "force majeure events").

Any Force Majeure event with a duration in excess of not less than thirty (30) days entitles either party to terminate this Agreement with written notice to the other party, without further penalty or compensation.

27. California Department of Tax and Fee Administration Data.

CITY shall adopt a resolution in a form acceptable to the California Department of Tax and Fee Administration and in compliance with Section 7056 of the Revenue and Taxation Code, authorizing CONSULTANT to examine the confidential sales tax records of CITY. CITY further agrees to continue CONSULTANT's authorization to examine the confidential sales tax records of the CITY by maintaining CONSULTANT's name on the CITY resolution until such time as all CONSULTANT compliance work on behalf of CITY has been completed and any fee owing to CONSULTANT has been paid.

27.1 Section 7056 of the State of California Revenue and Taxation Code specifically limits the disclosure of confidential taxpayer information contained in the records of the California Department of Tax and Fee Administration. Section

7056 specifies the conditions under which a CITY may authorize persons other than CITY officers and employees to examine State Sales and Use Tax records.

27.2 The following conditions specified in Section 7056-(b), (1) of the State of California Revenue and Taxation Code are hereby made part of this Agreement:

27.2.1 CONSULTANT is authorized by this Agreement to examine sales, use or transactions and use tax records of the Department of Tax and Fee Administration provided to CITY pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law Revenue and Taxation Code section 7200 et.seq.

27.2.2 CONSULTANT is required to disclose information contained in, or derived from, those sales, use or transactions and use tax records only to an officer or employee of the CITY who is authorized by resolution to examine the information.

27.2.3 CONSULTANT is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015, during the term of this Agreement.

27.2.4 CONSULTANT is prohibited from retaining the information contained in, or derived from those sales, use or transactions and use tax records, after this Agreement has expired. Information obtained by examination of Department of Tax and Fee Administration records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the CITY as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the CONSULTANT as a person authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code.

28. Entire Agreement. This Agreement, including Exhibits A, B, C, and D comprises the entire Agreement.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF FOSTER CITY

Dated: _____

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

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk

APPROVED AS TO FORM

Dated: _____

Benjamin Stock, City Attorney

CONSULTANT

Dated: _____

HdL

EXHIBIT A

SERVICES TO BE PROVIDED

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

1. **Services:**

CONSULTANT will provide the following Services relative to CITY's business license tax administration.

1. **Operations Management Services**
 - 1.1. Establish and maintain database of CITY businesses.
 - 1.2. Receive and process applications, renewals and payments in a timely fashion.
 - 1.3. Send renewal notices to active businesses within 30 days of the renewal period end date or at another interval specified by CITY.
 - 1.4. Provide businesses multiple options for submitting applications, renewals, payments, or support requests (including via website, email, mail, phone, and fax. CONSULTANT license specialists will be available for live interactions Monday through Friday, 8:00am to 5:00pm Pacific).
 - 1.5. Remit revenue to CITY no less than monthly.
 - 1.6. Provide CITY staff access to website portal offering business registry inquiry, reporting, and electronic department approval capabilities.
2. **Compliance Services:** 1) Identify and register businesses which are subject to licensure or taxation, 2) collect known debt as pertains to business license or tax, and 3) identify under-reported tax liability.
 - 2.1. **Discovery Services**
 - 2.1.1. Develop a list of businesses subject to CITY licensure or taxation.
 - 2.1.2. Notify non-compliant businesses of their options to comply or dispute their non-compliant status. Notification and support to businesses will be facilitated through the website, mail, email, phone and fax.
 - 2.1.3. Review information and forms submitted by the business for completion and accuracy, inclusive of any additional required documentation (i.e. home occupation permit). All submissions are filed and stored electronically and made available to CITY upon request.
 - 2.1.4. Provide businesses with detailed invoicing and options to pay via website, mail, and phone.
 - 2.1.5. Remit revenue to CITY no less than monthly, along with all business applications and any additional documentation.
 - 2.2. **Collection Services**
 - 2.2.1. Identify businesses subject to CITY licensure or taxation which have known debt to CITY and have failed to pay within an appropriate time frame.
 - 2.2.2. Notify businesses of their options to comply or dispute their non-compliant status.
 - 2.2.3. Provide businesses with detailed invoicing and options to pay via website, mail and phone.
 - 2.2.4. Remit revenue to CITY no less than monthly.
 - 2.3. **Audit Services**
 - 2.3.1. Identify potential under-reporting and/or misclassified businesses.
 - 2.3.2. Audit businesses mutually agreed to by CITY and CONSULTANT that are identified as potential under-reporting businesses.
 - 2.3.3. Submit audit summaries to CITY and discuss further actions.
 - 2.3.4. Educate businesses on proper reporting practices.
 - 2.3.5. Invoice and collect identified delinquencies.
3. **Online Payment Processing** – CONSULTANT's services include PCI compliant payment processing services powered by FIS Global, which supports both credit card and eCheck transactions.

3.1. CITY Responsibilities

3.1.1. As a condition to its receipt of the Service, CITY shall execute and deliver any and all applications, agreements, certifications or other documents required by FIS Global, Networks or other third parties whose consent or approval is necessary for the processing of Transactions by FIS Global. "Network" is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc., NYCE Corporation, American Express, and Discover.

3.1.2. CITY hereby grants CONSULTANT the full right, power and authority to request, receive and review any Data or records reflected in a Transaction report. CITY represents and warrants that it has the full right and authority to grant these rights.

END OF EXHIBIT A

EXHIBIT B
FEE SCHEDULE

1. Operations Management Services

- 1.1. Fees for performing operations management Services shall be \$17.00 for each processed account, which is any account for which an application or renewal/return was processed, or active account which was sent a renewal notice and, a one-time \$5,000.00 implementation fee.
- 1.2. Fees will be increased as of January 1st of each calendar year. Each annual increase in the Fees will be equal to a fixed 4% CPI.
- 1.3. Fees related to travel and lodging expenses are billed at cost and apply to all meetings (including implementation, training, operations and support). Travel expenses only apply to out-of-scope travel and must therefore be pre-approved by CITY.
- 1.4. Fees will be invoiced monthly to CITY for Services performed during the prior month. Fees will be netted out of CITY's monthly revenue disbursement. CITY will submit payment for any balance due to CONSULTANT within 30 days of receiving the invoice.

2. Compliance Services

- 2.1. Fees for performing compliance Services apply to all monies received for the current tax/license period and any other prior period collected (including monies received for taxes, penalties, interest, and fees).
 - 2.1.1. Fees for performing discovery Services shall be a contingency Fee of 40% of the revenues received as a result of the Services.
 - 2.1.2. In the event that CITY discovers a non-compliant business and reports the business to CONSULTANT (including a calculation of all taxes/fees due), CONSULTANT will categorize the business as a collection service effort and thus apply the lower collection Services contingency Fee rate.
 - 2.1.3. Fees for performing collection Services shall be a contingency Fee of 25% of the revenues received as a result of the Services.
 - 2.1.4. Fees for performing audit Services shall be a contingency Fee of 40% of the revenues received as a result of the Services.
- 2.2. CONSULTANT recognizes CITY's authority to waive or reduce the tax/fee debt of a business. Should CITY decide to do so for a business whose deficiency was identified by CONSULTANT, CONSULTANT shall be entitled to compensation in the amount of one half (1/2) of the Fees CONSULTANT would have otherwise earned. Deficiencies which are uncollectable due to insolvency or dissolution of the business, or for deficiencies which are otherwise incapable of collection (i.e. statute of limitation or other legal defense) shall not be considered a CITY voluntary election to waive, and thus, CONSULTANT would not be entitled to compensation related thereto under this provision.

- 2.3. The fee shall be paid notwithstanding any related CITY assistance, work in parallel, and/or incurrence of attorneys' fees or other costs or expenses in connection, with the relevant Services.
- 2.4. Fees related to travel and lodging expenses are billed at cost and applied to all meetings (including implementation, training, operations, and support). Travel expenses only apply to out-of-scope travel and must therefore be pre-approved by CITY.
- 2.5. Fees will be invoiced monthly to CITY for Services performed during the prior month. Fees will be netted out of CITY's monthly revenue disbursement. CITY will submit payment for any balance due to CONSULTANT within 30 days of receiving the invoice.
- 3. Payment Processing** – CONSULTANT will configure payment processing services to utilize either a taxpayer funded model (convenience fee) or CITY funded model, as directed by CITY. CITY may switch between these models upon written request to CONSULTANT. Fees for each of these payment processing models are detailed here.
 - 3.1. Taxpayer funded model – CITY authorizes CONSULTANT to collect each convenience fee from the taxpayer at time of payment.
 - 3.1.1. Credit and debit card processing – 2.9% of transaction amount, minimum of \$2.00
 - 3.1.2. ACH/eCheck processing - \$1.25 per transaction
 - 3.2. CITY funded
 - 3.2.1. Credit and debit card processing – 2.9% of transaction amount
 - 3.2.2. ACH/eCheck processing - \$0.50 per transaction
 - 3.3. Returned payments/NSF fee – Each occurrence of a card chargeback, returned payment or insufficient funds will incur a fee of \$25.00, to be applied to the taxpayers account.
 - 3.4. CONSULTANT reserves the right to review and adjust pricing related to payment processing services on an annual basis. CONSULTANT will communicate any such adjustment to CITY in writing, with 60 days advance notice. Items that will be considered in the review of fees may include, but are not limited to: regulatory changes, card association rate adjustments, card association category changes, bank/processor dues and assessments, average consumer payment amounts, card type utilization, and costs of service.

END OF EXHIBIT B

EXHIBIT C

INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified in herein on the attached form. No substitute form will be accepted.

This is an Exhibit to, and made a part of and incorporated by reference to the Agreement dated [Date of Agreement](#), by and between [CONSULTANT Name](#), hereinafter referred to as "**CONSULTANT**", and the City of Foster City, hereinafter referred to as "**City**", providing for professional services.

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

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of CONSULTANT's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent CONSULTANTS working on the behalf of the named insured. CONSULTANT shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least two million dollars (\$2,000,000) each occurrence and five million dollars (\$5,000,000) aggregate.

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

[FOR THE FOLLOWING INSURANCE REQUIREMENTS, PLEASE CONSIDER IF EACH IS APPROPRIATE FOR THE SERVICE TO BE PROVIDED AND FOR THE CONSULTANT. UNCHECK THE CHECKBOX FOR ANY INSURANCE REQUIREMENT THAT IS NOT APPLICABLE. PLEASE CONTACT THE CITY MANAGER'S OFFICE WITH ANY QUESTIONS.]

☒ Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least two million dollars (\$2,000,000) each occurrence.

☒ Workers' Compensation Insurance

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

☒ Professional Liability Insurance

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

☒ Installation Floater

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

☒ Cyber Liability Insurance

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

1.2 Self-Insured Retention

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

1.3 Claims-Made Basis Coverage

If any of the insurance coverages required under this Agreement is written on a claims-made basis, CONSULTANT, at CONSULTANT's option, shall either (i) maintain said coverage for at least five (5) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended

reporting period of not less than five (5) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

2. City as Additional Insured

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

3. Insurance terms and conditions:

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by CONSULTANT shall be maintained until the completion of all of CONSULTANT's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by CONSULTANT shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by CONSULTANT in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. CONSULTANT shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

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

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

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

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

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

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

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

ATTACHED

1. Insurance Coverage Form

EXHIBIT C

This **INSURANCE COVERAGE FORM** modifies or documents insurance provided under the following:

Named Insured: _____ Effective Work Date(s): _____

Description of Work/Locations/Vehicles: _____

ADDITIONAL INSURED: **City of Foster City (CITY)**
610 Foster City Boulevard, Foster City, CA 94404
Attention: _____

Contract Administrator

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

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

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

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

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

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

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

SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

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

SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required)

ORGANIZATION: _____ **TITLE:** _____

ADDRESS: _____

TELEPHONE: () _____ **DATE ISSUED:** _____

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

This COVID-19 Amendment/Attachment amends the Agreement between City of Foster City ("City") and HdL ("CONSULTANT") dated October 16, 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 and unavoidable under the circumstances; (iii) is not the result of the CONSULTANT's failure to comply with the contract documents or a COVID-19 Proclamation; and (iv) is not the result of a subCONSULTANTS failure to comply with a COVID-19 Proclamation in connection with the performance of the Services.

2. COVID-19 Conditions and Proposal. CONSULTANT is expected to know and is deemed to have known about COVID-19 Conditions when it submits its proposal, and COVID-19 Conditions must be accounted for in the CONSULTANT's price and schedule. In order to be entitled to any relief from a COVID-19 Condition, the CONSULTANT must demonstrate that the issue, cost or delay is due to an Unknown COVID-19 Condition.

3. Compliance with COVID-19 Proclamations.

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

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

4. Delay. The CONSULTANT is entitled to a reasonable time extension for an Unknown COVID-19 Condition. Such time extension is non-compensable.

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

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

7. Safe Work Practices. CONSULTANT shall implement safe work practices recommended by CDC or OSHA or Cal/OSHA, which may include, inter alia, screening all employees, subCONSULTANTS, or others ("worker(s)") at all locations where Services are performed for signs and symptoms of COVID-19; adopting staggered work schedules, e.g., providing alternating workdays or extra shifts, to reduce the total number of employees on a site at any given time and to ensure physical distancing; identifying choke points where workers are forced to stand together, such as hallways and elevators, ingress and egress points, break areas, and buses, and implement policies to maintain social distancing; coordinating deliveries in line with the employer's minimal contact and cleaning protocols; and instituting a rigorous housekeeping program to reduce dust levels at all exterior locations. CONSULTANT remains fully responsible for following and complying with changes to recommended safe work practices from time to time.

8. Monitoring and Reporting. City may require the CONSULTANT to actively monitor the health of its workers through temperature checks and questionnaires of major COVID-19 symptoms, including but not limited to cough, fever above 100.4 degrees Fahrenheit and shortness of breath. CONSULTANT shall immediately report to City any outbreaks of COVID-19 among its workers. The CONSULTANT shall not knowingly allow any worker who has tested positive with COVID-19 to enter a City building. In the event of an outbreak or an exposure to COVID-19, the City may impose appropriate mitigation strategies which may be in consultation with the public health officer.

9. Conflicts. In the event of an inconsistency between this COVID-19 Amendment and the Agreement, this Addendum shall control.

[Signatures on Next Page]

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

CONSULTANT:

CITY:

Signature

Signature

Print Name & Title

Print Name & Title

DRAFT