



TO: Mayor and Councilmembers

SUBMITTED BY: Matthew R. Fore, General Services Director

SUBJECT: Amendment No. 7 to Professional Design Services Agreement with Flowers & Associates, Inc. for Capital Improvements at the Goleta Community Center

RECOMMENDATION:

Authorize the City Manager to execute Amendment No. 7 to Professional Design Services Agreement No. 2021-041 with Flowers & Associates, Inc. for the Americans with Disabilities Act Improvements Project at the Goleta Community Center, updating the scope of work and increasing the contract authority by \$101,700, for a new total contract amount of \$490,104 and extending the term of the Agreement to June 30, 2028.

BACKGROUND:

The Goleta Community Center ADA Improvements Project (Project) is included as part of the City's 5-Year Capital Improvement Program (CIP) and identified as Project No. 9121. On June 1, 2021, the City Council authorized the City Manager to execute Agreement No. 2021-041 with Flowers & Associates, Inc. (Flowers) to provide professional design services for this capital project.

On September 29, 2021, the City executed Amendment No. 1 to the Agreement to amend Exhibit A to identify a new Electrical Engineer for the project team. Subsequently, on December 6, 2022, the City executed Amendment No. 2 to amend Exhibit A-1 to update the list of professionals that comprise the Consultant's Project Team; to include design of a stage lift, additional handrails throughout the facility; topographic mapping survey for replacement of a sewer lateral; inclusion of Federal Contract Provisions; and to extend the term of the agreement.

The City executed Amendment No. 3 to the Agreement on February 21, 2023, to complete the design of the sewer lateral that will serve the ADA-remodeled public restrooms, and on May 16, 2023, executed Amendment No. 4 to include design services from a historic architect to comply with the City's Historic Preservation Ordinance. On September 19, 2023, the City executed Amendment No. 5 to extend the term of the agreement to June 30, 2025. On January 16, 2024, the City executed Amendment No. 6 to direct the project engineer to produce a complete bid package which included plans, specifications, and cost estimates for the Project.

DISCUSSION:

As originally conceived, both the exterior and interior ADA improvements would be bid as a single project. However, during design, in response to persistent complications with the electrical system at the Community Center, staff initiated a new project (CIP 9127c) to replace the entire electrical system, including replacement of all electrical panels and branch circuit wiring. Based on the scope of the electrical system replacement project, and its impact on the interior ADA improvements, staff determined that the most efficient approach would be to phase construction at the Community Center as follows:

- Phase I: Exterior ADA Improvements including paths of travel, curb cuts, new wheelchair ramp and hand railings, and installation of a new sewer lateral; and
- Phase II: Interior ADA improvements including remodel of the interior restrooms, installation of a stage lift, and door and hardware improvements.

Replacement of the electrical system, which is currently unfunded, would, if funded in Fiscal Year 2026-27, be initiated in the Fall of 2026, with construction extending into 2027.

This Amendment No. 7 directs the project engineer to revise the previously produced construction documents for the exterior ADA and sewer lateral replacement, which includes, but is not limited to plans, specifications, and cost estimates for the Project. The scope of the Amendment also includes permit revision, bidding, and construction inspection support, and extends the termination date of the Agreement to June 30, 2028.

It should be noted that this Amendment No. 7 fully covers Phase I of ADA Improvements Project (as noted above). Once complete, the City will no longer need the services of Flowers and Associates for Phase II (Interior ADA improvements).

GOLETA STRATEGIC PLAN:

City-Wide Initiative: 5. Strengthen Infrastructure

Strategic Goal: 5.4 Protect and maintain City-owned facilities and critical operational assets

FISCAL IMPACTS:

Amendment No. 7 adds \$101,700 of contract authority. Sufficient budget exists in CIP Project No. 9121 Goleta Community Center ADA Improvement and Sewer Lateral Replacement to cover the cost of the amendment (see Table 1).

Table 1 – Project

Fund	Account	Current Budget	FY 25/26 Activity & Encumbrances	Reserves	FY 25/26 Budget Available
General Fund	101-90-9121-57070	\$ 491,185	\$ 107,427	\$ 25,000	\$ 358,758
General Fund	101-90-9121-57071	\$ 952,655	\$ 562,239	\$ -	\$ 390,416
Community Project Fund Grant	424-90-9121-57071	\$ 3,000,000	\$ -	\$ -	\$ 3,000,000
Total:		\$ 4,443,840	\$ 669,666	\$ 25,000	\$3,749,174

ALTERNATIVES:

The City Council may choose not to authorize the proposed contract amendment and provide staff with alternative direction. However, doing so may delay completion of the ADA Improvement and Sewer Lateral Replacement project.

LEGAL REVIEW BY: Isaac Rosen, City Attorney

APPROVED BY: Robert Nisbet, City Manager

ATTACHMENTS:

1. Amendment No. 7 to Professional Design Services Agreement No. 2021-041 with Flowers & Associates, Inc.
2. Amendments No. 1-6 and Professional Design Services Agreement No. 2021-041 with Flowers & Associates, Inc.

ATTACHMENT 1

Amendment No. 7 to Professional Design Services Agreement No. 2021-041 with
Flowers & Associates, Inc.

**AMENDMENT NO. 7
TO A PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
FLOWERS & ASSOCIATES, INC.**

This **Amendment No. 7** to the Professional Services Agreement by and between the **City of Goleta**, a municipal corporation ("City") and **Flowers & Associates, Inc.**, a California Corporation ("Consultant") dated June 1, 2021 ("Agreement," Agreement No. 2021-041) is made on this ____ day of _____, 2026.

SECTION A. RECITALS

1. This Agreement is for producing design plans for access improvements and a sewer lateral replacement for the Goleta Community Center associated with the Goleta Community Center Improvements Project (Project No. 9121); and
2. This Agreement has been amended to identify an electrical engineer, historic preservation consultant, and project architect; identify a new City Project Manager; extend the term of the Agreement; add Federal Contract Provisions; and modify the project scope and increase the contract amount (Amendments No. 1-6); and
3. The parties desire to retroactively amend this Agreement so that this Amendment is effective as of June 30, 2025, and the term of the Agreement extends to June 30, 2028; and
4. The Agreement currently provides for the total compensation amount not to exceed \$388,404; and
5. The parties desire to amend the Agreement so as to provide for additional compensation in the amount of \$101,700 for additional tasks; and
6. The Agreement currently designates Matthew Fore as the City Project Manager; and
7. The parties desire to amend the Agreement to designate Patrick Zuroske, Project Manager, General Services Department, as the City Project Manager; and
8. The Agreement currently provides in Exhibit A-5 entitled "Scope of Work" the complete and particular description of services; and
9. The parties desire to amend Exhibit A-5 by adding additional services as more completely and particularly set forth in the Scope of Work, attached as Exhibit "A-6"; and

City of Goleta
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10. The Agreement currently provides in Exhibit B-1 entitled "Schedule of Fees" hourly rates; and
11. The parties desire to amend Exhibit B of the Agreement to identify the new hourly rates, attached as "Exhibit B-2"; and
12. The City Council approved this Amendment No. 7, on this _____ day of _____, 2026.

SECTION B. AMENDED TERMS

Now therefore City and Consultant agree that the Agreement be, and hereby is, amended as follows:

1. **Subsection (a) of Section 3. COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$101,700 and to read in its entirety:

(a) Maximum and Rate. The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$490,104 (herein "not-to-exceed amount") and shall be earned as the work progresses.

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B-2," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2028, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days' notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

2. **Section 6. CITY PROJECT MANAGER AND SERVICES BY CITY** of the agreement is amended to designate Patrick Zuroske, Project Manager, General Services Department as the City Project Manager and to read in its entirety:

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY'S "Project Manager", as that staff person is designated by CITY from time to time, and who presently is Patrick Zuroske, Project Manager, General Services Department. Project Manager shall have the authority to act on behalf of the CITY in administering

this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

3. **Section 6. TERM, PROGRESS AND COMPLETION** of the Agreement is amended to extend the term for an additional thirty-six (36) months to read in its entirety:

The term of this Agreement is from the date first written above to June 30, 2028, unless the term of this Agreement is extended or the Agreement is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager.

4. This Agreement is amended to delete and replace in its entirety:

Exhibit A-5 "Scope of Work" with **Exhibit A-6 "Scope of Work"** attached hereto and incorporated herein.

5. This Agreement is amended to delete and replace in its entirety:

Exhibit B-1 "Schedule of Fees" with **Exhibit B-2 "Schedule of Fees"** attached hereto and incorporated herein.

6. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

In concurrence and witness whereof, this Amendment No. 7 has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

CONSULTANT

Robert Nisbet, City Manager

Robert A. Schmidt, P.E., President

ATTEST:

Deborah Lopez, City Clerk

Vernon E. Williams, P.E., CFO

APPROVED AS TO FORM:
ISAAC ROSEN, CITY ATTORNEY

Signed by:


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Scott Shapses, Deputy City Attorney

EXHIBIT A-6 SCOPE OF WORK

This Section covers work conducted via the original contract and Amendments No. 1-6, which have been acceptably concluded.

Consultant shall deliver the following services:

1. Review all site information related to the project provided by the City. Communicate to and share site information with subconsultants. Assumed 21 hours total (between office engineers and project manager).
2. Coordinate with City Public Works staff in order to understand their site improvement goals and budget constraints and continue coordination throughout the project to ensure tasks and goals are met. Assumed 24 hours total.
3. Select a project Surveyor and coordinate inner-office and w/surveyor to define the necessary extents and details of the mapping in order to provide sufficient detail for grading and drainage design compliant with ADA requirements. Assumed 12 hours total (split between engineer and project manager).
4. Select a project Architect and coordinate to confirm the scope of interior access improvements. Continue coordination/management of the Architect in order to confirm City goals and project tasks are met. Assumed 44 hours total (between engineer and project manager).
5. Prepare Preliminary Civil Grading and Drainage Plans incorporating all the exterior improvements identified in the aforementioned Crosby/Partner reports as modified by the forthcoming ADA assessment/update. These improvements shall include modifications to the parking lot (addition of disabled parking stalls, access aisles, etc.). Assumed 64 hours total (between engineers, Principal, and project manager).
6. Prepare Preliminary Architectural Plans for all the identified interior improvements, as defined below and in the forthcoming ADA Assessment/update:

Building A: Two new completely redesigned multi-user restrooms including X-Ray of the men's and women's restroom floor systems to determine size, spacing, and depth of reinforcing steel within the existing concrete slabs, and boring of two 6-inch diameter holes in the existing concrete slabs to determine the existing building construction under the slabs. Door hardware, minor walls being moved, cabinets, and equipment ADA stage lift and associated handrails in auditorium and removal of dining room stage. ADA handrails at the existing ramp at the main entrance, and the handrails

on the existing front entrance stairs. ADA stage and associated handrails in dining room.

Replacement of sewer lateral that serves the existing restrooms and installation of grease interceptor. Preparation of sewer lateral replacement plans includes the following work:

- a. Coordination with City staff regarding locations of existing sewer lines, conditions and elevations, and evaluation of which lines to investigate and pursue for replacement.
- b. Record searches for easements that allow connection to the sewer main, westerly, as opposed to travelling to the main on Hollister Avenue.
- c. Coordination, calls, site visits, and meetings with Goleta Sanitary District, the project surveyor, multiple plumbers, and scoping specialists to define the onsite sewer lines and elevations, to determine the best route for the new line.
- d. Review of past sewer line inspections and video inspections.
- e. Calculate effluent loads from the Goleta Community Center and Boys and Girls Club and determine available capacity in the Goleta Sanitary District's main line to receive these loads.
- f. Coordination with contract plumbers, Goleta Sanitary District and City staff, to assess the viability of the new sewer line tie-in.
- g. Design and produce plans for the sewer line replacement, including replacement of the concrete walkway/doorway exits to be ADA-compliant along the south side of the Goleta Community Center building.

Plans shall require that the Architect enlist and coordinate with a Structural Engineer, a Mechanical/Plumbing Engineer, an Electrical Engineer, a door hardware specialist, and an ADA specialist, all of which are defined below:

Structural Engineer: GSE, Thuy Greer, SE

Mechanical/Plumbing: MEC, Paul Tziouvaras and Linda Altomare

Electrical: Alan Noelle Engineering, Alan Noelle

Door Hardware: IDS, Bob Simpson

ADA Specialist: Eric McSwain

7. Consultant shall contract with a historic architect services consultant to provide Historic Preservation Consultation and Historic Preservation Architectural Services to the project architect for the design of accessibility upgrades in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, as well as other related historic preservation requirements. Deliverables shall include the following:

Historic Preservation Consultation

Deliverables:

- a. Redlined drawings (one set) in digital format.
- b. Draft and Final Design Development (DD) Phase Secretary of the Interior (SOI) Standards Review Summary Memorandum.
- c. Updated significance diagrams
- d. Redlined drawings (one set at 60%) in digital format.

Historic Architectural Services

Deliverables:

- a. Design Development Drawings: door and window details.
- b. Data sheets regarding door hardware and lights.
- c. Construction Documents Drawings: door and window details.
- d. As needed, updated data sheets regarding door hardware and lights.
- e. DD Specifications: historic architect services consultant will provide up to five (5) historic specifications sections in CSI format. Specification sections will likely include:
 - o 01 35 91 Historic Treatment Procedures
 - o 02 42 96 Historic Removal and Dismantling
 - o 08 03 14 Historic Treatment of Wood Doors
 - o 08 03 52 Historic Treatment of Wood Windows
 - o 09 03 20 Historic Treatment of Plaster
 - o Construction Document Historic Specifications: historic architect services consultant will provide up to five (5) historic specification sections in CSI Format.

Construction Administration

Deliverables:

- a. Respond to up to six (6) Requests for Information from the Contractor for Preservation Architect-related questions.
- b. Review project submittals required in historic specification sections, including product data, shop drawings, and samples. Perform two (2) reviews maximum per submittal.
 - o Contribution to punch list: as the Construction Contractor completes portions of the work, visit the site and perform a punch list walk-through with the Contractor and Client. Contractor will document items to be completed in written and photographic format and distribute digitally.

8. Circulate preliminary plans to the City for review and address comments. Revisions shall be limited to two rounds of comments/corrections. Assumed 20 hours (between engineer, Principal, and project manager).
9. Produce a construction level plan set for the sewer, parking lot, and building improvements (combined civil + architectural), incorporating revisions resulting from all City plan review as well as a stand-alone turn-key bid package, including, but not limited to, specifications, bid schedule, and front-end bid manual.
10. Address comments from and update the Plans, accordingly. Assumed 26 hours total.
11. Produce 50% and 100% Construction Cost Estimates for the project (interior costs from Architect and exterior costs from Consultant) and provide it to the City. This shall include coordination with the Architect and their sub-consultants.
12. Produce specifications for the Goleta Community Center Americans with Disabilities Act Improvements Project (CIP No. 9121). Deliverables include 100% technical specifications and Division 1 General Requirements including coordination and inclusion of other consultants' technical specifications (Structural, Mechanical, Plumbing and Electrical).

Production of specifications does not include bid, procurement, and contract requirements for the Project Manual, bidding assistance, addendum, submittal review, estimates or value engineering, changes in technical specifications due to design changes or changes in product selections after consultants' completion of individual specification sections.

13. Provide design assistance during construction, which shall include Consultant's review/comment on submittals required by Consultant's plans, and review/response to RFIs (limit to no more than 10 RFIs), and up to 4 site visits for construction observation. This task excludes contract bidding and/or construction contract administration.
14. Attend meetings as requested by City, not to exceed 8 man-hours.

CONSULTANT PROJECT TEAM

The below listed professionals have been selected by CONSULTANT for the subject project:

Civil Engineer: Flowers & Associates, Inc.

Architect: Paul Zink, AIA (and his subconsultants as defined above in Task 6)

Surveyor: Gary Salmen, California Licensed Land Surveyor No. 5018

Historic Architect Services Consultant: Page & Turnbull

Cost Estimator: Cumming Group
Specifications/Bid Documents: Richard McKenzie

The following Scope of Work is to be completed upon execution of Amendment No. 7:

Due to new projects being designed and undertaken at the Goleta Community Center within the last year, the previous prepared architectural plans for the interior ADA improvements are no longer applicable. In February 2026, the project team determined that the best path forward was to separate the Interior ADA project phase from the Exterior ADA and the Sewer Lateral Replacement Phases.

Per Amendment No. 7, Consultant will restructure the older plans and add improvements per comments provided by City Staff and by Kitchell CEM, the City's contracted Construction Manager. It is anticipated that the design and construction periods will extend through June 30, 2028.

With the above information as a basis, Consultant will provide the following services. Note that the number within parentheses, e.g. (12), indicates the approximate number of hours estimated to complete each task while amount provided in brackets, e.g. [\$2,000], indicates approximate cost per task. With City Project Manager approval, Consultant may adjust the hours and costs of individual tasks provided that the total cost of the Scope of Work set forth in this Amendment No. 7 does not exceed \$101,700.

1. Review all site information related to the project provided to Consultant by the City. Communicate to and share site information with the City's subconsultants as requested and needed to define civil scope between construction managers, project manager, and sub consultants (30) [\$6,700].
2. Coordinate with City Public Works staff in order to understand their site improvement goals and budget constraints and continue coordination throughout the project to ensure tasks and goals are met (38) [\$8,600].
3. Prepare two sets of revised Preliminary Civil Grading and Drainage Plans with defined scope (72) [\$16,200].
4. Circulate two preliminary plans to the City for review and address comments. Revisions will be limited to two rounds of comments/corrections per each set (24) [\$5,400].
5. Produce two construction level plan sets which incorporates revisions resulting from the Preliminary Plans review, and includes construction details (40) [\$9,000].
6. Preparation of civil specifications to be included in a stand-alone specifications package being assembled and compiled by others (22) [\$5,100].

7. Address comments from City (limited to one round of corrections/comments) and update the construction plans and specifications, accordingly (14) [\$3,300].
8. Produce a Construction Cost Estimate related to exterior (civil related) improvements only (18) [\$4,200].
9. Provide design assistance during construction, which will include our review/comment on submittals required by our plans, and review/response to RFIs (limit to no more than 15 RFIs), and up to 4 site visits for construction observation (53) [\$12,100].
10. Attend meetings as requested by Client, not to exceed 16 man-hours (12) [\$3,900].
11. Produce two (2) sets of as-built construction record drawings upon completion of construction to be based on contractor's comprehensive and legible as-builts (notes, references, mark-ups, etc. to be provided in CAD or Bluebeam [or similar]) that will be submitted to Consultant for review and coordination, limited to one (1) round of review of comments from the City prior to finalization (45) [10,100].
12. A contingency to account for unforeseen (within reason) or unanticipated impacts that would drive changes to scope or plan set revisions (74) [\$17,100].

SPECIFIC EXCLUSIONS

Specifically not included in the above Scope of Services/Compensation are the following:

1. Geotechnical Engineering, including design, observation and testing of earthwork.
2. City review fees and permit costs.
3. Reproduction expenses, including the cost of blueprinting and other reprographics.
4. Entitlement.
5. Environmental review, including storm water requirements (the new/replaced hardscape totals are not anticipated to trigger the City's storm water requirements).
6. Assumptions and Exclusions Related to Historic Preservation Consultation and Historic Architectural Services.
 - As-built drawings in digital format (AutoCAD or Revit) will be provided by the Client for historic architect services consultant's use. Where as-built drawings are not available, historic architect services consultant will use photographs to illustrate the scope of work.
 - Unless noted otherwise, all deliverables will be provided in electronic format. The Prime Architect will be responsible for printing materials.
 - The design and construction periods will extend through June 30, 2028.
 - This Scope of Services does NOT include the following:
 - Formal environmental compliance analysis and documentation (CEQA and/or Section 106 of NHPA as required by FEMA).

- Condition Assessments.
 - Hazardous materials identification or abatement design.
 - Mechanical, electrical, plumbing and geotechnical engineering services.
 - Bidding and Construction Administration.
 - Costs to access high areas of the building (i.e., rental costs for personnel lifts or ladders).
 - Planning, plan-check, or permitting fees.
 - Presentation to and/or attendance at public meetings or hearings.
 - Costs for a contractor to create and temporarily repair inspection openings to observe as built conditions.
 - Preparation of City of Goleta application forms.
 - Review and commentary of a proposed project or project alternatives, as defined in an Environmental Impact Report.
 - CEQA technical support by the Historic Preservation Consultant.
7. Calculations, design, and delineation resulting from development configuring changes by others differing substantially from the project as initially proposed.
 8. Offsite improvement plans.
 9. Utility coordination.
 10. Traffic analysis and reports including construction traffic control plans or Haul Route Plans.
 11. Actual design of “dry” public Utilities (e.g., electricity, gas cable, internet and/or telephone) and onsite services, including lighting.
 12. National Pollution Discharge Elimination System (NPDES) compliance during construction (QSP activities).
 13. Land surveying services.

EXHIBIT B-2 SCHEDULE OF FEES

FEE SCHEDULE

Effective February 1, 2025
June 30, 2028

<u>ENGINEERING SERVICES</u>	<u>HOURLY RATE</u>
Principal Engineer	\$263.00
Associate Engineer	\$242.00
Senior Engineer II	\$231.00
Senior Engineer I	\$215.00
Drainage Engineer	\$215.00
Qualified SWPPP Practitioner	\$200.00
Design Engineer II	\$190.00
Water Resources Specialist	\$190.00
Project Manager	\$190.00
Design Engineer I	\$175.00
CAD Designer	\$160.00
CAD Technician	\$142.00
Administrative Support	\$120.00
 <u>PLANNING SERVICES</u>	
Principal Planner	\$263.00
Associate Planner	\$200.00
Senior Planner	\$181.00
Public Agency Coordinator	\$167.00
Assistant Planner	\$142.00
 <u>CONSTRUCTION PHASE SERVICES</u>	
Principal Construction Engineer	\$263.00
Associate Construction Engineer	\$242.00
Senior Construction Engineer	\$215.00
Resident Engineer	\$200.00
Prevailing Wage Construction Monitor	\$180.00
Construction Monitor	\$158.00

EXPERT TESTIMONY

Expert Testimony, Deposition, Court Appearance, and research related thereto will be charged at 3.0 times the applicable hourly rate.

REIMBURSABLE EXPENSE

Plots and other expenses connected with the work will be charged at cost.

CONSULTANTS

Subcontracts administered by Flowers & Associates, Inc. will be charged at cost plus 10%.

ATTACHMENT 2

Amendments No. 1-6 and Professional Design Services Agreement No. 2021-041 with
Flowers & Associates, Inc.

2021-041.1

**AMENDMENT NO. 1
TO A PROFESSIONAL DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
FLOWERS & ASSOCIATES, INC.**

This **Amendment No. 1** to the Professional Design Services Agreement by and between the **City of Goleta**, a municipal corporation ("City") and **Flowers & Associates, Inc., a California corporation** ("Consultant") dated June 1, 2021 ("Agreement," Agreement No. 2021-041) is made on this 29th day of September, 2021.

SECTION A. RECITALS

1. This Agreement is for producing design plans for access improvements to the Goleta Community Center associated with the Goleta Community Center Improvements Project (Project No. 9067) and
2. The Agreement currently provides in Exhibit A entitled "Scope of Work" the subconsultants; and
3. The parties desire to amend Exhibit A of the Agreement to identify a new Electrical Engineer, and
4. The City Manager approved this Amendment No. 1, on this 29th day of September, 2021.

SECTION B. AMENDED TERMS

Now therefore City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

2. This Agreement is amended to delete and replace in its entirety:
Exhibit A "Scope of Work" with **Exhibit A-1 "Scope of Work"** attached hereto and incorporated herein.

3. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect

In concurrence and witness whereof, this Amendment No. 1 has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

DocuSigned by:

Michelle Greene

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Michelle Greene, City Manager

CONSULTANT

DocuSigned by:

Robert A. Schmidt

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Robert A. Schmidt, P.E., President

ATTEST:

DocuSigned by:

Deborah Lopez

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Deborah Lopez, City Clerk

DocuSigned by:

Vernon E. Williams

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vernon E. Williams, P.E., CEO

APPROVED AS TO FORM:

MICHAEL JENKINS, CITY ATTORNEY

DocuSigned by:

Winnie Cai

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Winnie Cai, Assistant City Attorney

EXHIBIT A-1 SCOPE OF WORK

Consultant shall deliver the following services:

1. Review all site information related to the project provided by the City. Communicate to and share site information with subconsultants. Assumed 21 hours total (between office engineers and project manager).
2. Coordinate with City Public Works staff in order to understand their site improvement goals and budget constraints and continue coordination throughout the project to ensure tasks and goals are met. Assumed 24 hours total.
3. Select a project Surveyor and coordinate inner-office and w/surveyor to define the necessary extents and details of the mapping in order to provide sufficient detail for grading and drainage design compliant with ADA requirements. Assumed 12 hours total (split between engineer and project manager).
4. Select a project Architect and coordinate to confirm the scope of interior access improvements. Continue coordination/management of the Architect in order to confirm City goals and project tasks are met. Assumed 44 hours total (between engineer and project manager).
5. Prepare Preliminary Civil Grading and Drainage Plans incorporating all the exterior improvements identified in the aforementioned Crosby/Partner reports as modified by the forthcoming ADA assessment/update. These improvements shall include modifications to the parking lot (addition of disabled parking stalls, access aisles, etc.). Assumed 64 hours total (between engineers, Principal, and project manager).
6. Prepare Preliminary Architectural Plans for all the identified interior improvements, as defined below and in the forthcoming ADA Assessment/update:
 - Building A: Two new completely redesigned multi-user restrooms
Door hardware, minor walls being moved, cabinets, and equipment
 - Building B: Doors, gates, and door hardware
Note, restroom work limited to grab bar installation only
Note, no change to existing exterior door landings
 - Building C2: One new completely redesigned single user restroom
Door hardware, modify door ramps, and cabinets
 - Building C4: Two new completely redesigned single user restrooms
Door hardware and cabinets
 - Building D: Door hardware

Note, no change to existing restrooms

Plans shall require that the Architect enlist and coordinate with a Structural Engineer, a Mechanical/Plumbing Engineer, an Electrical Engineer, a door hardware specialist, and an ADA specialist, all of which are defined below:

Structural Engineer: GSE, Thuy Greer, SE

Mechanical/Plumbing: MEC, Paul Tziouvaras and Linda Altomare

Electrical: Alan Noelle Engineering, Alan Noelle

Door Hardware: IDS, Bob Simpson

ADA Specialist: Eric McSwain

7. Circulate preliminary plans to the City for review and address comments. Revisions shall be limited to two rounds of comments/corrections. Revisions shall be limited to two rounds of comments/corrections. Assumed 20 hours (between engineer, Principal, and project manager).
8. Produce a construction level plan set (combined civil + architectural), incorporating revisions resulting from the Preliminary Plans review, and including construction details and specifications (on the sheets, not stand-alone specs). Assumed 38 hours total (between engineer, principal engineer, and project manager).
9. Address comments from City (limited to one round of corrections/comments) and update the Plans, accordingly. Assumed 26 hours total (between engineer, principal engineer, and project manager).
10. Produce a Construction Cost Estimate for the project (interior costs from Architect and exterior costs from Consultant) and provide it to the City. This shall include coordination with the Architect and his sub-consultants. Assumed 13 hours total.
11. Provide design assistance during construction, which shall include Consultant's review/comment on submittals required by Consultant's plans, and review/response to RFIs (limit to no more than 10 RFIs), and up to 4 site visits for construction observation. This task excludes contract bidding and/or construction contract administration.
12. Attend meetings as requested by City, not to exceed 8 man-hours.

SPECIFIC EXCLUSIONS

Specifically not included in the above Scope of Services/Compensation are the following:

1. Geotechnical Engineering, including design, observation and testing of earthwork.
2. City review fees and permit costs.
3. Any involvement with hazardous waste including detection, evaluation, and cleanup.
4. Reproduction expense including the cost of blueprinting and other reprographics.
5. Entitlement.
6. Environmental review, including storm water requirements (the new/replaced hardscape totals are not anticipated to trigger the City's storm water requirements).

**AMENDMENT NO. 2
TO A PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
Flowers & Associates, Inc.**

This **Amendment No. 2** to the Professional Design Services Agreement by and between the **City of Goleta**, a municipal corporation ("City") and Flowers & Associates, Inc., a California Corporation ("Consultant") dated June 1, 2021, ("Agreement," Agreement No. 2021-041) is made on this 6th day of December, 2022.

SECTION A. RECITALS

1. This Agreement is for producing design plans for access improvements to the Goleta Community Center Improvements Project (Project No. 9121); and

2. This Agreement has been amended to amend Exhibit A of the Agreement to identify a new Electrical Engineer (Amendment No. 1); and

3. The Agreement currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed \$165,000; and

4. The parties desire to amend the Agreement so as to provide for additional compensation in the amount of \$26,300 for additional tasks; and

5. The Agreement currently designates in Section 5, Melissa Angeles as the City Project Manager.

6. The parties desire to amend the Agreement to designate Matthew Fore, General Services Director, as the City Project Manager.

7. The Agreement currently provides in Section 6 for the termination of the Agreement on December 31, 2022; and

8. The parties desire to amend the Agreement so as to extend the termination of the Agreement to June 30, 2023; and

9. The Agreement currently provides in Exhibit A entitled "Scope of Work" the complete and particular description of services; and

10. The parties desire to amend Exhibit A by adding additional services as more completely and particularly set forth in the Scope of Work, attached as Exhibit "A-1"; and

11. The parties desire to amend the Agreement so as to add Section 32 – Federal Requirements and Appendix C – Federal Contract Provisions to address the use of federal funding; and

12. The City Council approved this Amendment No. 2, on this 6th day of December, 2022.

SECTION B. AMENDED TERMS

Now therefore City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Subsection (a) of Section 3. COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$26,300 and to read in its entirety:

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$191,300 (herein "not-to-exceed amount") and shall be earned as the work progresses.

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2023, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

2. **Section 6. CITY PROJECT MANAGER AND SERVICES BY CITY** of the Agreement is amended to designate Matthew Fore, General Services Director, as the City Project Manager and to read in its entirety:

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is Matthew Fore, General Services Director. Project Manager shall have the authority to act on behalf of the CITY in administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

3. **Section 6. TERM, PROGRESS AND COMPLETION** of the Agreement is amended to extend the term for an additional six (6) months to read in its entirety.

The term of this Agreement is from the date first written above to June 30, 2023, unless the term of this Agreement is extended or the Agreement is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed within the term of this Agreement following the notice to proceed.

4. This Agreement is amended to delete and replace in its entirety:

Exhibit A "Scope of Work" with **Exhibit A-1 "Scope of Work"** attached hereto and incorporated herein.

5. **Section 33. FEDERAL REQUIREMENTS** of the Agreement is added to include Federal Requirement Provisions as follows:

FEMA financial assistance will be used to fund all or a portion of this contract. The consultant shall comply with all federal requirements including, but not limited to, the following:

1. 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is expressly incorporated herein by reference.

2. Federal Contract Provisions attached hereto as Exhibit "C" and incorporated herein by reference.

Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in the contract, including but not limited to, 2 C.F.R. Part 200 and the Federal Contract Provisions.

With respect to any conflict between such federal requirements and the terms of this contract and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

6. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect

In concurrence and witness whereof, this Amendment No. 2 has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

DocuSigned by:
Robert Mshet
Robert Mshet, City Manager

CONSULTANT

DocuSigned by:
Robert A. Schmidt
Robert A. Schmidt, P.E., President

ATTEST:

DocuSigned by:
Deborah Lopez
Deborah Lopez, City Clerk

DocuSigned by:
Vernon E. Williams
Vernon E. Williams, P.E., CEO

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:
Winnie Cai
Winnie Cai, Assistant City Attorney

EXHIBIT A-1 SCOPE OF WORK

Consultant shall deliver the following services:

1. Review all site information related to the project provided by the City. Communicate to and share site information with subconsultants. Assumed 21 hours total (between office engineers and project manager).
2. Coordinate with City Public Works staff in order to understand their site improvement goals and budget constraints and continue coordination throughout the project to ensure tasks and goals are met. Assumed 24 hours total.
3. Select a project Surveyor and coordinate inner-office and w/surveyor to define the necessary extents and details of the mapping in order to provide sufficient detail for grading and drainage design compliant with ADA requirements. Assumed 12 hours total (split between engineer and project manager).
4. Select a project Architect and coordinate to confirm the scope of interior access improvements. Continue coordination/management of the Architect in order to confirm City goals and project tasks are met. Assumed 44 hours total (between engineer and project manager).
5. Prepare Preliminary Civil Grading and Drainage Plans incorporating all the exterior improvements identified in the aforementioned Crosby/Partner reports as modified by the forthcoming ADA assessment/update. These improvements shall include modifications to the parking lot (addition of disabled parking stalls, access aisles, etc.). Assumed 64 hours total (between engineers, Principal, and project manager).
6. Prepare Preliminary Architectural Plans for all the identified interior improvements, as defined below and in the forthcoming ADA Assessment/update:

Building A: Two new completely redesigned multi-user restrooms
Door hardware, minor walls being moved, cabinets, and equipment
ADA stage lift and associated handrails in auditorium
ADA handrails at the existing ramp at the main entrance, and the
handrails on the existing front entrance stairs
ADA stage and associated handrails in dining room
Replacement of sewer lateral that serves the existing restrooms and
installation of grease interceptor (work includes all survey work,
topographic mapping, and coordination with mechanical and
plumbing subcontractors)

Plans shall require that the Architect enlist and coordinate with a Structural Engineer, a Mechanical/Plumbing Engineer, an Electrical Engineer, a door hardware specialist, and an ADA specialist, all of which are defined below:

Structural Engineer: GSE, Thuy Greer, SE

Mechanical/Plumbing: MEC, Paul Tziouvaras and Linda Altomare

Electrical: Alan Noelle Engineering, Alan Noelle

Door Hardware: IDS, Bob Simpson

ADA Specialist: Eric McSwain

7. Circulate preliminary plans to the City for review and address comments. Revisions shall be limited to two rounds of comments/corrections. Revisions shall be limited to two rounds of comments/corrections. Assumed 20 hours (between engineer, Principal, and project manager).
8. Produce a construction level plan set (combined civil + architectural), incorporating revisions resulting from the Preliminary Plans review, and including construction details and specifications (on the sheets, not stand-alone specs). Assumed 38 hours total (between engineer, principal engineer, and project manager).
9. Address comments from City (limited to one round of corrections/comments) and update the Plans, accordingly. Assumed 26 hours total (between engineer, principal engineer, and project manager).
10. Produce a Construction Cost Estimate for the project (interior costs from Architect and exterior costs from Consultant) and provide it to the City. This shall include coordination with the Architect and his sub-consultants. Assumed 13 hours total.
11. Provide design assistance during construction, which shall include Consultant's review/comment on submittals required by Consultant's plans, and review/response to RFIs (limit to no more than 10 RFIs), and up to 4 site visits for construction observation. This task excludes contract bidding and/or construction contract administration.
12. Attend meetings as requested by City, not to exceed 8 man-hours.

CONSULTANT PROJECT TEAM

The below listed professionals have been selected by CONSULTANT for the subject project:

Civil Engineer: Flowers & Associates, Inc.

Architect: Paul Zink, AIA (and his subconsultants as defined above in Task 6)

Surveyor: Gary Salmen, California Licensed Land Surveyor No. 5018

SPECIFIC EXCLUSIONS

Specifically not included in the above Scope of Services/Compensation are the following:

1. Geotechnical Engineering, including design, observation and testing of earthwork.
2. City review fees and permit costs.
3. Any involvement with hazardous waste including detection, evaluation, and cleanup.
4. Reproduction expense including the cost of blueprinting and other reprographics.
5. Entitlement.
6. Environmental review, including storm water requirements (the new/replaced hardscape totals are not anticipated to trigger the City's storm water requirements).

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EXHIBIT C

FEDERAL CONTRACT PROVISIONS

During the performance of this contract, Flowers & Associates, Inc. (the "Consultant") shall comply with all applicable federal laws and regulations including but not limited to the federal contract provisions in this Exhibit. In this Exhibit, the term "Agency" shall mean the local agency entering into this contract with the Consultant.

1. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS (2 C.F.R. § 200.321)

- A. Consultant shall be subject to 2 C.F.R. § 200.321 and will take affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award.
- B. Affirmative steps shall include:
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
 - v. Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

Consultant shall submit evidence of compliance with the foregoing affirmative steps when requested by the Agency.

Notwithstanding the foregoing, the affirmative steps requirements detailed above do not apply in the case of a noncompetitive procurement made under the emergency exception/exigency exception to competitive procurements.

2. COST PRINCIPLES (2 C.F.R. PART 200, SUBPART E)

- A. If any indirect costs will be charged to the Agency under this contract, such costs must conform to the cost principles set forth under the Uniform Rules at 2 C.F.R. Part 200, subpart E (“Cost Principles”). In general, costs must (i) be necessary and reasonable; (ii) allocable to the grant award; (iii) conform to any limitations or exclusions set forth in the Cost Principles; (iv) be adequately documented; and (v) be determined in accordance with generally accepted accounting principles (“GAAP”), except, for state and local governments and Indian tribes only, as otherwise provided for in 2 C.F.R. Part 200, subpart E. 2 C.F.R. § 200.403. Costs that are determined unallowable pursuant to a federal audit are subject to repayment by Consultant.

3. ACCESS TO RECORDS & RECORD RETENTION (2 C.F.R. 200.336)

- A. Consultant shall comply with 2 C.F.R. § 200.336 and provide the Federal Agency, Inspectors General, the Comptroller General of the United States, Agency, and the State of California or any of their authorized representatives access, during normal business hours, to documents, papers, books and records which are directly pertinent to this contract for the purposes of making and responding to audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to the Consultant personnel for the purpose of interview and discussion related to the books and records.
- B. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Consultant agrees to provide the Federal Agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

4. REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.326)

- A. Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. If the contract is in excess of \$10,000 and the contract does not include provisions for both termination for cause and termination for convenience by the Agency, including the manner by which it will be effected and the basis for settlement, then the

City of Goleta

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following termination clauses shall apply. If the contract is for more than the simplified acquisition threshold (see 2 C.F.R. § 200.88) at the time the contract is executed and does not provide for administrative, contractual, or legal remedies in instances where Contractor violates or breaches the terms of the contract, then the following termination clauses shall apply and have precedence over the contract. Otherwise, the following termination clauses shall not be applicable to the contract.

- i. Termination for Convenience. The Agency may, by written notice to Consultant, terminate this contract for convenience, in whole or in part, at any time by giving written notice to Consultant of such termination, and specifying the effective date thereof ("Notice of Termination for Convenience"). If the termination is for the convenience of the Agency, the Agency shall compensate Provider for work or materials fully and adequately provided through the effective date of termination. No amount shall be paid for unperformed work or materials not provided, including anticipated profit. Consultant shall provide documentation deemed adequate by the Agency to show the work actually completed or materials provided by Consultant prior to the effective date of termination. This contract shall terminate on the effective date of the Notice of Termination.
- ii. Termination for Cause. If Consultant fails to perform pursuant to the terms of this contract, the Agency shall provide written notice to Consultant specifying the default ("Notice of Default"). If Consultant does not cure such default within ten (10) calendar days of receipt of Notice of Default, the Agency may terminate this contract for cause. If Consultant fails to cure a default as set forth above, the Agency may, by written notice to Consultant, terminate this contract for cause, in whole or in part, and specifying the effective date thereof ("Notice of Termination for Cause"). If the termination is for cause, Consultant shall be compensated for that portion of the work or materials provided which has been fully and adequately completed and accepted by the Agency as of the date the Agency provides the Notice of Termination. In such case, the Agency shall have the right to take whatever steps it deems necessary to complete the project and correct Consultant's deficiencies and charge the cost thereof to Consultant, who shall be liable for the full cost of the Agency's corrective action, including reasonable overhead, profit and attorneys' fees.

- iii. Reimbursement; Damages. The Agency shall be entitled to reimbursement for any compensation paid in excess of work rendered or materials provided and shall be entitled to withhold compensation for defective work or other damages caused by Consultant performance of the work.
 - iv. Additional Termination Provisions. Upon receipt of a Notice of Termination, either for cause or for convenience, Consultant shall promptly discontinue the work unless the Notice directs to the contrary. Consultant shall deliver to the Agency and transfer title (if necessary) to all provided materials and completed work, and work in progress including drafts, documents, plans, forms, maps, products, graphics, computer programs and reports. The rights and remedies of the parties provided in this Section are in addition to any other rights and remedies provided by law or under this contract. Consultant acknowledges the Agency's right to terminate this contract with or without cause as provided in this Section, and hereby waives any and all claims for damages that might arise from the Agency's termination of this contract. The Agency shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed work or materials not provided and shall not be entitled to damages or compensation for termination of work or supply of materials. If Agency terminates this contract for cause, and it is later determined that the termination for cause was wrongful, the termination shall automatically be converted to and treated as a termination for convenience. In such event, Consultant shall be entitled to receive only the amounts payable under this Section, and Consultant specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The rights and remedies of the Agency provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.
- B. Appendix II to Part 200 (C) – Equal Employment Opportunity: Except as otherwise provided under 41 C.F.R. Part 60, Consultant shall comply with the following equal opportunity clause, in accordance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and implementation regulations at 41 C.F.R. Chapter 60:

- i. Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Consultant will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.
- ii. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- iii. Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Consultant's legal duty to furnish information.
- iv. Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in

conspicuous places available to employees and applicants for employment.

- v. Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- vi. Consultant will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- vii. In the event of Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No.11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No.11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- viii. Consultant will include the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24,1965, so that such provisions will be binding upon each subcontractor or Consultant. Consultant will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or Consultant as a result of such direction, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

C. Appendix II to Part 200 (D) – Davis-Bacon Act; Copeland Act: Not applicable to this contract.

D. Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

- i. If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Consultant shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- ii. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- iii. In the event of any violation of the clause set forth in paragraph (ii) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 for each calendar day on which

such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (ii) of this section.

- iv. The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.
- v. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.

E. Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement:

- i. If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Agency.
- ii. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of

experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

- iii. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

F. Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act: If this contract is in excess of \$150,000, Consultant shall comply with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

- i. Pursuant to the Clean Air Act, (1) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Consultant agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.
- ii. Pursuant to the Federal Water Pollution Control Act, (1) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Consultant agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.

G. Appendix II to Part 200 (H) – Debarment and Suspension: A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Consultant is required to verify that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- ii. Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- iii. This certification is a material representation of fact relied upon by Agency. If it is later determined that Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- iv. Consultant warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Consultant also agrees to verify that all subcontractors performing work under this contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Consultant further agrees to notify the Agency in writing immediately if Consultant or its subcontractors are not in compliance during the term of this contract.

H. Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: If this contract is in excess of \$100,000, Consultant shall have submitted and filed the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1353). If at any time during the contract term funding exceeds \$100,000.00, Consultant shall file with the Agency the Federal Standard Form LLL titled

“Disclosure Form to Report Lobbying.” Consultants that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

I. Appendix II to Part 200 (J) – Procurement of Recovered Materials:

- i. Consultant shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.
- ii. In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price.
- iii. Information about this requirement, along with the list of EPA-designate items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

5. MISCELLANEOUS PROVISIONS

- A. The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.
- B. This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The Consultant will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- C. Consultant acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this contract.
- D. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Agency, Consultant, any subcontractors or any other party pertaining to any matter resulting from the contract.
- E. General and Administrative Expenses And Profit For Time And Materials Contracts/Amendments.
 - i. General and administrative expenses shall be negotiated and must conform to the Cost Principles.
 - ii. Profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Consultant, the Consultant's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
 - iii. Any agreement, amendment or change order for work performed on a time and materials basis shall include a ceiling price that Consultant exceeds at its own risk.

**AMENDMENT NO. 3
TO A PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
FLOWERS & ASSOCIATES, INC.**

This **Amendment No. 3** to the Professional Design Services Agreement by and between the **City of Goleta**, a municipal corporation ("City") and Flowers & Associates, Inc., a California Corporation ("Consultant") dated June 1, 2021, ("Agreement," Agreement No. 2021-041) is made on this 21st day of February 2023.

SECTION A. RECITALS

1. This Agreement is for producing design plans for access improvements to the Goleta Community Center Improvements Project (Project No. 9121); and
2. The Agreement currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed \$191,300; and
3. The parties desire to amend the Agreement so as to provide for additional compensation in the amount of \$34,489 for additional tasks; and
4. The Agreement currently provides in Exhibit A-1 entitled "Scope of Work" the complete and particular description of services; and
5. The parties desire to amend Exhibit A-1 by adding additional services as more completely and particularly set forth in the Scope of Work, attached as Exhibit A-2; and
6. The City Council approved this Amendment No. 3, on this 21st day of February 2023.

SECTION B. AMENDED TERMS

Now therefore City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Subsection (a) of Section 3. COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$34,489 and to read in its entirety:
 - (a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$225,789 (herein "not-to-exceed amount") and shall be earned as the work progresses.

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2023, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

2. This Agreement is amended to delete and replace in its entirety:

Exhibit A-1 "Scope of Work" with **Exhibit A-2 "Scope of Work"** attached hereto and incorporated herein.

3. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

In concurrence and witness whereof, this Amendment No. 3 has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

DocuSigned by:

Robert Nisbet
Robert Nisbet, City Manager

CONSULTANT

DocuSigned by:

Robert A. Schmidt
Robert A. Schmidt, P.E., President

ATTEST:

DocuSigned by:

Deborah Lopez
Deborah Lopez, City Clerk

DocuSigned by:

Vernon E. Williams
Vernon E. Williams, P.E., CFO

APPROVED AS TO FORM:

MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:

Winnie Cai
Winnie Cai, Assistant City Attorney

EXHIBIT A-2 SCOPE OF WORK

Consultant shall deliver the following services:

1. Review all site information related to the project provided by the City. Communicate to and share site information with subconsultants. Assumed 21 hours total (between office engineers and project manager).
2. Coordinate with City Public Works staff in order to understand their site improvement goals and budget constraints and continue coordination throughout the project to ensure tasks and goals are met. Assumed 24 hours total.
3. Select a project Surveyor and coordinate inner-office and w/surveyor to define the necessary extents and details of the mapping in order to provide sufficient detail for grading and drainage design compliant with ADA requirements. Assumed 12 hours total (split between engineer and project manager).
4. Select a project Architect and coordinate to confirm the scope of interior access improvements. Continue coordination/management of the Architect in order to confirm City goals and project tasks are met. Assumed 44 hours total (between engineer and project manager).
5. Prepare Preliminary Civil Grading and Drainage Plans incorporating all the exterior improvements identified in the aforementioned Crosby/Partner reports as modified by the forthcoming ADA assessment/update. These improvements shall include modifications to the parking lot (addition of disabled parking stalls, access aisles, etc.). Assumed 64 hours total (between engineers, Principal, and project manager).
6. Prepare Preliminary Architectural Plans for all the identified interior improvements, as defined below and in the forthcoming ADA Assessment/update:

Building A: Two new completely redesigned multi-user restrooms including X-Ray of the men's and women's restroom floor systems to determine size, spacing, and depth of reinforcing steel within the existing concrete slabs, and boring of two 6-inch diameter holes in the existing concrete slabs to determine the existing building construction under the slabs. Door hardware, minor walls being moved, cabinets, and equipment ADA stage lift and associated handrails in auditorium. ADA handrails at the existing ramp at the main entrance, and the handrails on the existing front entrance stairs. ADA stage and associated handrails in dining room.

Replacement of sewer lateral that serves the existing restrooms and installation of grease interceptor. Preparation of sewer lateral replacement plans includes the following work:

- a. Coordination with City staff regarding locations of existing sewer lines, conditions and elevations, and evaluation of which lines to investigate and pursue for replacement
- b. Record searches for easements that allow connection to the sewer main, westerly, as opposed to travelling to the main on Hollister Avenue
- c. Coordination, calls, site visits, and meetings with Goleta Sanitary District, the project surveyor, multiple plumbers, and scoping specialists to define the onsite sewer lines and elevations, to determine the best route for the new line
- d. Review of past sewer line inspections and video inspections
- e. Calculate effluent loads from the Goleta Community Center and Boys and Girls Club and determine available capacity in the Goleta Sanitary District's main line to receive these loads.
- f. Coordination with contract plumbers, Goleta Sanitary District and City staff, to assess the viability of the new sewer line tie-in
- g. Design and produce plans for the sewer line replacement, including replacement of the concrete walkway/doorway exits to be ADA-compliant along the south side of the Goleta Community Center building

Plans shall require that the Architect enlist and coordinate with a Structural Engineer, a Mechanical/Plumbing Engineer, an Electrical Engineer, a door hardware specialist, and an ADA specialist, all of which are defined below:

Structural Engineer: GSE, Thuy Greer, SE

Mechanical/Plumbing: MEC, Paul Tziouvaras and Linda Altomare

Electrical: Alan Noelle Engineering, Alan Noelle

Door Hardware: IDS, Bob Simpson

ADA Specialist: Eric McSwain

7. Circulate preliminary plans to the City for review and address comments. Revisions shall be limited to two rounds of comments/corrections. Assumed 20 hours (between engineer, Principal, and project manager).
8. Produce a construction level plan set (combined civil + architectural), incorporating revisions resulting from the Preliminary Plans review, and including construction details and specifications (on the sheets, not stand-alone specs). Assumed 38 hours total (between engineer, principal engineer, and project manager).

9. Address comments from City (limited to one round of corrections/comments) and update the Plans, accordingly. Assumed 26 hours total (between engineer, principal engineer, and project manager).
10. Produce a Construction Cost Estimate for the project (interior costs from Architect and exterior costs from Consultant) and provide it to the City. This shall include coordination with the Architect and his sub-consultants. Assumed 13 hours total.
11. Provide design assistance during construction, which shall include Consultant's review/comment on submittals required by Consultant's plans, and review/response to RFIs (limit to no more than 10 RFIs), and up to 4 site visits for construction observation. This task excludes contract bidding and/or construction contract administration.
12. Attend meetings as requested by City, not to exceed 8 man-hours.

CONSULTANT PROJECT TEAM

The below listed professionals have been selected by CONSULTANT for the subject project:

Civil Engineer: Flowers & Associates, Inc.

Architect: Paul Zink, AIA (and his subconsultants as defined above in Task 6)

Surveyor: Gary Salmen, California Licensed Land Surveyor No. 5018

SPECIFIC EXCLUSIONS

Specifically not included in the above Scope of Services/Compensation are the following:

1. Geotechnical Engineering, including design, observation and testing of earthwork.
2. City review fees and permit costs.
3. Any involvement with hazardous waste including detection, evaluation, and cleanup.
4. Reproduction expense including the cost of blueprinting and other reprographics.
5. Entitlement.
6. Environmental review, including storm water requirements (the new/replaced hardscape totals are not anticipated to trigger the City's storm water requirements).

>

**AMENDMENT NO. 4
TO A PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
FLOWERS & ASSOCIATES, INC.**

This **Amendment No. 4** to the Professional Design Services Agreement by and between the **City of Goleta**, a municipal corporation ("City") and Flowers & Associates, Inc., a California Corporation ("Consultant") dated June 1, 2021, ("Agreement," Agreement No. 2021-041) is made on this 16th day of May 2023.

SECTION A. RECITALS

1. This Agreement is for producing design plans for access improvements to the Goleta Community Center Improvements Project (Project No. 9121); and
2. The Agreement currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed \$225,789; and
3. The parties desire to amend the Agreement so as to provide for additional compensation in the amount of \$73,084 for additional tasks; and
4. The Agreement currently provides in Exhibit A-2 entitled "Scope of Work" the complete and particular description of services; and
5. The parties desire to amend Exhibit A-2 by adding additional services as more completely and particularly set forth in the Scope of Work, attached as Exhibit A-3; and
6. The City Council approved this Amendment No. 4, on this 16th day of May 2023.

SECTION B. AMENDED TERMS

Now therefore City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Subsection (a) of Section 3. COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$73,084 and to read in its entirety:
 - (a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$298,873 (herein "not-to-exceed amount") and shall be earned as the work progresses.

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2023, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

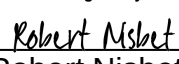
2. This Agreement is amended to delete and replace in its entirety:

Exhibit A-2 "Scope of Work" with **Exhibit A-3 "Scope of Work"** attached hereto and incorporated herein.

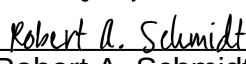
3. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

In concurrence and witness whereof, this Amendment No. 4 has been executed by the parties effective on the date and year first above written.

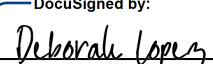
CITY OF GOLETA

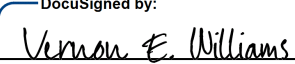
DocuSigned by:

Robert Nisbet, City Manager

CONSULTANT

DocuSigned by:

Robert A. Schmidt, P.E., President

ATTEST:

DocuSigned by:

Deborah Lopez, City Clerk

DocuSigned by:

Vernon E. Williams, P.E., CFO

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

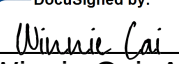
DocuSigned by:

Winnie Cai, Assistant City Attorney

EXHIBIT A-3 SCOPE OF WORK

Consultant shall deliver the following services:

1. Review all site information related to the project provided by the City. Communicate to and share site information with subconsultants. Assumed 21 hours total (between office engineers and project manager).
2. Coordinate with City Public Works staff in order to understand their site improvement goals and budget constraints and continue coordination throughout the project to ensure tasks and goals are met. Assumed 24 hours total.
3. Select a project Surveyor and coordinate inner-office and w/surveyor to define the necessary extents and details of the mapping in order to provide sufficient detail for grading and drainage design compliant with ADA requirements. Assumed 12 hours total (split between engineer and project manager).
4. Select a project Architect and coordinate to confirm the scope of interior access improvements. Continue coordination/management of the Architect in order to confirm City goals and project tasks are met. Assumed 44 hours total (between engineer and project manager).
5. Prepare Preliminary Civil Grading and Drainage Plans incorporating all the exterior improvements identified in the aforementioned Crosby/Partner reports as modified by the forthcoming ADA assessment/update. These improvements shall include modifications to the parking lot (addition of disabled parking stalls, access aisles, etc.). Assumed 64 hours total (between engineers, Principal, and project manager).
6. Prepare Preliminary Architectural Plans for all the identified interior improvements, as defined below and in the forthcoming ADA Assessment/update:

Building A: Two new completely redesigned multi-user restrooms including X-Ray of the men's and women's restroom floor systems to determine size, spacing, and depth of reinforcing steel within the existing concrete slabs, and boring of two 6-inch diameter holes in the existing concrete slabs to determine the existing building construction under the slabs. Door hardware, minor walls being moved, cabinets, and equipment ADA stage lift and associated handrails in auditorium. ADA handrails at the existing ramp at the main entrance, and the handrails on the existing front entrance stairs. ADA stage and associated handrails in dining room.

Replacement of sewer lateral that serves the existing restrooms and installation of grease interceptor. Preparation of sewer lateral replacement plans includes the following work:

- a. Coordination with City staff regarding locations of existing sewer lines, conditions and elevations, and evaluation of which lines to investigate and pursue for replacement
- b. Record searches for easements that allow connection to the sewer main, westerly, as opposed to travelling to the main on Hollister Avenue
- c. Coordination, calls, site visits, and meetings with Goleta Sanitary District, the project surveyor, multiple plumbers, and scoping specialists to define the onsite sewer lines and elevations, to determine the best route for the new line
- d. Review of past sewer line inspections and video inspections
- e. Calculate effluent loads from the Goleta Community Center and Boys and Girls Club and determine available capacity in the Goleta Sanitary District's main line to receive these loads.
- f. Coordination with contract plumbers, Goleta Sanitary District and City staff, to assess the viability of the new sewer line tie-in
- g. Design and produce plans for the sewer line replacement, including replacement of the concrete walkway/doorway exits to be ADA-compliant along the south side of the Goleta Community Center building

Plans shall require that the Architect enlist and coordinate with a Structural Engineer, a Mechanical/Plumbing Engineer, an Electrical Engineer, a door hardware specialist, and an ADA specialist, all of which are defined below:

Structural Engineer: GSE, Thuy Greer, SE
Mechanical/Plumbing: MEC, Paul Tziouvaras and Linda Altomare
Electrical: Alan Noelle Engineering, Alan Noelle
Door Hardware: IDS, Bob Simpson
ADA Specialist: Eric McSwain

7. Consultant shall contract with a historic architect services consultant to provide Historic Preservation Consultation and Historic Preservation Architectural Services to the project architect for the design of accessibility upgrades in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, as well as other related historic preservation requirements. Deliverables shall include the following:

Historic Preservation Consultation

Deliverables:

- Redlined drawings (one set) in digital format.
- Draft and Final Design Development (DD) Phase Secretary of the Interior (SOI) Standards Review Summary Memorandum.
- Updated significance diagrams
- Redlined drawings (one set at 60%) in digital format.

Historic Architectural Services

Deliverables:

- Design Development Drawings: door and window details
- Data sheets regarding door hardware and lights.
- Construction Documents Drawings: door and window details.
- As needed, updated data sheets regarding door hardware and lights.
- DD Specifications: historic architect services consultant will provide up to five (5) historic specifications sections in CSI format. Specification sections will likely include:
 - 01 35 91 Historic Treatment Procedures
 - 02 42 96 Historic Removal and Dismantling
 - 08 03 14 Historic Treatment of Wood Doors
 - 08 03 52 Historic Treatment of Wood Windows
 - 09 03 20 Historic Treatment of Plaster
 - Construction Document Historic Specifications: historic architect services consultant will provide up to five (5) historic specification sections in CSI Format.

Construction Administration

Deliverables:

- Respond to up to six (6) Requests for Information from the Contractor for Preservation Architect-related questions.
 - Review project submittals required in historic specification sections, including product data, shop drawings, and samples. Perform two (2) reviews maximum per submittal.
 - Contribution to punch list: as the Construction Contractor completes portions of the work, visit the site and perform a punch list walk-through with the Contractor and Client. Contractor will document items to be completed in written and photographic format and distribute digitally.
8. Circulate preliminary plans to the City for review and address comments. Revisions shall be limited to two rounds of comments/corrections. Assumed 20 hours (between engineer, Principal, and project manager).

City of Goleta

Amendment No. 4 to Agreement No. 2021-041

Page 5 of 7

9. Produce a construction level plan set (combined civil + architectural), incorporating revisions resulting from the Preliminary Plans review, and including construction details and specifications (on the sheets, not stand-alone specs). Assumed 38 hours total (between engineer, principal engineer, and project manager).
10. Address comments from City (limited to one round of corrections/comments) and update the Plans, accordingly. Assumed 26 hours total (between engineer, principal engineer, and project manager).
11. Produce a Construction Cost Estimate for the project (interior costs from Architect and exterior costs from Consultant) and provide it to the City. This shall include coordination with the Architect and his sub-consultants. Assumed 13 hours total.
12. Provide design assistance during construction, which shall include Consultant's review/comment on submittals required by Consultant's plans, and review/response to RFIs (limit to no more than 10 RFIs), and up to 4 site visits for construction observation. This task excludes contract bidding and/or construction contract administration.
13. Attend meetings as requested by City, not to exceed 8 man-hours.

CONSULTANT PROJECT TEAM

The below listed professionals have been selected by CONSULTANT for the subject project:

Civil Engineer: Flowers & Associates, Inc.

Architect: Paul Zink, AIA (and his subconsultants as defined above in Task 6)

Surveyor: Gary Salmen, California Licensed Land Surveyor No. 5018

Historic Architect Services Consultant: Page & Turnbull

SPECIFIC EXCLUSIONS

Specifically not included in the above Scope of Services/Compensation are the following:

1. Geotechnical Engineering, including design, observation and testing of earthwork.
2. City review fees and permit costs.
3. Any involvement with hazardous waste including detection, evaluation, and cleanup.
4. Reproduction expense including the cost of blueprinting and other reprographics.
5. Entitlement.

6. Environmental review, including storm water requirements (the new/replaced hardscape totals are not anticipated to trigger the City's storm water requirements).
7. Assumptions and Exclusions Related to Historic Preservation Consultation and Historic Architectural Services
 - As-built drawings in digital format (AutoCAD or Revit) will be provided by the Client for historic architect services consultant's use. Where as-built drawings are not available, historic architect services consultant will use photographs to illustrate scope of work.
 - Unless noted otherwise, all deliverables will be provided in electronic format. The Prime Architect will be responsible for printing materials.
 - The design and construction periods will not extend beyond June 2024.
 - This Scope of Services does NOT include the following:
 - formal environmental compliance analysis and documentation (CEQA and/or Section 106 of NHPA as required by FEMA).
 - Condition Assessments.
 - Hazardous materials identification or abatement design.
 - Mechanical, electrical, plumbing and geotechnical engineering services.
 - Bidding and Construction Administration.
 - Costs to access high areas of the building (i.e. rental costs for personnel lifts or ladders).
 - Planning, plan-check, or permitting fees.
 - Presentation to and/or attendance at public meetings or hearings.
 - Costs for a contractor to create and temporarily repair inspection openings to observe as built conditions.
 - Cost estimating services.
 - Preparation of City of Goleta application forms
 - Review and commentary of a proposed project or project alternatives, as defined in an Environmental Impact Report.
 - CEQA technical support by the Historic Preservation Consultant.

**AMENDMENT NO. 5
TO A PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
FLOWERS & ASSOCIATES, INC.**

This **Amendment No. 5** to the Professional Design Services Agreement by and between the **City of Goleta**, a municipal corporation ("City") and **Flowers & Associates, Inc.**, a California Corporation ("Consultant") dated June 1, 2021, ("Agreement," Agreement No. 2021-041) is made on this 13th day of September 2023.

SECTION A. RECITALS

1. This Agreement is for producing design plans for access improvements to the Goleta Community Center Improvements Project (Project No. 9121); and
2. This Agreement has been amended to identify a new electrical engineer (Amendment 1); to identify a new City Project Manager, extend the term of the Agreement, add federal contract provisions, amend the scope of work, and add additional compensation (Amendment 2); and amend the scope of work and add additional compensation (Amendments 3 and 4); and
3. The parties desire to retroactively amend this Agreement so that this Amendment is effective as of June 30, 2023, and the term of the Agreement extends to June 30, 2025; and
4. The City Manager approved this Amendment No. 5 on this 13th day of September 2023.

SECTION B. AMENDED TERMS

Now therefore City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Section 6. TERM PROGRESS AND COMPLETION** of the Agreement is amended to extend the term for an additional two (2) years and to read in its entirety:

The term of this AGREEMENT is from the date first written above to June 30, 2025, unless term of this AGREEMENT is extended, or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager.

2. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

In concurrence and witness whereof, this Amendment No. 5 has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

DocuSigned by:

Robert Nisbet, City Manager

CONSULTANT

DocuSigned by:

Robert A. Schmidt, P.E., President

ATTEST:

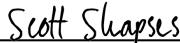
DocuSigned by:

Deborah Lopez, City Clerk

DocuSigned by:

Vernon E. Williams, P.E., CFO

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:

Scott Shapses, Deputy City Attorney

**AMENDMENT NO. 6
TO A PROFESSIONAL DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
FLOWERS & ASSOCIATES, INC.**

This **Amendment No. 6** to the Professional Design Services Agreement by and between the **City of Goleta**, a municipal corporation ("City") and **Flowers & Associates, Inc.**, a California Corporation ("Consultant") dated June 1, 2021, ("Agreement," Agreement No. 2021-041) is made on this 16th day of January 2024.

SECTION A. RECITALS

1. This Agreement is for producing design plans for access improvements to the Goleta Community Center Improvements Project (Project No. 9121); and
2. This Agreement has been amended to identify a new electrical engineer and new City Project Manager, extend the term of the Agreement, add federal contract provisions, amend the scope of work, and add additional compensation (Amendments No. 1-5); and
3. The Agreement currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed \$298,873; and
4. The parties desire to amend the Agreement so as to provide for additional compensation in the amount of \$89,531 for additional tasks; and
5. The Agreement currently provides in Exhibit A-3 entitled "Scope of Work" the complete and particular description of services; and
6. The parties desire to amend Exhibit A-3 by adding additional services as more completely and particularly set forth in the Scope of Work, attached as Exhibit A-5; and
7. The Agreement currently provides in Exhibit B entitled "Schedule of Fees" the hourly rates; and
8. The parties desire to amend Exhibit B of the Agreement to identify the new hourly rates, attached as "Exhibit B-1"; and
9. The City Council approved this Amendment No. 6, on this 16th day of January 2024.

SECTION B. AMENDED TERMS

Now therefore City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

City of Goleta
Amendment No. 6 to Agreement No. 2021-041
Page 1 of 9

1. **Subsection (a) of Section 3. COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$89,531 and to read in its entirety:

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$388,404 (herein "not-to-exceed amount") and shall be earned as the work progresses.

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B-1," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2025, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days' notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

2. This Agreement is amended to delete and replace in its entirety:

Exhibit A-3 "Scope of Work" with **Exhibit A-5 "Scope of Work"** attached hereto and incorporated herein.

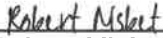
3. This Agreement is amended to delete and replace in its entirety:

Exhibit B "Schedule of Fees" with **Exhibit B-1 "Schedule of Fees"** attached hereto and incorporated herein.

4. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

In concurrence and witness whereof, this Amendment No. 6 has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

DocuSigned by:

Robert A. Nisbet, City Manager

CONSULTANT

DocuSigned by:

Robert A. Schmidt, P.E., President

ATTEST:

DocuSigned by:

Deborah Lopez, City Clerk

DocuSigned by:

Vernon E. Williams, P.E., CFO

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

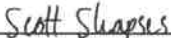
DocuSigned by:

Scott Shapses, Deputy City Attorney

EXHIBIT A-5 SCOPE OF WORK

Consultant shall deliver the following services:

1. Review all site information related to the project provided by the City. Communicate to and share site information with subconsultants. Assumed 21 hours total (between office engineers and project manager).
2. Coordinate with City Public Works staff in order to understand their site improvement goals and budget constraints and continue coordination throughout the project to ensure tasks and goals are met. Assumed 24 hours total.
3. Select a project Surveyor and coordinate inner-office and w/surveyor to define the necessary extents and details of the mapping in order to provide sufficient detail for grading and drainage design compliant with ADA requirements. Assumed 12 hours total (split between engineer and project manager).
4. Select a project Architect and coordinate to confirm the scope of interior access improvements. Continue coordination/management of the Architect in order to confirm City goals and project tasks are met. Assumed 44 hours total (between engineer and project manager).
5. Prepare Preliminary Civil Grading and Drainage Plans incorporating all the exterior improvements identified in the aforementioned Crosby/Partner reports as modified by the forthcoming ADA assessment/update. These improvements shall include modifications to the parking lot (addition of disabled parking stalls, access aisles, etc.). Assumed 64 hours total (between engineers, Principal, and project manager).
6. Prepare Preliminary Architectural Plans for all the identified interior improvements, as defined below and in the forthcoming ADA Assessment/update:

Building A: Two new completely redesigned multi-user restrooms including X-Ray of the men's and women's restroom floor systems to determine size, spacing, and depth of reinforcing steel within the existing concrete slabs, and boring of two 6-inch diameter holes in the existing concrete slabs to determine the existing building construction under the slabs. Door hardware, minor walls being moved, cabinets, and equipment ADA stage lift and associated handrails in auditorium and removal of dining room stage. ADA handrails at the existing ramp at the main entrance, and the handrails on the existing front entrance stairs. ADA stage and associated handrails in dining room.

Replacement of sewer lateral that serves the existing restrooms and installation of grease interceptor. Preparation of sewer lateral replacement plans includes the following work:

- a. Coordination with City staff regarding locations of existing sewer lines, conditions and elevations, and evaluation of which lines to investigate and pursue for replacement
- b. Record searches for easements that allow connection to the sewer main, westerly, as opposed to travelling to the main on Hollister Avenue
- c. Coordination, calls, site visits, and meetings with Goleta Sanitary District, the project surveyor, multiple plumbers, and scoping specialists to define the onsite sewer lines and elevations, to determine the best route for the new line
- d. Review of past sewer line inspections and video inspections
- e. Calculate effluent loads from the Goleta Community Center and Boys and Girls Club and determine available capacity in the Goleta Sanitary District's main line to receive these loads
- f. Coordination with contract plumbers, Goleta Sanitary District and City staff, to assess the viability of the new sewer line tie-in
- g. Design and produce plans for the sewer line replacement, including replacement of the concrete walkway/doorway exits to be ADA-compliant along the south side of the Goleta Community Center building

Plans shall require that the Architect enlist and coordinate with a Structural Engineer, a Mechanical/Plumbing Engineer, an Electrical Engineer, a door hardware specialist, and an ADA specialist, all of which are defined below:

Structural Engineer: GSE, Thuy Greer, SE

Mechanical/Plumbing: MEC, Paul Tziouvaras and Linda Altomare

Electrical: Alan Noelle Engineering, Alan Noelle

Door Hardware: IDS, Bob Simpson

ADA Specialist: Eric McSwain

7. Consultant shall contract with a historic architect services consultant to provide Historic Preservation Consultation and Historic Preservation Architectural Services to the project architect for the design of accessibility upgrades in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, as well as other related historic preservation requirements. Deliverables shall include the following:

Historic Preservation Consultation

Deliverables:

- Redlined drawings (one set) in digital format.
- Draft and Final Design Development (DD) Phase Secretary of the Interior (SOI) Standards Review Summary Memorandum.
- Updated significance diagrams
- Redlined drawings (one set at 60%) in digital format.

Historic Architectural Services

Deliverables:

- Design Development Drawings: door and window details
- Data sheets regarding door hardware and lights.
- Construction Documents Drawings: door and window details.
- As needed, updated data sheets regarding door hardware and lights.
- DD Specifications: historic architect services consultant will provide up to five (5) historic specifications sections in CSI format. Specification sections will likely include:
 - 01 35 91 Historic Treatment Procedures
 - 02 42 96 Historic Removal and Dismantling
 - 08 03 14 Historic Treatment of Wood Doors
 - 08 03 52 Historic Treatment of Wood Windows
 - 09 03 20 Historic Treatment of Plaster
 - Construction Document Historic Specifications: historic architect services consultant will provide up to five (5) historic specification sections in CSI Format.

Construction Administration

Deliverables:

- Respond to up to six (6) Requests for Information from the Contractor for Preservation Architect-related questions.
 - Review project submittals required in historic specification sections, including product data, shop drawings, and samples. Perform two (2) reviews maximum per submittal.
 - Contribution to punch list: as the Construction Contractor completes portions of the work, visit the site and perform a punch list walk-through with the Contractor and Client. Contractor will document items to be completed in written and photographic format and distribute digitally.
8. Circulate preliminary plans to the City for review and address comments. Revisions shall be limited to two rounds of comments/corrections. Assumed 20 hours (between engineer, Principal, and project manager).

9. Produce a construction level plan set for the sewer, parking lot, and building improvements (combined civil + architectural), incorporating revisions resulting from all City plan review as well as a stand-alone turn-key bid package, including, but not limited to, specifications, bid schedule, and front-end bid manual.
10. Address comments from and update the Plans, accordingly. Assumed 26 hours total.
11. Produce 50% and 100% Construction Cost Estimates for the project (interior costs from Architect and exterior costs from Consultant) and provide it to the City. This shall include coordination with the Architect and their sub-consultants.
12. Produce specifications for the Goleta Community Center Americans with Disabilities Act Improvements Project (CIP No. 9121). Deliverables include 100% technical specifications and Division 1 General Requirements including coordination and inclusion of other consultants' technical specifications (Structural, Mechanical, Plumbing and Electrical).

Production of specifications does not include bid, procurement, and contract requirements for the Project Manual, bidding assistance, addendum, submittal review, estimates or value engineering, changes in technical specifications due to design changes or changes in product selections after consultants' completion of individual specification sections.

13. Provide design assistance during construction, which shall include Consultant's review/comment on submittals required by Consultant's plans, and review/response to RFIs (limit to no more than 10 RFIs), and up to 4 site visits for construction observation. This task excludes contract bidding and/or construction contract administration.
14. Attend meetings as requested by City, not to exceed 8 man-hours.

CONSULTANT PROJECT TEAM

The below listed professionals have been selected by CONSULTANT for the subject project:

Civil Engineer: Flowers & Associates, Inc.

Architect: Paul Zink, AIA (and his subconsultants as defined above in Task 6)

Surveyor: Gary Salmen, California Licensed Land Surveyor No. 5018

Historic Architect Services Consultant: Page & Turnbull

Cost Estimator: Cumming Group

Specifications/Bid Documents: Richard McKenzie

SPECIFIC EXCLUSIONS

Specifically not included in the above Scope of Services/Compensation are the following:

1. Geotechnical Engineering, including design, observation and testing of earthwork.
2. City review fees and permit costs.
3. Reproduction expense, including the cost of blueprinting and other reprographics.
4. Entitlement.
5. Environmental review, including storm water requirements (the new/replaced hardscape totals are not anticipated to trigger the City's storm water requirements).
6. Assumptions and Exclusions Related to Historic Preservation Consultation and Historic Architectural Services
 - As-built drawings in digital format (AutoCAD or Revit) will be provided by the Client for historic architect services consultant's use. Where as-built drawings are not available, historic architect services consultant will use photographs to illustrate the scope of work.
 - Unless noted otherwise, all deliverables will be provided in electronic format. The Prime Architect will be responsible for printing materials.
 - The design and construction periods will not extend beyond June 2024.
 - This Scope of Services does NOT include the following:
 - formal environmental compliance analysis and documentation (CEQA and/or Section 106 of NHPA as required by FEMA).
 - Condition Assessments.
 - Hazardous materials identification or abatement design.
 - Mechanical, electrical, plumbing and geotechnical engineering services.
 - Bidding and Construction Administration.
 - Costs to access high areas of the building (i.e., rental costs for personnel lifts or ladders).
 - Planning, plan-check, or permitting fees.
 - Presentation to and/or attendance at public meetings or hearings.
 - Costs for a contractor to create and temporarily repair inspection openings to observe as built conditions.
 - Cost estimating services.
 - Preparation of City of Goleta application forms
 - Review and commentary of a proposed project or project alternatives, as defined in an Environmental Impact Report.
 - CEQA technical support by the Historic Preservation Consultant.

EXHIBIT B-1 SCHEDULE OF FEES

FEE SCHEDULE

Effective July 1, 2022

Until Revised

<u>ENGINEERING SERVICES</u>	<u>HOURLY RATE</u>
Principal Engineer	\$238.00
Associate Engineer	\$219.00
Senior Engineer II	\$208.00
Senior Engineer I	\$194.00
Drainage Engineer	\$194.00
Qualified SWPPP Practitioner	\$185.00
Design Engineer II	\$175.00
Water Resources Specialist	\$175.00
Project Manager	\$175.00
Design Engineer I	\$162.00
CAD Designer	\$147.00
CAD Technician	\$131.00
Administrative Support	\$112.00
 <u>PLANNING SERVICES</u>	
Principal Planner	\$238.00
Associate Planner	\$185.00
Senior Planner	\$174.00
Public Agency Coordinator	\$156.00
 <u>CONSTRUCTION PHASE SERVICES</u>	
Principal Construction Engineer	\$238.00
Associate Construction Engineer	\$219.00
Senior Construction Engineer	\$208.00
Resident Engineer	\$185.00
Prevailing Wage Construction Monitor	\$168.00
Construction Monitor	\$145.00
 <u>EXPERT TESTIMONY</u>	
Expert Testimony, Deposition, Court Appearance, and research related thereto Will be charged at 3.0 times the applicable hourly rate.	
 <u>REIMBURSABLE EXPENSE</u>	
Plots and other expenses connected with the work will be charged at cost.	
 <u>CONSULTANTS</u>	
Subcontracts administered by Flowers & Associates, Inc. will be charged at cost plus 10%.	

Purchase Order Change Register

Change Details

POPKT04702 - Auto Process - PO Change

City of Goleta, CA

Purchase Order 21CP023-R3	Purchase Order Description PROJECT - #2021-041.6 GOLETA CC 000459 - FLOWERS & ASSOCIATES 001	Vendor 000459 - FLOWERS & ASSOCIATES 001	Ship To Code 001	Attention To	Delivery Date 7/1/2023	Amount 151,269.97	Shipping 0.00	Tax 0.00	Discount 0.00	Total Amount 151,269.97
	Change Description: add \$89,531 to contract per Amendm									
	Change Reason: add \$89,531 to contract per Amendment No. 6 to 2021-041, approved by City Council on 1/16/2024. New NTE \$383,404;Term Ending June 30, 2025.									
	Purchase Order Changes									
	What Changed									
	Description: PROJECT - #2021-041.5 GOLETA COMMUNITY CTR									
	Summary Description: AGREEMENT NO. 2021-041 GOLETA COMMUNITY CENTER - ACCESSIBILITY IMPROVEMENTS.									
	AMENDMENT NO. 5 TERM EXTENTION ONLY; TERM ENDING JUNE 30, 2025.									
	Changed To									
	PROJECT - #2021-041.6 GOLETA COMMUNITY CTR									
	AGREEMENT NO. 2021-041 GOLETA COMMUNITY CENTER - ACCESSIBILITY IMPROVEMENTS.									
	AMENDMENT NO. 5 TERM EXTENTION ONLY; TERM ENDING JUNE 30, 2025.									
	Amendment No. 6 to increase contract authority in the amount of \$89,531 for additional tasks as more particularly defined in Exhibit A-5 Scope of Work, per Agreement 2021-041.6 approved by City Council on 1/16/2024. New NTE \$388,404;Term Ending June 30, 2025.									

1/22/2024 Change order allocation pending (MF) confirmation on G/L split.

Purchase Order Change Register

POPKT04702 - Auto Process - PO Change

Account Summary

Account	Changed From	Changed To	Voided	Difference
101-90-9121-57070	24,367.00	24,367.00	0.00	0.00
402-90-9121-57070	126,902.97	126,902.97	0.00	0.00
Packet Totals:	151,269.97	151,269.97	0.00	0.00

Fund Summary

Fund	Changed From	Changed To	Voided	Difference
101	24,367.00	24,367.00	0.00	0.00
402	126,902.97	126,902.97	0.00	0.00
Packet Totals:	151,269.97	151,269.97	0.00	0.00



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/7/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549 INSURED Flowers & Associates, Inc. 115 W. Canon Perdido Street Santa Barbara CA 93101	CONTACT NAME: Marie Swaney PHONE (A/C, No. Ext): 626-696-1890 E-MAIL ADDRESS: CertsDesignPro@AssuredPartners.com FAX (A/C, No): <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A : BERKLEY INSURANCE COMPANY</td> <td>32603</td> </tr> <tr> <td>INSURER B : Sentinel Insurance Company</td> <td>11000</td> </tr> <tr> <td>INSURER C : Hartford Accident and Indemnity Company</td> <td>22357</td> </tr> <tr> <td>INSURER D : HARTFORD INSURANCE COMPANY</td> <td>38288</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : BERKLEY INSURANCE COMPANY	32603	INSURER B : Sentinel Insurance Company	11000	INSURER C : Hartford Accident and Indemnity Company	22357	INSURER D : HARTFORD INSURANCE COMPANY	38288	INSURER E :		INSURER F :	
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INSURER E :															
INSURER F :															

 License#: 6003745
 FLOW&AS-02

 DS
 RE

COVERAGES

CERTIFICATE NUMBER: 602342034

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☐ Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC ☐ OTHER:	Y	Y	57SBWBO5215	9/1/2023	9/1/2024	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
APPROVED By Sandra Rodriguez at 10:40 am, Oct 05, 2023 SR							
C	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	57UEGHC3712	9/1/2023	9/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$10,000	Y	Y	57SBWBO5215	9/1/2023	9/1/2024	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	57WEGPI0126	9/1/2023	9/1/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	Professional Liability & *Contr. Pollution Liab Included			AEC906992003	8/26/2023	8/26/2024	Each Claim \$2,000,000 Aggregate Limit \$4,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

AM Best's Rating on all policies above: A/XII or greater. Umbrella Liability policy is follow-form to its underlying Policies: General Liability/Auto Liability/Employers Liability.

Job: WO#: W.O. 1959 City of Goleta Community Center.

The City of Goleta, its directors, officers, managers, employees, contractors, agents, and representatives are named as an additional insured as respects general liability and auto liability as required per written contract or agreement. Insurance coverage includes waiver of subrogation per the attached endorsement(s).

CERTIFICATE HOLDER

CANCELLATION 30 Day Notice will be sent to holder

City of Goleta Attn: Matt Fore 130 Cremona Dr., Ste B Goleta CA 93117	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	---

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QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY

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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (b) The "bodily injury" or "property damage" occurs during the policy period; and

- (c) Prior to the policy period, no insured listed under Paragraph 1. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES**Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
 provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
 - (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

BUSINESS LIABILITY COVERAGE FORM

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS**1. Applicable To Business Liability Coverage**

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

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(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

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- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

BUSINESS LIABILITY COVERAGE FORM**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

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Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

BUSINESS LIABILITY COVERAGE FORM**o. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

(8) Arising out of an offense committed by an insured whose business is:

- (a) Advertising, broadcasting, publishing or telecasting;
- (b) Designing or determining content of web sites for others; or
- (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section G. – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

(12) Arising out of:

- (a) An "advertisement" for others on your web site;
- (b) Placing a link to a web site of others on your web site;
- (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
- (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

BUSINESS LIABILITY COVERAGE FORM

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

BUSINESS LIABILITY COVERAGE FORM**2. Applicable To Medical Expenses Coverage**

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED**1. If you are designated in the Declarations as:**

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:**a. Employees And Volunteer Workers**

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;

- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or

- (d)** Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a)** Owned, occupied or used by,

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- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

- b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

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contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

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- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to 2.a. or 2.b. above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

BUSINESS LIABILITY COVERAGE FORM

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

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This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations**a. When You Accept This Policy**

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. – Coverages.

BUSINESS LIABILITY COVERAGE FORM**(6) When You Are Added As An Additional Insured To Other Insurance**

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us**a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

BUSINESS LIABILITY COVERAGE FORM**F. OPTIONAL ADDITIONAL INSURED COVERAGES**

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

- b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision - Permits

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

BUSINESS LIABILITY COVERAGE FORM

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

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This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;
- b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or
- c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
 - b. An interactive conversation between or among persons through a computer network.
2. "Advertising idea" means any idea for an "advertisement".
3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.
4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
5. "Bodily injury" means physical:
- a. Injury;
 - b. Sickness; or
 - c. Disease
- sustained by a person and, if arising out of the above, mental anguish or death at any time.
6. "Coverage territory" means:

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- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication
- provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.
- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
 - 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
 - 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
 - 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
 - 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. – Liability and Medical Expenses Limits of Insurance.
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph f. does not include that part of any contract or agreement:

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- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

BUSINESS LIABILITY COVERAGE FORM

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- 18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.**
- 19. "Products-completed operations hazard";**
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20. "Property damage" means:**
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
- 21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:**
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.**
- 23. "Volunteer worker" means a person who:**
- a. Is not your "employee";

BUSINESS LIABILITY COVERAGE FORM

- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and

- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

- (2) The providing of or failure to provide warnings or instructions.

Policy # 57SBWBO5215



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT - AGGREGATE LIMITS (PER PROJECT)

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

A. Section D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE is amended as follows:

1. The General Aggregate Limit under Section D. LIABILITY AND MEDICAL EXPENSES LIMIT OF INSURANCE applies separately to each of your "projects".
2. The limits shown in the Declarations for Liability and Medical Expenses, Damage To Premises Rented To You and Medical Expenses continue to apply.
3. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit.

4. If the applicable "project" has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the "project" will still be deemed to be the same "project".

5. The provisions of Section D. LIABILITY AND MEDICAL EXPENSES LIMIT OF INSURANCE not otherwise modified by this endorsement shall continue to apply as stipulated.

B. Additional Definitions

The following definition is added to Section G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS:

1. "Project" means "your work" at location(s) away from premises owned or rented to you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (a) That is a partnership or joint venture,
 - (b) That is an "insured" under any other policy,
 - (c) That has exhausted its Limit of Insurance under any other policy, or
 - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
 - (1) The agreement requires you to provide direct primary insurance for the lessor and
 - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

D. Additional Insured if Required by Contract

- (1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:
 - f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - OF SECTION IV - BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

E. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

2. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

3. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

4. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

6. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

7. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

9. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

10. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

14. HIRED AUTO - COVERAGE TERRITORY

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

- e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

15. WAIVER OF SUBROGATION

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

16. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

17. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

- c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.
- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

19. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF OUR RIGHT TO RECOVER FROM
OTHERS ENDORSEMENT - CALIFORNIA**

Policy Number: 57WEGPI0126

Endorsement Number:

Effective Date: 09/01/2023

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: Flowers & Associates, Inc.
115 W. Canon Perdido Street
Santa Barbara, CA 93101

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2 % of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

Person or Organization

Job Description

Any person or organization from whom you are required by written contract or agreement to obtain this waiver of rights from us

Countersigned by

Authorized Representative

REQUISITION

Requisition #: 21CP023
Date: 04/29/2021
Vendor #: 000459

ISSUED TO: FLOWERS & ASSOCIATES
201 NORTH CALLE CESAR CHAVEZ
SUITE 100
SANTA BARBARA, CA 93013

SHIP TO: CITY OF GOLETA
130 CREMONA DRIVE, SUITE B
GOLETA, CA 93117

ITEM	UNITS DESCRIPTION	ITEM #	PRICE GL ACCOUNT NUMBER	AMOUNT
1	0 101-90-9067-57070 FLOWERS ASSOC AGM		0.00 101-90-9067-57070	24,367.00
2	0 402-90-9067-57070 FLOWERS ASSOC AGM		0.00 402-90-9067-57070	140,633.00

On June 1, 2021 City Council, To authorize the City Manager to execute a Professional Design Services Agreement with Flowers & Associates, Inc. for the Goleta Community Center Upgrade Project (CIP 9067) in an amount not to exceed \$165,000 with a termination date of December 31, 2022.

Detailed Description:

AGREEMENT #2021-PENDING 9067 GOLETA COMMUNITY CENTER - ACCESSIBILITY IMPROVEMENTS

Authorized By: _____

SUBTOTAL:	165,000.00
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	165,000.00

~~2020-041~~ 2021-041

Project Name: Goleta Community Center Improvements (Project No. 9067)

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES
BETWEEN THE CITY OF GOLETA
AND
Flowers & Associates, Inc.**

This AGREEMENT FOR PROFESSIONAL DESIGN SERVICES (herein referred to as "AGREEMENT") is made and entered into this 1st day of June, 2021, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and Flowers & Associates, Inc., a California corporation (herein referred to as "CONSULTANT").

WHEREAS, the CITY has a need for professional design services for the Goleta Community Center Improvements Project; and

WHEREAS, the CITY does not have the personnel able and/or available to perform the services required under this AGREEMENT, and therefore, the CITY desires to contract for professional services to accomplish this work; and

WHEREAS, CONSULTANT was approved by Council on December 3, 2019 and placed on a short list of pre-approved consultants for engineering design services after a review of a Request for Qualifications in compliance with Goleta Municipal Code Section 3.05.260; and

WHEREAS, the City Council, on this 1st day of June 2021, approved this AGREEMENT and authorized the City Manager to execute the AGREEMENT.

CITY and CONSULTANT agree as follows:

1. RETENTION AS CONSULTANT

CITY hereby retains CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the services described in Section 2. CONSULTANT warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by CONSULTANT are as follows:

Professional Design Services in conjunction with Goleta Community Center Improvements Project services shall generally include producing design plans for access improvements to the Goleta Community Center as more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein.

CONSULTANT shall deliver to CITY the deliverables defined in Exhibit "A."

3. COMPENSATION AND PAYMENT

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$165,000 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until December 31, 2022, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

(b) **Payment.** CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager, as described in Section 5. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

4. EXTRA SERVICES

CITY shall pay CONSULTANT for those CITY authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to writing in advance of the incurrence of extra services by CONSULTANT. Unless CITY and CONSULTANT have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. The applicable hourly rates for extra services shall be at the hourly rates set forth in the compensation exhibit. Any compensation for extra services shall be part of the total compensation and shall not increase the not to exceed amount identified in Section 3.

5. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is Melissa Angeles. Project Manager shall have the authority to act on behalf of the CITY in administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

6. TERM, PROGRESS AND COMPLETION

The term of this AGREEMENT is from the date first written above to December 31, 2022, unless term of this AGREEMENT is extended, or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager.

7. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports and other documentation (other than CONSULTANT's drafts, notes and internal memorandum), including duplication of same prepared by CONSULTANT in the performance of these services, are the property of CITY. CITY shall be entitled to immediate possession of the same upon completion of the work under this AGREEMENT, or at any earlier or later time when requested by CITY. CITY agrees to hold CONSULTANT harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications for purposes other than those described in this AGREEMENT, unless written authorization of CONSULTANT is first obtained.

8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

This AGREEMENT is for professional services which are personal to CITY. Autumn Malanca is deemed to be specially experienced and is a key member of CONSULTANT's firm and shall be directly involved in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate this AGREEMENT. This AGREEMENT may not be assigned or subcontracted without the City Manager's prior written consent.

9. HOLD HARMLESS AND INDEMNITY

(a) Indemnification and Defense for Professional Service. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless the CITY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT's duty to defend shall consist of reimbursement of defense costs incurred by CITY in direct proportion to the CONSULTANT's proportionate percentage of fault. CONSULTANT's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any

loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the CONSULTANT's percentage of fault, the parties agree to mediation with a third party neutral to determine the CONSULTANT's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the CITY.

(b) For All Other Liabilities. Notwithstanding the foregoing and without diminishing any rights of CITY, for any liability, claim, demand, allegation against CITY arising out of, related to, or pertaining to any act or omission of CONSULTANT, but which is not a design professional service, CONSULTANT shall defend, indemnify, and hold harmless CITY, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of the CITY, except for the sole or active negligence of, or willful misconduct of the CITY.

(c) No Waiver. CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

10. INSURANCE

CONSULTANT shall, at CONSULTANT's sole cost and expense, provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating of A- or better, Class VII or better, or as otherwise approved by CITY.

Insurance shall include the following (or broader) coverage:

- a) Insurance Services Office Commercial Liability coverage "occurrence" form CG 00 01 or its exact equivalent with an edition date prior to 2004 and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate.
- b) Insurance Services Office form number CA 00 01 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider's commercial general liability policy.
- c) Workers' Compensation insurance complying with California worker's compensation laws, including statutory limits for workers' compensation and an Employer's Liability limit of \$1,000,000 per accident or disease.

- d) Professional liability insurance that covers the services to be performed in connection with this agreement, in the minimum amount of \$1,000,000 per claim.

Liability insurance policies required to be provided by CONSULTANT hereunder shall contain or be endorsed to contain the following provisions:

- a) CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10, with an edition date prior to 2004, or its equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37, or its equivalent.
- b) General and automobile liability insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Coverage will not be limited to CITY's vicarious liability.
- c) Professional liability insurance policies inception date, continuity date, or retroactive date must be before the effective date of this agreement. CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.
- d) Liability coverage shall be primary and non-contributing with any insurance maintained by CITY.
- e) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.
- f) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.
- g) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.

- h) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by CONSULTANT hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.
- i) CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

11. RELATIONSHIP OF CONSULTANT TO CITY

The relationship of the CONSULTANT to CITY shall be that of an independent contractor and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

12. CORRECTIONS

In addition to the above indemnification obligations, CONSULTANT shall correct, at its expense, all errors in the work that may be disclosed during CITY's review of CONSULTANT's report or plans. Should CONSULTANT fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONSULTANT or withheld from any funds due to CONSULTANT hereunder.

13. TERMINATION BY CITY

CITY, by notifying CONSULTANT in writing, may upon 10 calendar days notice, terminate without cause any portion or all of the services agreed to be performed under this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, CONSULTANT shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to CONSULTANT within 30 days following submission of a final statement by CONSULTANT unless termination is for cause. In such event, CONSULTANT shall be compensated only to the extent required by law.

14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by CONSULTANT of the final payment made under this AGREEMENT shall operate as and be a release of CITY from all claims and liabilities for compensation to CONSULTANT for anything done, furnished, or relating to CONSULTANT'S work or services. Acceptance of payment shall be any negotiation of CITY's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by CITY shall not constitute, nor be deemed, a release of the responsibility and liability of CONSULTANT, its employees, subcontractors, agents and CONSULTANTS for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by CITY for any defect or error in the work prepared by CONSULTANT, its employees, subcontractors, agents and consultants.

15. AUDIT OF RECORDS

At any time during normal business hours and as often as it may deem necessary, CONSULTANT shall make available to a representative of CITY for examination of all its records with respect to all matters covered by this AGREEMENT and will permit CITY to audit, examine and/or reproduce such records. CONSULTANT will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this AGREEMENT.

16. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this AGREEMENT by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this AGREEMENT, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

17. CONFLICT OF INTEREST

CONSULTANT is unaware of any CITY employee or official that has a financial interest in CONSULTANT'S business. During the term of this AGREEMENT and/or as a result of being awarded this AGREEMENT, CONSULTANT shall not offer, encourage

or accept any financial interest in CONSULTANT'S business by any CITY employee or official.

18. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

19. MITIGATION OF DAMAGES

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

20. GOVERNING LAW

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

21. NONDISCRIMINATION

CONSULTANT shall not discriminate on the basis of race, color, gender, gender identity/expression, pregnancy, sexual orientation, disability, marital status, or any other characteristic protected under applicable federal or state law.

22. TAXPAYER IDENTIFICATION NUMBER

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. October 2018), as issued by the Internal Revenue Service.

23. NON-APPROPRIATION OF FUNDS

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.

24. MODIFICATION OF AGREEMENT

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and CONSULTANT.

25. USE OF THE TERM "CITY"

Reference to "CITY" in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

26. PERMITS AND LICENSES

CONSULTANT, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this AGREEMENT.

27. CAPTIONS

The captions or headings in this AGREEMENT are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the AGREEMENT.

28. AUTHORIZATION

Each party has expressly authorized the execution of this AGREEMENT on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this AGREEMENT.

29. ENTIRE AGREEMENT BETWEEN PARTIES

Except for CONSULTANT'S proposals and submitted representations for obtaining this AGREEMENT, this AGREEMENT supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services.

30. PARTIAL INVALIDITY

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

31. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: Attention: Michelle Greene, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

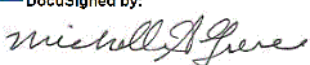
TO CONSULTANT: Attention: Autumn Malanca, Project Manager
Flowers & Associates, Inc.
201 North Calle Cesar Chavez, Suite 100
Santa Barbara, CA 93103

32. **COUNTERPARTS AND ELECTRONIC/FACSIMILE SIGNATURES**

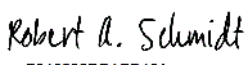
This Agreement may be executed in several counterparts, which may be facsimile or electronic copies. Each counterpart is fully effective as an original, and together constitutes one and the same instrument.

In concurrence and witness whereof, this AGREEMENT has been executed by the parties effective on the date and year first above written.

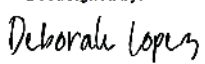
CITY OF GOLETA

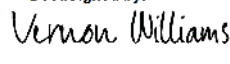
DocuSigned by:

DE7CE466308944A...
Michelle Greene, City Manager

CONSULTANT

DocuSigned by:

E846532DDAFD45A...
Robert A. Schmidt, P.E., President

ATTEST

DocuSigned by:

A3E09F3473CA47E...
Deborah Lopez, City Clerk

DocuSigned by:

9FECE26684DB48E...
Vernon E. Williams, P.E., CEO

APPROVED AS TO FORM:
MICHAEL JENKINS, CITY ATTORNEY

DocuSigned by:

A1BF8F896161498...
Winnie Cai, Assistant City Attorney

EXHIBIT A SCOPE OF WORK

Consultant shall deliver the following services:

1. Review all site information related to the project provided by the City. Communicate to and share site information with subconsultants. Assumed 21 hours total (between office engineers and project manager).
2. Coordinate with City Public Works staff in order to understand their site improvement goals and budget constraints and continue coordination throughout the project to ensure tasks and goals are met. Assumed 24 hours total.
3. Select a project Surveyor and coordinate inner-office and w/surveyor to define the necessary extents and details of the mapping in order to provide sufficient detail for grading and drainage design compliant with ADA requirements. Assumed 12 hours total (split between engineer and project manager).
4. Select a project Architect and coordinate to confirm the scope of interior access improvements. Continue coordination/management of the Architect in order to confirm City goals and project tasks are met. Assumed 44 hours total (between engineer and project manager).
5. Prepare Preliminary Civil Grading and Drainage Plans incorporating all the exterior improvements identified in the aforementioned Crosby/Partner reports as modified by the forthcoming ADA assessment/update. These improvements shall include modifications to the parking lot (addition of disabled parking stalls, access aisles, etc.). Assumed 64 hours total (between engineers, Principal, and project manager).
6. Prepare Preliminary Architectural Plans for all the identified interior improvements, as defined below and in the forthcoming ADA Assessment/update:

- Building A: Two new completely redesigned multi-user restrooms
Door hardware, minor walls being moved, cabinets, and equipment
- Building B: Doors, gates, and door hardware
Note, restroom work limited to grab bar installation only
Note, no change to existing exterior door landings
- Building C2: One new completely redesigned single user restroom
Door hardware, modify door ramps, and cabinets
- Building C4: Two new completely redesigned single user restrooms
Door hardware and cabinets
- Building D: Door hardware
Note, no change to existing restrooms

Plans shall require that the Architect enlist and coordinate with a Structural Engineer, a Mechanical/Plumbing Engineer, an Electrical Engineer, a door hardware specialist, and an ADA specialist, all of which are defined below:

Structural Engineer: GSE, Thuy Greer, SE
Mechanical/Plumbing: MEC, Paul Tziouvaras and Linda Altomare
Electrical: Smith Engineering, Brian Smith
Door Hardware: IDS, Bob Simpson
ADA Specialist: Eric McSwain

7. Circulate preliminary plans to the City for review and address comments. Revisions shall be limited to two rounds of comments/corrections. Revisions shall be limited to two rounds of comments/corrections. Assumed 20 hours (between engineer, Principal, and project manager).
8. Produce a construction level plan set (combined civil + architectural), incorporating revisions resulting from the Preliminary Plans review, and including construction details and specifications (on the sheets, not stand-alone specs). Assumed 38 hours total (between engineer, principal engineer, and project manager).
9. Address comments from City (limited to one round of corrections/comments) and update the Plans, accordingly. Assumed 26 hours total (between engineer, principal engineer, and project manager).
10. Produce a Construction Cost Estimate for the project (interior costs from Architect and exterior costs from Consultant) and provide it to the City. This shall include coordination with the Architect and his sub-consultants. Assumed 13 hours total.
11. Provide design assistance during construction, which shall include Consultant's review/comment on submittals required by Consultant's plans, and review/response to RFIs (limit to no more than 10 RFIs), and up to 4 site visits for construction observation. This task excludes contract bidding and/or construction contract administration.
12. Attend meetings as requested by City, not to exceed 8 man-hours.

SPECIFIC EXCLUSIONS

Specifically not included in the above Scope of Services/Compensation are the following:

1. Geotechnical Engineering, including design, observation and testing of earthwork.

2. City review fees and permit costs.
3. Any involvement with hazardous waste including detection, evaluation, and cleanup.
4. Reproduction expense including the cost of blueprinting and other reprographics.
5. Entitlement.
6. Environmental review, including storm water requirements (the new/replaced hardscape totals are not anticipated to trigger the City's storm water requirements).

EXHIBIT B
SCHEDULE OF FEES
Effective January 1, 2021
Until Revised

ENGINEERING SERVICESHOURLY RATE

Principal Engineer	\$216.00
Associate Engineer	\$199.00
Senior Engineer II.....	\$189.00
Senior Engineer I.....	\$176.00
Drainage Engineer	\$176.00
Qualified SWPPP Practitioner	\$176.00
Design Engineer II.....	\$166.00
Water Resources Specialist	\$166.00
Project Manager	\$166.00
Design Engineer I.....	\$154.00
CAD Designer	\$140.00
CAD Technician	\$125.00
Administrative Support	\$107.00

PLANNING SERVICES

Principal Planner	\$189.00
Associate Planner	\$168.00
Senior Planner.....	\$158.00
Public Agency Coordinator.....	\$142.00

CONSTRUCTION PHASE SERVICES

Principal Construction Engineer	\$216.00
Associate Construction Engineer	\$199.00
Senior Construction Engineer.....	\$187.00
Resident Engineer.....	\$176.00
Prevailing Wage Construction Monitor	\$160.00
Construction Monitor	\$138.00

EXPERT TESTIMONY

Expert Testimony, Deposition, Court Appearance, and research related thereto will be charged at 3.0 times the applicable hourly rate.

REIMBURSABLE EXPENSE

Plots and other expenses connected with the work will be charged at cost.

CONSULTANTS

Subcontracts administered by Flowers & Associates, Inc. will be charged at cost plus 10%.