



TO: Mayor and Councilmembers

FROM: Charles W. Ebeling, Public Works Director

CONTACT: Michael Winnewisser, Assistant Engineer

SUBJECT: Ratification of Agreements and Amendments for 2023 Winter Storm Emergency Response Services and Appropriation of Budget for Emergency Storm Response

RECOMMENDATION:

- A. Authorize the City Manager to execute Public Works Contract No. 2023-037 with Toro Enterprise Inc. for the Ellwood Beach Drive Drain Repair Project, emergency storm construction services, for a total not-to-exceed amount of \$70,000 with an expiration date of December 31, 2023;
- B. Authorize the City Manager to execute Amendment No. 1 to Professional Services Agreement No. 2023-015 with Filippin Engineering, Inc. for emergency storm professional services, increasing the contract amount by \$311,420 for a new total not-to-exceed amount of \$355,920;
- C. Authorize the City Manager to execute Amendment No. 1 to Professional Services Agreement No. 2023-016 with Rincon Consultants, Inc. for emergency storm professional services, increasing the contract amount by \$214,000 for a new total not-to-exceed amount of \$258,999;
- D. Authorize the City Manager to execute a General Services Agreement with Mark Crane's Tree and Arborist Services for January 2023 Winter Storm Emergency Response Tree Work, for a total not-to-exceed amount of \$100,000 with an expiration date of December 31, 2023;
- E. Authorize the City Manager to execute a General Services Agreement with Mark Crane's Tree and Arborist Services for March 2023 Winter Storm Emergency Response Tree Work, for a total not-to-exceed amount of \$50,000 with an expiration date of December 31, 2023;
- F. Authorize the City Manager to execute a General Services Agreement with Nick's Tree Service for January 2023 Winter Storm Emergency Response Tree Work, for a total not-to-exceed amount of \$25,000 with an expiration date of December 31, 2023;

- G. Authorize the City Manager to execute a General Services Agreement with Nick's Tree Service for March 2023 Winter Storm Emergency Response Tree Work, for a total not-to-exceed amount of \$10,000 with an expiration date of December 31, 2023;
- H. Authorize the City Manager to execute Public Works Contract No. 2023-045 with Toro Enterprises Inc. for emergency storm construction services for the Cathedral Oaks Road Slope Stability Project, for a total not-to-exceed amount of \$600,000 with an expiration date of December 31, 2023.
- I. Authorize a budget appropriation of \$1,830,420 from the General Fund Unassigned Fund Balance to Account 101-50-5200-54004 – Emergency Response; and
- J. Authorize a budget adjustment to transfer budget from four Capital Improvement Program Projects for a total amount of \$846,900 to the Emergency Response GL account no. 101-50-5200-54004, as noted in the Fiscal Impact section of Table 8.

BACKGROUND:

In early January 2023, City of Goleta (City) staff began monitoring the potential for heavy rains to impact Santa Barbara County, particularly portions of the more densely populated areas of South County. The recent history of sizable wildfires and subsequent burn scars prompted further concern for major impacts from Gaviota to Carpinteria, including Goleta. Staff began attending briefings and preparing in case the first set of storms just after the New Year might result in more pervasive and large-scale flooding and other associated heavy rain activity in Goleta.

On January 9, 2023, an atmospheric river storm struck the County of Santa Barbara. The significant rainfall caused flooding on public streets, watersheds, creeks, open spaces, wetlands, and other property in the City; damage to public rights-of-way; downed trees blocking sidewalks and streets; road closures; and disruption of public services. The storm prompted the County of Santa Barbara and the City of Goleta to declare a local emergency on January 9, 2023. On January 18, 2023, the White House added the County of Santa Barbara to the Presidential Major Disaster Declaration to support the State's storm response and recovery efforts.

Pursuant to City of Goleta Municipal Code Section 3.05.120 for Urgencies, Public Works staff engaged in immediate emergency operations by securing necessary contractors and consultants to permit the continued performance of the operations and services of the City, and to avoid the immediate danger to life, health, or property caused by the January and March 2023 storms.

DISCUSSION:

As a result of the storm, a wide range of damages occurred throughout the City of Goleta. Public Works staff has created a list of damages and consolidated them into the Public Works Storm Damage List, which names each project and describes the damages

caused by the storm, as well as needed repairs. The emergency agreements and amendments referenced in this report are necessary to cover services for one or more projects included on this list, as well as emergency clean-up and maintenance measures. The current list is outlined below in Table 1.

Table 1: Public Works Storm Damage List

Project Name	Project Description
Emergency Storm Services	Removal of downed or damaged trees, clean-up of sediment and debris at Ellwood Beach, filling of various potholes, and storm drain pumping.
Ellwood Mesa Access Road and Devereux Creek Culvert Repair	The service roadway to Ellwood Mesa and Devereux Creek culvert was damaged by the high flows. Temporary repairs include the installation of a metal plate to bridge the eroded roadway and reinforcement of the failing culvert.
San Pedro Creek and Storm Drain Repair	The concrete collar of the storm drain was exposed and separated from a pipe in the high storm flows. Repairs include excavation of existing pipe, and installation of the new collar, headwall, and footing. Nearby downed trees must also be removed.
Ellwood Beach Dr. Drain Repair	High flows caused erosion of the nearby slope past the end of the roadway. Repairs include the installation of a drainage system to mitigate flows.
San Rossano & Padova Drain Replacement	A sinkhole developed in the parkway near the curb drain inlet by Evergreen Park due to pipe erosion. Repairs include excavation, replacement of eroded pipe, backfill, and compaction of the soil.
Jonny D. Wallis Neighborhood Park Sinkhole	A Sinkhole developed due to high flows. Repairs include excavation and removal of old facilities and backfilling the sinkhole with native material and sand.
Cathedral Oaks Slope Stability	Excess flows accelerated the erosion of the sinkhole in bike pathway. Repairs include the installation of a secant wall to prevent further erosion, backfill of materials including pressure-injected foam, and investigatory potholing and trenching in the roadway.
Ellwood Mesa Bluff and Beach Access Erosion	Due to the heavy rainfall flows, the coastal bluffs eroded at two locations. Repairs include trail segments to redirect runoff water away from the bluff, stabilization, and backfilling of eroded sections.
Maria Ygnacio Bike Path	Undercrossing sustained heavy flows of debris and sediment, clogging the drain and dislodging rock riprap. Repairs include clearing debris, repairing riprap, and clearing downed trees and vegetation.
Tree Damage	78 trees across eight parks and open spaces were damaged or destroyed. Debris clearing, chipping, and tree felling will be performed under the direction of certified arborists and biologists.

March 2023 Storm Event	
Newport Drive Erosion & Sinkhole	A sinkhole developed near the sidewalk near the curb drain inlet due to storm drainpipe erosion. Repairs include excavation, replacement of eroded pipe, backfill, and compaction of soil.
303 Santa Barbara Shores Catch Basin and Culvert	A sinkhole developed near the open space due to storm drainpipe erosion. Repairs include excavation, replacement of eroded pipe, backfill, and compaction of soil.
Santa Barbara and Sea Gull Erosion Repair Project	A sinkhole developed near the sidewalk near the curb drain inlet due to storm drainpipe erosion. Repairs include excavation, replacement of eroded pipe, backfill, and compaction of soil.
Tree Damage	120 trees across ten parks and open spaces were damaged or destroyed. Debris clearing, chipping, and tree felling will be performed under the direction of certified arborists and biologists.

Emergency Services Agreements

Toro Enterprises, Inc.

Toro Enterprise, Inc (Toro) was selected to repair the Ellwood Beach Drive Drain Repair project listed in Table 1. The work has yet to begin due to needed environmental permits. The repairs for this project consist of an emergency connection of the existing Corrugated Metal Pipe (CMP) to the end of Ellwood Beach Drive on the West side of the road. The project work also includes filling in the erosion area, placing an asphalt or concrete inlet swale to connect the end of the roadway to the existing CMP, and cleaning out the existing 18" CMP for positive flow. This is a temporary repair only to establish a water path from the road to the CMP until a more permanent repair can be made and to help prevent further public and private property erosion.

Table 2 provides the estimated cost and funding source for the Ellwood Beach Drive Drain Repair project. The Public Works Contract with Toro Enterprise, Inc. for emergency storm construction services, for a total not-to-exceed amount of \$70,000 with an expiration date of December 31, 2023 is provided as Attachment 1.

Toro has also been selected for the work on the Cathedral Oaks Road Slope Stability Project listed in Table 1. For this contract, Public Works staff received a geotechnical report from Earth Systems which established the connection between the storm and the new damage related to the Cathedral Oaks Road Slope Stability, as well as repair recommendations for the sinkhole itself, and justifications for the investigatory work. The cost estimates for the repair options and investigatory work are listed below:

- Installation of a steel pile wall extending past the length of the sinkhole to prevent further erosion toward the roadway. The cost estimate for this work is approximately \$500,000; or

- Conventional earthwork with soil bulkhead and sinkhole backfill. The cost estimate for this work is approximately \$15,000; and
- Fill the sinkhole with pressure-injected polymer foam or grout, the cost estimate for this work is approximately \$25,000.
- Investigatory trenching and potholing operation to perform due diligence to identify voids on the slope-side of the sinkhole, the cost estimate for this work is approximately \$100,000.

Therefore the cost for the Cathedral Oaks Road Slope Stability Repair project is based on the combination of the estimated cost of the investigatory trenching and potholing operations (\$100,000) and the most comprehensive repair option of installing the steel piles (\$500,000). The total not-to-exceed amount for the contract is therefore \$600,000 with an expiration date of December 31, 2023, which is provided as Attachment 10. Table 7 provides the estimated cost and funding source for the work to be completed by Toro for this project.

Filippin Engineering, Inc.

Filippin Engineering, Inc. (Filippin) has an existing Professional Services Agreement No. 2023-015 for emergency and storm response services. This agreement was entered into on January 21, 2022 and expires on December 31, 2023. This agreement must be amended to increase the contract authority to continue to address damages associated with the January storm. This increase is justified through Goleta Municipal Code Section 3.05.120 for urgencies.

Filippin has been supporting the City by assisting with the emergency repair projects shown in Table 1. Filippin has performed a site evaluation and has developed a scope of work for each emergency repair project. Additional support services include ongoing meeting participation, project management, construction oversight, and coordination with City staff, City consultants, contractors, California Governor's Office of Emergency Services (Cal OES) staff, and Federal Emergency Management Agency (FEMA) staff.

The estimated cost for each emergency repair project varies based on the project necessities such as project management, construction management, inspection services, post-construction, and the estimated working days for each project. The original professional service agreement with Filippin has a not-to-exceed amount of \$44,500. Table 3 shows the estimated cost and funding for each emergency repair project. Amendment No. 1 to Professional Services Agreement No. 2023-015 with Filippin Engineering, Inc. for emergency storm professional services, increasing the contract amount by \$311,420 for a new total not-to-exceed amount of \$355,920 is provided as Attachment 2.

Rincon Consultants, Inc.

Rincon Consultants, Inc. (Rincon) has an existing Professional Services Agreement No. 2023-016 for environmental monitoring, permitting, and arborist services related to 2023

Winter Storm Emergency Damage Repair projects. Rincon's agreement was executed on March 30, 2023 and expires on December 31, 2023.

Rincon has been providing services to support the emergency repair projects in Table 1. Rincon has contacted all the required regulatory agencies to obtain permits for the emergency repair projects. Rincon has also provided field assessments, permit submittal coordination, and construction support. The estimated cost for each emergency repair project varies based on their services. The original professional service agreement with Rincon has a not-to-exceed amount of \$44,999. Table 4 provides the remaining estimated cost for each emergency project, as well as the funding source. Amendment No. 1 to Professional Services Agreement No. 2023-016 with Rincon Consultants, Inc. for emergency storm professional services, increasing the contract amount by \$214,000 for a new total not-to-exceed amount of \$258,999 is provided as Attachment 4.

Mark Crane's Tree and Arborist Services, Inc.

Two General Service Agreements were executed with Mark Crane's Tree and Arborist Services, Inc. to address life and safety concerns related to damaged and fallen trees in City parks, open spaces, and the public right of way. Separate agreements to coincide with the January and March storm events were executed to conform to FEMA guidelines for potential federal reimbursement. The two General Service Agreements are \$100,000 and \$50,000 for the January and March storm events, respectively. The General Services Agreement with Mark Crane's Tree and Arborist Services for January 2023 Winter Storm Emergency Response Tree Work, for a total not-to-exceed amount of \$100,000 with an expiration date of December 31, 2023 is provided as Attachment 7. The General Services Agreement with Mark Crane's Tree and Arborist Services for March 2023 Winter Storm Emergency Response Tree Work, for a total not-to-exceed amount of \$50,000 with an expiration date of December 31, 2023 is provided as Attachment 9.

Nick's Tree Service, Inc.

Two General Service Agreements were executed with Nick's Tree Service, Inc. to address life and safety concerns related to damaged and fallen trees in City parks, open spaces, and the public right of way. Separate agreements to coincide with the January and March storm events were executed to conform to FEMA guidelines for potential federal reimbursement. The two General Service Agreements are \$25,000 and \$10,000 for the January and March storm events, respectively. Compared to Mark Crane's Tree and Arborist Services, Nick's Tree Service is better suited for less technically challenging tree work outside of designated Environmentally Sensitive Habitat Areas. The General Services Agreement with Nick's Tree Service for January 2023 Winter Storm Emergency Response Tree Work, for a total not-to-exceed amount of \$25,000 with an expiration date of December 31, 2023 is provided as Attachment 6. The General Services Agreement with Nick's Tree Service for March 2023 Winter Storm Emergency Response Tree Work, for a total not-to-exceed amount of \$10,000 with an expiration date of December 31, 2023 is provided as Attachment 8.

GOLETA STRATEGIC PLAN:

This emergency repair work meets the following City-wide Strategies:

City-Wide Strategy 5: Strengthen Infrastructure

City-Wide Strategy 7: Maintain a Safe Community

FISCAL IMPACTS:

There are insufficient funds in the adopted Fiscal Year (FY) 22/23 budget to cover the cost of the services associated with the emergency response projects.

The total estimated costs and funding sources associated with the Toro agreement for Ellwood Beach Drive Drain Repair are outlined in Table 2 below.

Table 2 – Toro Emergency Response Projects Cost Estimates for Ellwood Beach Drive Drain Repair

Project Components	Estimated Costs	Funding Source	Funding Amounts
Repair Operations	\$70,000	General Fund (101-50-5200-54004)	\$70,000
Total	\$70,000	Total	\$70,000

Filippin's total estimated costs and funding source associated with Professional Services Agreement No. 2023-015 and Amendment No. 1 are summarized in Table 3 below.

Table 3 – Filippin Emergency Response Projects Cost Estimates

Project Components	Estimated Costs
Original Agreement	\$44,500
Ellwood Mesa Access Road and Devereux Creek Culvert Repair	\$9,040
San Pedro Creek and Westmorland Pl. Storm Drain Repair	\$63,280
Ellwood Beach Dr. Drain Repair	\$63,280
San Rossano & Padova Drain Replacement	\$18,080
Jonny D. Wallis Park Sinkhole	\$5,490
Cathedral Oaks Slope Stability	\$54,240
Ellwood Mesa Bluff and Beach Access Erosion	\$54,240
Maria Ygnacio Bike Path	\$5,490
Project Management	\$30,240
Post Construction	\$8,040
Total	\$355,920

Funding Source	Funding Amounts
General Fund (101-50-5200-54004)	\$355,920
Total	\$355,920

Rincon's total estimated costs and funding source associated with Professional Services Agreement No. 2023-016 and Amendment No. 1 are summarized in Table 4 below

Table 4 – Rincon Emergency Response Projects Cost Estimates

Project Components	Estimated Costs
Original Agreement	\$44,999
Ellwood Mesa Access Road and Devereux Creek Culvert Repair	\$14,000
San Pedro Creek and Westmorland Pl. Storm Drain Repair	\$20,000
Ellwood Beach Dr. Drain Repair	\$18,000
San Rossano & Padova Drain Replacement	\$1,500

Funding Source	Funding Amounts
General Fund (101-50-5200-54004)	\$258,999

Jonny D. Wallis Park Sinkhole	\$1,500
Cathedral Oaks Slope Stability	\$15,000
Ellwood Mesa Bluff and Beach Access Erosion	\$14,000
Maria Ygnacio Bike Path	\$20,000
Emergency Tree Removal	\$110,000
Total	\$258,999

Total	\$258,999

Table 5 – Mark Crane’s Tree and Arborist Services January and March 2023 Winter Storm Emergency Response Cost Estimates

Project Components	Estimated Costs
Mark Crane’s Tree and Arborist January Storm	\$100,000
Mark Crane’s Tree and Arborist March Storm	\$50,000
Total	\$150,000

Funding Source	Funding Amounts
General Fund (101-50-5200-54004)	\$150,000
Total	\$150,000

Table 6 – Nick’s Tree Service January and March 2023 Winter Storm Emergency Response Cost Estimates

Project Components	Estimated Costs
Nick’s Tree Service January Storm	\$25,000
Nick’s Tree Service March Storm	\$10,000
Total	\$35,000

Funding Source	Funding Amounts
General Fund (101-50-5200-54004)	\$35,000
Total	\$35,000

Table 7 – Toro Emergency Response Projects Cost Estimates for Cathedral Oaks Slope Stability Project

Project Components	Estimated Costs
Trenching and Potholing Operations	\$100,000
Repair Operations	\$500,000
Total	\$600,000

Funding Source	Funding Amounts
General Fund (101-50-5200-54004)	\$600,000
Total	\$600,000

To continue to address the necessary repairs and be eligible for FEMA cost recovery, Public Works staff is recommending an additional appropriation of \$1,830,420 from General Fund Unassigned Fund Balance into General Fund Account 101-50-5200-54004 – Emergency Response (see Tables 2 through 7 above). These projects are potentially eligible for FEMA reimbursement. Table 8 summarizes the FY 22/23 project budget amounts in the project account. Staff is also requesting to transfer the general fund appropriations from five other CIP projects for a total amount of \$846,900 to the Emergency Response GL account 101-50-5200-54004, see table below. The four CIP projects that staff wishes to transfer funds from are #9031-Old Town Sidewalk Improvements, #9122-City-Wide Open Space Management & Maintenance, #9123-Lake Los Carneros Master Plan, #9124-Fairview & Stow Canyon Traffic Signal, and #9125-Rectangular Rapid Flashing Beacons (RRFBs) Calle Real at Jenna drive. These projects have available budgets from the General Fund that is currently not actively worked on due to staff capacity and competing priorities. Budgets will be reprogrammed in future years.

Table 8: Project Funding

Emergency Response Costs, FY 22/23					
Fund Type	Account	Current Budget	YTD Actuals/ Encumbrance	Total Appropriation Requested	Total Available Budget
General Fund	101-50-5200-54004	\$200,000	\$216,006	\$2,677,320 \$1,830,420 (new) \$846,900 (transfer)	\$2,661,314
Total		\$200,000	\$216,006	\$2,677,320	\$2,661,314
Summary of CIP Project Budget Transfers					
General Fund	101-90-9031-57071	\$196,900.24	\$ -	(\$196,900)	\$ -
General Fund	101-90-9122-57070	\$100,000	\$ -	(\$100,000)	\$ -
General Fund	101-90-9123-57070	\$250,000	\$ -	(\$250,000)	\$ -
General Fund	101-90-9124-57070	\$200,000	\$ -	(\$200,000)	\$ -
General Fund	101-90-9125-57070	\$100,000	\$ -	(\$100,000)	\$ -
Total Budget Transfers to 101-50-5200-54004:				(\$846,900)	

The current emergency response budget is \$200,000. With the new appropriation of \$1,830,420 and budget transfer of \$846,900, the total emergency response budget will increase by \$2,677,320 for a total budget of \$2,877,320. There is approximately \$2.8 million available from the General Fund's Unassigned Fund Balance.

The emergency related work is subject to possible reimbursement from FEMA and CalOES at a combined rate of 93.75%. Staff is estimating the City would be reimbursed \$2,697,488 and the City will be responsible for \$179,833 or 6.25% of costs. It should be noted that reimbursement is not guaranteed and will depend on final review and approval from FEMA and CalOES. The General Fund will need to absorb any additional costs not reimbursed. Actual information will be reported once known.

ALTERNATIVES:

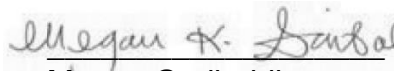
The City Council can elect not to approve the amendments and agreements discussed herein; however, this would result in significant delays to the initiation and completion of the work associated with these emergency storm projects. This delay would result in many of these locations being inaccessible and hazardous to the public. This would also jeopardize the acquisition of FEMA funds by risking project completion by the six-month deadline of July 14, 2023.

Reviewed By:



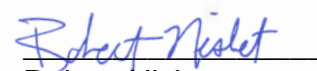
Kristine Schmidt
Assistant City Manager

Legal Review By:



Megan Garibaldi
City Attorney

Approved By:



Robert Nisbet
City Manager

ATTACHMENTS:

1. Public Works Contract No. 2023-037 with Toro Enterprises, Inc.
2. Amendment No. 1 to Professional Services Agreement No. 2023-015 with Filippin Engineering, Inc.
3. Professional Services Agreement No. 2023-015 with Filippin Engineering, Inc.
4. Amendment No. 1 to Professional Services Agreement No. 2023-016 with Rincon Consultants, Inc.
5. Professional Services Agreement No. 2023-016 with Rincon Consultants, Inc.
6. General Services Agreement No. 2023-026 with Nick's Tree Service
7. General Services Agreement No. 2023-031 with Mark Crane's Tree and Arborist Services
8. General Services Agreement No. 2023-030 with Nick's Tree Service
9. General Services Agreement No. 2023-032 with Mark Crane's Tree and Arborist Services
10. Public Works Contract No. 2023-045 with Toro Enterprises, Inc.

ATTACHMENT 1

Public Works Contract No. 2023-037 with Toro Enterprises, Inc.

**PUBLIC WORKS CONTRACT
BETWEEN THE CITY OF GOLETA
AND
TORO ENTERPRISES, INC.**

This Public Works Contract (herein referred to as "CONTRACT") is made and entered into by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **TORO ENTERPRISES, INC.**, a California Corporation (hereinafter referred to as "CONTRACTOR").

SECTION A. RECITALS

1. The CITY has a need for drainage repair services related to projects for emergency repair to public property, trees, parks, and other infrastructure caused by severe storms in 2023; and

2. 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 construction services to accomplish this work; and

3. Goleta Municipal Code Section 2.10.040(A)(6)(a) allows the City Manager (referenced as "Director of Emergency Services") to "make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided however, such rules and regulations must be confirmed at the earliest practicable time by the City Council"; and

4. An emergency exists in the CITY due to the severe storms of 2023 which caused significant damage to roadways and CITY infrastructure. Therefore, it is necessary to the public health and safety that the City Manager immediately authorize the start of work on emergency mitigation measures, subject to ratification by City Council; and

5. The City Manager authorized this agreement pursuant to Goleta Municipal Code Section 2.10.040(A)(6)(a) and the City Council ratified this agreement at its next public meeting.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, it is agreed:

SECTION B. TERMS

1. **GENERAL SCOPE OF WORK: CITY agrees to engage CONTRACTOR and CONTRACTOR** agrees to furnish all necessary labor, tools, materials, appliances, and equipment for and do the work for the Ellwood Beach Drive Drain Repair Project in the City of Goleta as described in Exhibit A. The work shall be performed in accordance with the instructions of the City Engineer, or City's Manager's designee.
2. **COMPENSATION:** CONTRACTOR agrees to receive and accept the prices set forth in its Proposal as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder (Contract Price). Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof in the manner and time specified in the aforesaid contract documents; and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work.
3. **TIME OF PERFORMANCE:** CONTRACTOR agrees to complete the work within 10 **working days** in the timeframe specified in the Notice to Proceed Letter (Contract Time). By signing this CONTRACT, CONTRACTOR represents to CITY that the Contract Time is reasonable for completion of the work and that CONTRACTOR will complete such work within the Contract Time. In accordance with Government Code Section 53069.85, CONTRACTOR agrees to forfeit and pay CITY as liquidated damages, not as a penalty, the sum of \$1000 per day for each and every day of unauthorized delay beyond the completion date, which amount shall be deducted from any payments due or to become due the CONTRACTOR.
4. **PREVAILING WAGES:**
 - A. Pursuant to Labor Code Sections §§1720 *et seq.*, including but not limited to sections 1771, 1774 and 1775, and as specified in Title 8, California Code of Regulations, Section 16000 *et seq.*, CONTRACTOR must pay its workers prevailing wages. It is CONTRACTOR's responsibility to interpret and implement any prevailing wage requirements and CONTRACTOR agrees to pay any penalty or civil damages resulting from a violation of the prevailing wage laws.

- B. In accordance with Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are available upon request from CITY's Engineering Division or the website for State of California Prevailing wage determination at <http://www.dir.ca.gov/DLSR/PWD>. CONTRACTOR must post a copy of the prevailing rate of per diem wages at the job site.
- C. CITY directs CONTRACTOR's attention to Labor Code Sections 1777.5, 1777.6 and 3098 concerning the employment of apprentices by CONTRACTOR or any subcontractor.
- D. Labor Code Section 1777.5 requires CONTRACTOR or subcontractor employing tradesmen in any apprenticeship occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate must also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases will not be less than one to five except:
- (1) When employment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent in the 90 days before the request for certificate, or
 - (2) When the number of apprentices in training in the area exceeds a ratio of one to five, or
 - (3) When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally, or
 - (4) When assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

Pursuant to Labor Code § 1776, CONTRACTOR shall comply with all Department of Industrial Relations registration requirements.

- E. CONTRACTOR is required to make contributions to funds established for the administration of apprenticeship programs if CONTRACTOR employs registered apprentices or journeymen in any apprentice able trade on such contracts and if other contractors on the public works site are making such contributions.

- F. CONTRACTOR and any subcontractor must comply with Labor Code Sections 1777.5 and 1777.6 in the employment of apprentices.
- G. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the Director of Industrial Relations (DIR), ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- H. CONTRACTOR and its subcontractors must keep an accurate certified payroll records showing the name, occupation, and the actual per diem wages paid to each worker employed in connection with this CONTRACT. The record will be kept open at all reasonable hours to the inspection of the body awarding the contract and to the Division of Labor Law Enforcement. If requested by CITY, CONTRACTOR must provide copies of the records at its cost.
5. **LEGAL HOURS OF WORK:** CONTRACTOR agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. Except as provided by Labor Code Section 1815, the CONTRACTOR shall, as a penalty to the CITY, forfeit twenty five dollars (\$25) for each worker employed in the execution of the Contract by the CONTRACTOR or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 (commencing at Section 1810) of the California Labor Code.
6. **TRAVEL AND SUBSISTENCE PAY:** CONTRACTOR agrees to pay travel and subsistence pay to each worker needed to execute the work required by this CONTRACT as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.
7. **CONTRACTOR'S LIABILITY:** The CITY and its officers, agents and employees ("Indemnitees") shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof, or for any of the materials or other things used or employed in performing the work; or for injury or damage to any person or persons, either workers or employees of CONTRACTOR, of its subcontractors or the public, or for damage to adjoining or other property from any cause whatsoever arising out of or in connection with the performance of the work. CONTRACTOR shall be responsible for any damage or

injury to any person or property resulting from defects or obstructions or from any cause whatsoever.

CONTRACTOR will indemnify Indemnities against and will hold and save Indemnitees harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of CONTRACTOR, its agents, employees, subcontractors or invitees provided for herein, whether or not there is concurrent passive negligence on the part of CITY. In connection therewith:

- a. CONTRACTOR will defend any action or actions filed in connection with any such claims, damages, penalties, obligations or liabilities and will pay all costs and expenses, including attorneys' fees, expert fees and costs incurred in connection therewith.
- b. CONTRACTOR will promptly pay any judgment rendered against CONTRACTOR or Indemnitees covering such claims, damages, penalties, obligations and liabilities arising out of or in connection with such work, operations or activities of CONTRACTOR hereunder, and CONTRACTOR agrees to save and hold the Indemnitees harmless therefrom.
- c. In the event Indemnitees are made a party to any action or proceeding filed or prosecuted against CONTRACTOR for damages or other claims arising out of or in connection with the work, operation or activities hereunder, CONTRACTOR agrees to pay to Indemnitees and any all costs and expenses incurred by Indemnitees in such action or proceeding together with reasonable attorneys' fees.

CONTRACTOR'S obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnatee. However, without affecting the rights of CITY under any provision of this CONTRACT, Contractor shall not be required to indemnify and hold harmless CITY for liability attributable to the active negligence of CITY, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where CITY is shown to have been actively negligent and where CITY active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

So much of the money due to CONTRACTOR under and by virtue of the contract as shall be considered necessary by CITY may be retained by CITY until disposition has been made of such actions or claims for damages as aforesaid.

It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California. This indemnity provision shall survive the termination of the CONTRACT and is in addition to any other rights or remedies which Indemnitees may have under the law.

This indemnity is effective without reference to the existence or applicability of any insurance coverage which may have been required under this CONTRACT or any additional insured endorsements which may extend to Indemnitees.

CONTRACTOR, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the CONTRACTOR regardless of any prior, concurrent, or subsequent passive negligence by the Indemnitees.

8. **THIRD PARTY CLAIMS:** In accordance with Public Contracts Code Section 9201, CITY will promptly inform CONTRACTOR regarding third-party claims against CONTRACTOR, but in no event later than ten (10) business days after CITY receives such claims. Such notification will be in writing and forwarded in accordance with the "Notice" section of this CONTRACT. CONTRACTOR agrees to indemnify, hold harmless and defend the City against any third-party claim.
9. **POTENTIAL CLAIMS AND DISPUTE RESOLUTION:** Refer to exhibit C for potential claims and dispute resolution information.
10. **WORKERS COMPENSATION:** In accordance with California Labor Code Sections 1860 and 3700, CONTRACTOR and each of its subcontractors will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, CONTRACTOR, by signing this contract, certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

- 11. INSURANCE:** With respect to performance of work under this CONTRACT, CONTRACTOR shall maintain and shall require all of its subcontractors to maintain insurance as required in the Standard Specifications.
- 12. ASSIGNMENT:** This CONTRACT is not assignable nor the performance of either party's duties delegable without the prior written consent of the other party. Any attempted or purported assignment or delegation of any of the rights of obligations of either party without the prior written consent of the other shall be void and of no force and effect.
- 13. INDEPENDENT CONTRACTOR:** CONTRACTOR is and shall at all times remain as to the CITY, a wholly independent contractor. Neither the CITY nor any of its agents shall have control of the conduct of CONTRACTOR or any of CONTRACTOR'S employees, except as herein set forth. CONTRACTOR shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of CITY.
- 14. TAXES:** CONTRACTOR is responsible for paying all retail sales and use, transportation, export, import, special or other taxes and duties applicable to, and assessable against any work, materials, equipment, services, processes and operations incidental to or involved in this contract. CONTRACTOR is responsible for ascertaining and arranging to pay them. The prices established in the contract shall include compensation for any taxes CONTRACTOR is required to pay by laws and regulations in effect at the notice to proceed .
- 15. LICENSES:** CONTRACTOR represents and warrants to CITY that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required of CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to CITY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this CONTRACT any licenses, permits, insurance, and approvals which are legally required of CONTRACTOR to practice its profession. CONTRACTOR shall maintain a City of Goleta business license, if required under CITY ordinance.
- 16. RECORDS:** CONTRACTOR shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this CONTRACT and such other records as may be deemed necessary by CITY or any authorized representative, and will be retained for three years after the expiration of this CONTRACT. All such records shall be made available for inspection or audit by CITY at any time during regular business hours.

17. SEVERABILITY: If any portion of these contract documents are declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this CONTRACT will continue in full force and effect provided that it does not frustrate the mutual intent of the parties herein.

18. WHOLE AGREEMENT: This CONTRACT supersedes any and all other agreements either oral or written, between the parties and contains all of the covenants and agreements between the parties pertaining to the work of improvements described herein. Each party to this contract acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statements or promise not contained in this contract shall not be valid or binding. Any modifications of this contract will be effective only if signed by the party to be charged.

19. AUTHORITY: CONTRACTOR affirms that the signatures, titles, and seals set forth hereinafter in execution of this CONTRACT represent all individuals, firm members, partners, joint ventures, and/or corporate officers having a principal interest herein. Each party warrants that the individuals who have signed this CONTRACT have the legal power, right, and authority to make this CONTRACT and to bind each respective party. This CONTRACT may be modified by written amendment. CITY's City Manager may execute any such amendment on CITY's behalf.

20. NOTICES: All notices permitted or required under this CONTRACT shall be in writing, and shall be deemed made when delivered to the applicable party's representative as provided in this CONTRACT. Additionally, such notices may be given to the respective parties at the following addresses, or at such other addresses as the parties may provide in writing for this purpose.

Such notices shall be deemed made when personally delivered or when mailed forty-eight (48) hours after deposit in the U.S. mail, first-class postage prepaid, and addressed to the party at its applicable address. Courtesy copies of notices may be sent via electronic mail, provided that the original notice is deposited in the U.S. mail or personally delivered as specified in this Section.

CITY OF GOLETA
130 Cremona Drive, Suite B
Goleta, CA 93117
Attn: City Manager

CONTRACTOR

TORO ENTERPRISES, INC.
2101 Ventura Blvd
Oxnard, CA 93031

21. DISPUTES: Disputes arising from this contract will be determined in accordance with the contract documents.

22. NON-DISCRIMINATION: No discrimination shall be made in the employment of persons in the work contemplated by this CONTRACT because of race, religion, color, medical condition, sex, sexual orientation, national origin, political affiliation or opinion, or pregnancy or pregnancy-related condition. A violation of this section exposes CONTRACTOR to the penalties provided for in Labor Code Section 1735.

23. NO THIRD PARTY BENEFICIARY: This CONTRACT and every provision herein is for the exclusive benefit of CONTRACTOR and CITY and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of the CONTRACTOR's or the CITY's obligations under this Contract.

24. TIME IS OF ESSENCE: Time is of the essence for each and every provision of the Contract Documents.

25. ACCEPTANCE OF FACSIMILE OR ELECTRONIC SIGNATURES: The Parties agree that this CONTRACT, agreements ancillary to this CONTRACT, and related documents to be entered into in connection with this CONTRACT will be considered signed when the signature of a party is delivered by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.

26. GOVERNING LAW: This CONTRACT shall be governed by the laws of the State of California, and exclusive venue for any action involving this CONTRACT will be in Santa Barbara County.

27. FEDERAL REQUIREMENTS

FEMA financial assistance will be used to fund all or a portion of this contract. The Contractor 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 B 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.

IN WITNESS WHEREOF, the parties hereto have executed this CONTRACT with all the formalities required by law on the respective dates set forth opposite their signatures.

This CONTRACT is executed on this 17th day of May, at Goleta, California, and effective as of 17th May, 2023.

CITY OF GOLETA:

DocuSigned by:
Robert Nisbet
1AEBACAD159E4D7...
Robert Nisbet, City Manager

ATTEST:

DocuSigned by:
Deborah Lopez
A3E09F3473CA47E...
Deborah Lopez, City Clerk

APPROVED AS TO FORM:

MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:
Winnie Cai
A1BF8F896161498...
Winnie Cai, Assistant City Attorney

CONTRACTOR:

DocuSigned by:

Sean Castillo

9A0D7B67DDB44EE...

Sean Castillo, Owner

State of California License No.

710580

Department of Industrial Relations Registration
No.

Business Phone No.

CONTRACTOR'S Emergency Phone No. at
which contractor can be reached at any time

DocuSigned by:

Dann White

81CB98C141994B5...

Dann White, Superintendent

EXHIBIT A PROPOSAL

At the cost of \$61,000, CONTRACTOR shall perform the following work:

1. Slope protection in the form of placing a Jute material on the newly formed slope to the west or creek side. Utilize three rows of staked straw waddles to hold down the jute matting and prevent erosion.
2. Adjust the CMP to the same elevation as the double reinforced concrete pipes in the swale. After the adjustment, the A curb or concrete swale can be formed around the CMP to hold in place. This is to prevent ponding.
3. Provide a grate/strainer on the CMP inside the swale to prevent large debris and animals from entering the CMP.
4. Mirafi Fabric under the PMB infill that has eroded.

Note: Roughly 250 TN of PMB has been calculated to be needed in order to backfill after excavating down to stable ground.

The following optional services will be directed by the CITY to be conducted on an as-needed basis and up to a not to exceed the amount of \$9,000. The CONTRACTOR shall receive CITY's direction in writing from the Engineer before conducting any of the following services. If the CONTRACTOR performs the work without prior approval from the Engineer, the Contractor will be responsible for the cost of the work performed. The following services will also become a part of the work if directed by the City.

EXHIBIT B**FEDERAL CONTRACT PROVISIONS**

During the performance of this contract, TORO ENTERPRISES, INC. (the "Contractor") 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 Contractor.

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

A. Contractor 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.

Contractor 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 Contractor.

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

- A. Contractor 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 Contractor personnel for the purpose of interview and discussion related to the books and records.
- B. The Contractor 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 Contractor 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 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 Contractor, terminate this contract for convenience, in whole or in part, at any time by giving written notice to Contractor 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. Contractor shall provide documentation deemed adequate by the Agency to show the work actually completed or materials provided by Contractor 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 Contractor fails to perform pursuant to the terms of this contract, the Agency shall provide written notice to Contractor specifying the default ("Notice of Default"). If Contractor 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 Contractor fails to cure a default as set forth above, the Agency may, by written notice to Contractor, 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, Contractor 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 Contractor's deficiencies and charge the cost thereof to Contractor, 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 Contractor performance of the work.

- iv. Additional Termination Provisions. Upon receipt of a Notice of Termination, either for cause or for convenience, Contractor shall promptly discontinue the work unless the Notice directs to the contrary. Contractor 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. Contractor 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. Contractor 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, Contractor shall be entitled to receive only the amounts payable under this Section, and Contractor 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, Contractor 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. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor 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. Contractor 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. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- iii. Contractor 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 Contractor's legal duty to furnish information.
- iv. Contractor 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. Contractor 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. Contractor 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 Contractor'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. Contractor 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 Contractor. Contractor 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 Contractor becomes involved in, or is threatened with, litigation with a subcontractor or Contractor as a result of such direction, Contractor 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, Contractor 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 Contractor 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 Contractor 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, Contractor 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) Contractor 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) Contractor 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) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
- ii. Pursuant to the Federal Water Pollution Control Act, (1) Contractor 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) Contractor 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) Contractor 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 Contractor is required to verify that none of the Contractor, 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. Contractor 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 Contractor 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. Contractor warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Contractor 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. Contractor further agrees to notify the Agency in writing immediately if Contractor 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, Contractor 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, Contractor shall file with the Agency the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying.” Contractors 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. Contractor 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 Contractor 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 Contractor 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 Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- C. Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor'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, Contractor, 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 Contractor , the Contractor'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 Contractor exceeds at its own risk.

EXHIBIT C

DISPUTE RESOLUTION

Section 10 – Potential Claims and Dispute Resolution

Section 10-1 Potential Claim

Any demand or assertion by the Contractor seeking an adjustment of Contract Price and/or Contract Time, or other relief, for any reason whatsoever, must be in strict compliance with the requirements of the Contract Documents. For purposes of this Section 10-1, any and all work relating to any such demand or assertion shall be referred to as "Disputed Work," regardless of whether the basis of the demand or assertion arises from an interpretation of the Contract Documents, an action or inaction of the Contractor, the Engineer, or the City, or any other event, issue, or circumstance. The Contractor shall bear all costs incurred in complying with the provisions of this Section 10-1.

Promptly upon becoming aware of any event, issue, or circumstance including, but not limited to, disputes arising under the Contract, the acts or omissions of the Engineer or City or by operation of law, which the Contractor believes, in whole or in part, provides a basis for an adjustment of Contract Price and/or Contract Time. Or that Contractor's performance is excused, or other relief, Contractor shall provide a signed written Initial Notice of Potential Claim to the Engineer in a format acceptable to the City. Contractor shall provide a signed written initial notice of potential claim to the Engineer within 5 days from the date the dispute first arose and before commencing any disputed work. The initial notice of potential claim shall provide the nature and circumstances involved in the dispute which shall remain consistent through the dispute. The initial notice of potential claim shall be submitted on Form CEM 6201A available on Caltrans' website and shall be certified with reference to the California False Claims Act, Government Code Sections 12650 12655. Assign an exclusive identification number for each dispute, determined by chronological sequencing, based on the date of the dispute.

The exclusive identification number for each dispute shall be used on the following corresponding documents:

1. Initial notice of potential claim.
2. Supplemental notice of potential claim.
3. Full and final documentation of potential claim.
4. Corresponding claim included in the Contractor's written statement of claims.

Provide the Engineer the opportunity to examine the site of work within 5 days from the date of the initial notice of potential claim. Proceed with the performance of contract work unless otherwise specified or directed by the Engineer.

Throughout the disputed work, maintain records that provide a clear distinction between the incurred direct costs of disputed work and that of undisputed work. Allow the Engineer access to your project records deemed necessary by the Engineer to evaluate the potential claim within 20 days of the date of the Engineer's written request.

Within 15 days of submitting the initial notice of potential claim, submit a signed supplemental notice of potential claim to the Engineer that provides the following information:

1. The complete nature and circumstances of the dispute which caused the potential claim.
2. The contract provisions that provide the basis of claim.
3. The estimated cost of the potential claim, including an itemized breakdown of individual costs and how the estimate was determined.
4. A time impact analysis of the project schedule that illustrates the effect on the scheduled completion date due to schedule changes or disruptions where a request for adjustment of Contract Time is made.

Include your complete reasoning for additional compensation or adjustments.

Submit the supplemental notice of potential claim on Form CEM 6201B furnished by the Department and certify with reference to the California False Claims Act, Government Code Sections 12650 12655. The Engineer will evaluate the information presented in the supplemental notice of potential claim and provide a written response within 20 days of receipt. If the estimated cost or effect on the scheduled completion date changes, update information in items 3 and 4 above as soon as the change is recognized and submit this information to the Engineer.

Within 30 days of the completion of work related to the potential claim, submit the full and final documentation of potential claim to the Engineer that provides the following information:

- (1.) A detailed factual narration of events fully describing the nature and circumstances that caused the dispute, including, but not limited to, necessary dates, locations, and items of work affected by the dispute.
- (2.) The specific provisions of the contract that support the potential claim and a statement of the reasons these provisions support and provide a basis for entitlement of the potential claim.
- (3.) When additional monetary compensation is requested, the exact amount requested calculated in conformance with the Contract Documents including an itemized breakdown of individual costs. These costs shall be segregated into the following cost categories:
 - 3.1. Labor – A listing of individuals, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information related to the requested reimbursement of labor costs.
 - 3.2. Materials – Invoices, purchase orders, location of materials either stored or incorporated into the work, dates materials were transported to the project or incorporated into the work, and other pertinent information related to the requested reimbursement of material costs.
 - 3.3. Equipment – Listing of detailed description (make, model, and serial number), hours of use, dates of use, and equipment rates. Equipment rates shall be at the applicable State rental rate as listed in the Department of Transportation

publication entitled "Labor Surcharge and Equipment Rental Rates," in effect when the affected work related to the dispute was performed.

3.4. Other categories as specified by the Contractor or the Engineer.

(4.) When an adjustment of Contract Time is requested, include the following:

- 4.1. The specific dates for which contract time is being requested.
- 4.2. The specific reasons for entitlement to a Contract Time adjustment.
- 4.3. The specific provisions of the contract that provide the basis for the requested Contract Time adjustment.
- 4.4. A detailed time impact analysis of the project schedule. The time impact analysis shall show the effect of changes or disruptions on the scheduled completion date to demonstrate entitlement to a Contract Time adjustment.

(5.) The identification and copies of documents and the substance of oral communications that support the potential claim.

The full and final documentation of the potential claim shall be submitted on Form CEM 6201C furnished by the Department and shall be certified with reference to the California False Claims Act, Government Code Sections 12650 12655.

Pertinent information, references, arguments, and data to support the potential claim shall be included in the full and final documentation of potential claim. Information submitted subsequent to the full and final documentation submittal will not be considered. Information required in the full and final documentation of potential claim, as listed in items 1 to 5 above, that is not applicable to the dispute may be exempted as determined by the Engineer. No full and final documentation of potential claim will be considered that does not have the same nature and circumstances, and basis of claim as those specified on the initial and supplemental notices of potential claim.

If you, in conjunction with or subsequent to the assertion of a potential claim, request inspection and copying of documents or records in the possession of the City that pertain to the potential claim, you must make your records of the project, as deemed by the City to be pertinent to the potential claim, available to the City for inspection and copying."

Unless otherwise specified, the Engineer will evaluate the information presented in the full and final documentation of potential claim and provide a written response within 30 days of receipt. The Engineer's receipt of the full and final documentation of potential claim shall be evidenced by postal receipt or the Engineer's written receipt if delivered by hand. If you submit full and final documentation of potential claim after acceptance of the work by the City, the Engineer need not provide a written response.

10-2 Dispute Resolution

All disputes and claims arising under or by virtue of this contract shall be directed to and be determined by the Public Works Director. The Director's determination can be appealed to City Manager or their designee. The determination by the City Manager or their designee of disputes and claims shall constitute the decision of the City of Goleta; provided, however, that Article 1.5 (commencing with Section 20104) of Chapter 1 of Part

3 of Division 2 of the Public Contract Code shall apply to the public works claim of \$375,000 or less.

10-3 Dispute Resolution - Claims exceeding \$375,000

Any claim, dispute, or other matter in question arising out of or related to the Contract or Project exceeding three-hundred seventy-five thousand dollars (\$375,000.00) that cannot be resolved between the City and the Contractor shall be resolved by the Santa Barbara County Superior Court.

10-4 Claims Procedures as a Prerequisite to Filing Suit

Contractor acknowledges and agrees that its failure to submit any notice of potential claim or claim arising under this Contract in accordance with Section 10, shall constitute a waiver of Contractor's right to additional compensation and/or extension of time. Failure to follow the provisions set forth in this Contract shall constitute a waiver of Contractor's right to receive any additional time or money as a result of any event giving rise to a claim or request for change order. Notwithstanding any other provisions in the Contract relating to any additional time or money which Contractor may be entitled to upon the occurrence of any directive or other event, or any other circumstance, Contractor must comply with the provisions of Section 10 to avoid a waiver of any such entitlement to any additional time or money. Contractor's failure, neglect, or refusal to comply with the requirements of Section 10, or any portion thereof, shall bar Contractor's request for additional compensation or adjustments to Contract Time. Such failure, neglect, or refusal prejudices the City's and the Engineer's ability to recognize and mitigate delay, and such failure, neglect, or refusal prevent the timely analysis of requests for adjustment of Contract Time, and whether such adjustments may be warranted. Contractor hereby waives all rights to additional compensation or adjustments of Contract Time due to delays or accelerations that result from or occur during periods of time for which Contractor fails, neglects, or refuses to fully comply with the requirements of Section 10.

Section 10-5 Government Code Claims.

Notwithstanding Contractor's participation in dispute resolution proceedings or other claims procedures under the Contract, such proceedings are in addition to Contractor's obligation to present a written Government Code claim in accordance with Section 900 et al of the California Government Code, which is a prerequisite to filing a lawsuit for money or damages against the City. Contractor further acknowledges that notwithstanding Contractor's compliance with the claims procedures set forth in Section 10 or in the Contract Documents, such procedures are in addition to Contractor's obligation to comply with the claims procedures set forth in Government Code sections 900 et al prior to filing a lawsuit against the City for any such claim. Failure to submit a Government Code claim, or comply with the claims provision contained in Section 10 or in the City Special Provisions, shall bar Contractor from bringing and maintaining a valid lawsuit against the City.

Section 10-6 Participation in Dispute Resolution Proceedings.

Contractor and the City agree that all parties necessary to resolve a claim or dispute should be parties to the same dispute resolution proceeding. Contractor agrees upon request of the City to be joined in any mediation or arbitration when Contractor's presence is required if complete relief is to be accorded and to prevent the possibility of conflicting

rulings on a common issue of law or fact and otherwise to prevent the risk of the parties being subjected to inconsistent obligations or decisions.

Section 10-7 Contractor's Continuing Obligations.

At all times during the processing of the Contractor's potential Claim, including, but not limited to, in response to a work directive issued by the Engineer, the Contractor shall diligently proceed with the performance of the Disputed Work and other Work, unless otherwise specified or directed by the Engineer.

The Contractor shall provide the Engineer the opportunity to examine the site of the Disputed Work as soon as reasonably possible, and in no event later than five (5) days from the date of the Initial Notice of Potential Claim. Throughout the processing of the Contractor's potential Claim, the Contractor shall provide the Engineer a reasonable opportunity to examine the site of the Disputed Work within five (5) days of the date of Engineer's written request therefor.

The Contractor shall promptly respond to any requests for further information or documentation regarding the Contractor's potential Claim.

Although not to be construed as proceeding with force account work, throughout the performance of the Disputed Work, the Contractor shall maintain daily records in accordance with the Contract Documents that provide a clear distinction between the incurred direct costs of Disputed Work and other Work. The Contractor shall allow the Engineer access to its project records deemed necessary by the Engineer to evaluate the potential Claim within fifteen (15) days of the date of the Engineer's written request.

All Subcontractor's and material supplier's claims of any type shall be brought only through Contractor pursuant to the provisions of this Section 10 and Contractor's prior good faith review pursuant to the Contract Documents. Under no circumstances shall any Subcontractor or material supplier make any direct claim against City.

Except where provided by law, or elsewhere in these Contract Documents, THE CITY SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES AND THE CONTRACTOR SHALL NOT INCLUDE THEM IN ITS CLAIMS. Contractor shall be limited in its recovery on any Claim(s) to the adjustments allowed in the Contract Documents.

During each step in the processing of the Contractor's Claim, each notice shall be accompanied by the Contractor's written statement that the adjustment or relief claimed is the entire adjustment or relief to which the claimant believes it is entitled as a result of the event, issue, or circumstance giving rise to the Claim.

Under no circumstances may the Contractor submit an Initial Notice of Potential Claim, Supplemental Notice of Potential Claim, or Notice of Final Claim after the date of final payment.

Section 10-8 Notice of Third-Party Claims.

The City shall provide Contractor with prompt written notice of the receipt of any third-party claim relating to the Contract in accordance with Public Contract Code section 9201 by sending a copy of the third-party claim to Contractor at the address indicated in the Agreement via first class.

ATTACHMENT 2

Amendment No. 1 to Professional Services Agreement No. 2023-015 with
Filippin Engineering, Inc.

**AMENDMENT NO. 1
TO A PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
FILIPPIN ENGINEERING, INC**

This **Amendment No. 1** to the Professional Service Agreement by and between the **City of Goleta**, a municipal corporation ("City") and Filippin Engineering ("Consultant") dated March 29, 2023 ("Agreement," Agreement No. 2023-015) is made on this 18th day of May, 2023.

SECTION A. RECITALS

1. This Agreement is for the project management services in conjunction with 2023 Winter Storms Services; and
2. The Agreement currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed forty-four thousand, five hundred dollars (\$44,500); and
3. The parties desire to amend the Agreement so as to provide for additional compensation in the amount of \$311,420 for continued task; and
4. City Manager approved this Amendment No.1, on this 18th 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 \$311,420 and to read in its entirety:

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of three hundred and fifty-five thousand, nine hundred and twenty dollars (\$355,920) (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 December 31, 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. 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:

1AEBACAD159E4D7...
Robert Nisbet, City Manager


CONSULTANT

DocuSigned by:

C71C92D46F0B482...
Kelly R. Wheeler, P.E., Vice President

ATTEST:

DocuSigned by:

A3E09F3473CA47E...
Deborah Lopez, City Clerk

DocuSigned by:

1182AFB794DC499...
Gino Filippin, President

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:

A1BF8F896161498...
Winnie Cai, Assistant City Attorney

2023-015

Project Name: 2023 Winter Storms

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF GOLETA
AND
FILIPPIN ENGINEERING, INC**

This AGREEMENT FOR PROFESSIONAL SERVICES (herein referred to as "AGREEMENT") is made and entered into this 29th day of March, ~~2022~~, 2023, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and FILIPPIN ENGINEERING, INC, a Californian Corporation (herein referred to as "CONSULTANT").

SECTION A. RECITALS

1. The CITY has a need for professional Project Management services for emergency work associated with the January 9, 2023 Winter Storm Event; and
2. 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
3. The CITY procured these services in compliance with Goleta Municipal Code Section 3.05.260; and
4. The City Manager approved this AGREEMENT pursuant to Goleta Municipal Code section 3.05.070.

SECTION B. TERMS

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 Project Management Services in conjunction with 2023 Winter Storms Services shall generally include document control, contract development, site surveys, photo logs, as-built reviews, calculation of quantities, estimating costs, correspondence and coordination with City

staff, weekly meeting participation, time tracking, and project reports 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 \$44,500 (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, 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.

(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 Exhibit B, if one is included as part of this agreement. 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 Nina Buelna Assistant Public Works 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.

6. TERM, PROGRESS AND COMPLETION

The term of this AGREEMENT is from the date first written above to December 31, 2023, 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. Kelly R. Wheeler, P.E., Vice President 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) Hold Harmless for CONSULTANT's Damages. CONSULTANT holds CITY, its elected officials, officers, agents, and employees, harmless from all of CONSULTANT's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to CONSULTANT, to CONSULTANT's employees, to CONSULTANT's contractors or subcontractors, or to the owners of CONSULTANT's firm, which damages, losses, injuries or liability occur during the work required under this AGREEMENT, or occur while CONSULTANT is on CITY property, or which are connected, directly or indirectly, with CONSULTANT's performance of any activity or work required under this AGREEMENT.

(b) Defense and Indemnity of Third Party Claims/Liability. CONSULTANT shall investigate, defend, and indemnify CITY, its elected officials, officers, agents, and employees, from any claims, lawsuits, demands, judgments, and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, or professional errors and omissions arising out of, directly or indirectly, an error, negligence, or omission of CONSULTANT or any of CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, or the willful misconduct of CONSULTANT or any of CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, in performing the services described in, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions concerning any activity, product or work required under this AGREEMENT, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related thereto.

(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) Except for professional liability insurance, 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) Except for professional liability insurance, 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: Robert Nisbet, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

TO CONSULTANT: Attention: Kelly R. Wheeler, P.E., Vice President
Filippin Engineering, Inc
354 S. Fairview Avenue, Suite D
Goleta, CA 93117

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.

33. FEDERAL REQUIREMENTS

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.


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:


Robert Nisbet, City Manager

CONSULTANT

DocuSigned by:

Kelly R. Wheeler, P.E., Vice President

ATTEST

DocuSigned by:

Deborah Lopez, City Clerk

DocuSigned by:

Gino Filippin, President

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:

Winnie Cai, Assistant City Attorney

EXHIBIT A

SCOPE OF WORK

Consultant shall provide assistance to City staff on various storm related projects for which the City will be seeking federal reimbursement. Roles and responsibilities shall be developed in coordination with the City, but may include document control, contract development, site surveys, photo logs, as-built reviews, calculation of quantities, estimating costs, correspondence and coordination with the City staff, weekly meeting participation, time tracking, and project reports.

Project activities shall include:

- Site Evaluation of all City identified Damaged facilities or infrastructure.
- Assessment of existing infrastructure or facility prior to the rain event and after the rain event.
- Provide a scope of work for each site.
- Assist the City with documents for Emergency Contracts.
- Assist the City with coordination with Cal OES and FEMA.

EXHIBIT B

SCHEDULE OF FEES

Engineering

Engineering Technician	\$ 110.00
Senior Engineering Technician	\$ 120.00
Junior Engineer	\$ 155.00
Assistant Engineer	\$ 170.00
Associate Engineer	\$ 180.00
Senior Engineer	\$ 190.00
Principal Engineer	\$ 210.00

General

Technical/Clerical Support	\$ 110.00
Office Engineer	\$ 120.00
Senior Program Manager	\$ 190.00

Construction Management

Assistant Construction Manager	\$ 165.00
Associate Construction Manager	\$ 175.00
Senior Construction Manager	\$ 195.00
Principal Construction Manager	\$ 205.00
Senior Construction Inspector (PW)	\$ 155.00
Chief Inspector/Owner's Rep (PW)	\$ 160.00
(PW) Prevailing Wage	

Note 1: Reimbursable expenses include postage, shipping, outside plot and copy reproduction costs.

Note 2: On prevailing wage assignments, overtime rates for construction inspection = 1.3 X regular rate. Double time rates = 1.5 X regular rates. Overtime will not be performed unless authorized in writing by the client. Overtime is incurred as defined on the prevailing wage determination for construction inspector.

EXHIBIT C

FEDERAL CONTRACT PROVISIONS

During the performance of this contract, Filippin Engineering, 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 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.

ATTACHMENT 3

Professional Services Agreement No. 2023-015 with Filippin Engineering, Inc.

2023-015

Project Name: 2023 Winter Storms

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF GOLETA
AND
FILIPPIN ENGINEERING, INC**

This AGREEMENT FOR PROFESSIONAL SERVICES (herein referred to as "AGREEMENT") is made and entered into this 29th day of March, ~~2023~~, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and FILIPPIN ENGINEERING, INC, a Californian Corporation (herein referred to as "CONSULTANT").

SECTION A. RECITALS

1. The CITY has a need for professional Project Management services for emergency work associated with the January 9, 2023 Winter Storm Event; and
2. 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
3. The CITY procured these services in compliance with Goleta Municipal Code Section 3.05.260; and
4. The City Manager approved this AGREEMENT pursuant to Goleta Municipal Code section 3.05.070.

SECTION B. TERMS

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 Project Management Services in conjunction with 2023 Winter Storms Services shall generally include document control, contract development, site surveys, photo logs, as-built reviews, calculation of quantities, estimating costs, correspondence and coordination with City

staff, weekly meeting participation, time tracking, and project reports 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 \$44,500 (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, 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.

(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 Exhibit B, if one is included as part of this agreement. 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 Nina Buelna Assistant Public Works 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.

6. TERM, PROGRESS AND COMPLETION

The term of this AGREEMENT is from the date first written above to December 31, 2023, 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. Kelly R. Wheeler, P.E., Vice President 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) Hold Harmless for CONSULTANT's Damages. CONSULTANT holds CITY, its elected officials, officers, agents, and employees, harmless from all of CONSULTANT's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to CONSULTANT, to CONSULTANT's employees, to CONSULTANT's contractors or subcontractors, or to the owners of CONSULTANT's firm, which damages, losses, injuries or liability occur during the work required under this AGREEMENT, or occur while CONSULTANT is on CITY property, or which are connected, directly or indirectly, with CONSULTANT's performance of any activity or work required under this AGREEMENT.

(b) Defense and Indemnity of Third Party Claims/Liability. CONSULTANT shall investigate, defend, and indemnify CITY, its elected officials, officers, agents, and employees, from any claims, lawsuits, demands, judgments, and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, or professional errors and omissions arising out of, directly or indirectly, an error, negligence, or omission of CONSULTANT or any of CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, or the willful misconduct of CONSULTANT or any of CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, in performing the services described in, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions concerning any activity, product or work required under this AGREEMENT, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related thereto.

(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) Except for professional liability insurance, 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) Except for professional liability insurance, 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: Robert Nisbet, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

TO CONSULTANT: Attention: Kelly R. Wheeler, P.E., Vice President
Filippin Engineering, Inc
354 S. Fairview Avenue, Suite D
Goleta, CA 93117

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.

33. FEDERAL REQUIREMENTS

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.


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:


Robert Nisbet, City Manager

CONSULTANT

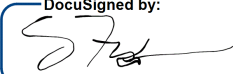
DocuSigned by:


Kelly R. Wheeler, P.E., Vice President

ATTEST

DocuSigned by:


Deborah Lopez, City Clerk

DocuSigned by:


Gino Filippin, President

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:


Winnie Cai, Assistant City Attorney

EXHIBIT A

SCOPE OF WORK

Consultant shall provide assistance to City staff on various storm related projects for which the City will be seeking federal reimbursement. Roles and responsibilities shall be developed in coordination with the City, but may include document control, contract development, site surveys, photo logs, as-built reviews, calculation of quantities, estimating costs, correspondence and coordination with the City staff, weekly meeting participation, time tracking, and project reports.

Project activities shall include:

- Site Evaluation of all City identified Damaged facilities or infrastructure.
- Assessment of existing infrastructure or facility prior to the rain event and after the rain event.
- Provide a scope of work for each site.
- Assist the City with documents for Emergency Contracts.
- Assist the City with coordination with Cal OES and FEMA.

EXHIBIT B

SCHEDULE OF FEES

Engineering

Engineering Technician	\$ 110.00
Senior Engineering Technician	\$ 120.00
Junior Engineer	\$ 155.00
Assistant Engineer	\$ 170.00
Associate Engineer	\$ 180.00
Senior Engineer	\$ 190.00
Principal Engineer	\$ 210.00

General

Technical/Clerical Support	\$ 110.00
Office Engineer	\$ 120.00
Senior Program Manager	\$ 190.00

Construction Management

Assistant Construction Manager	\$ 165.00
Associate Construction Manager	\$ 175.00
Senior Construction Manager	\$ 195.00
Principal Construction Manager	\$ 205.00
Senior Construction Inspector (PW)	\$ 155.00
Chief Inspector/Owner's Rep (PW)	\$ 160.00
(PW) Prevailing Wage	

Note 1: Reimbursable expenses include postage, shipping, outside plot and copy reproduction costs.

Note 2: On prevailing wage assignments, overtime rates for construction inspection = 1.3 X regular rate. Double time rates = 1.5 X regular rates. Overtime will not be performed unless authorized in writing by the client. Overtime is incurred as defined on the prevailing wage determination for construction inspector.

EXHIBIT C

FEDERAL CONTRACT PROVISIONS

During the performance of this contract, Filippin Engineering, 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 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.

ATTACHMENT 4

Amendment No. 1 to Professional Services Agreement No. 2023-016 with
Rincon Consultants, Inc.

**AMENDMENT NO. 1
TO A PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
RINCON CONSULTANTS, INC**

2023-016.1

This **Amendment No. 1** to the Professional Service Agreement by and between the **City of Goleta**, a municipal corporation ("City") and Rincon Consultants, Inc ("Consultant") dated March 30, 2023 ("Agreement," Agreement No. 2023-016) is made on this 18th day of May, 2023.

SECTION A. RECITALS

1. This Agreement is for the Professional services for environmental permitting, and arborist in conjunction with 2023 Winter Storms Services; and
2. The Agreement currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed forty-four thousand, nine hundred and ninety-nine dollars (\$44,999); and
3. The parties desire to amend the Agreement so as to provide for additional compensation in the amount of \$214,000 for continued task; and
4. City Manager approved this Amendment No.1, on this 18th 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 \$214,000 and to read in its entirety:

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of two hundred fifty-eight thousand nine hundred ninety-nine (\$258,999) (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 December 31, 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. 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:

1AEBACAD159E4D7...
Robert Nisbet, City Manager

CONSULTANT

DocuSigned by:

8DE69ADB0855423...
Steven Hongola, Vice President

ATTEST:

DocuSigned by:

A3E09F3473CA47E...
Deborah Lopez, City Clerk

DocuSigned by:

799B3F21211B48F...
Lacrisa Davis,
Chief Financial Officer

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:

A1BF8F896161498...
Winnie Cai, Assistant City Attorney

ATTACHMENT 5

Professional Services Agreement No. 2023-016 with Rincon Consultants, Inc.

Project Name: 2023 Winter Storm Emergency Repair

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF GOLETA
AND
RINCON CONSULTANTS, INC.**

This AGREEMENT FOR PROFESSIONAL SERVICES (herein referred to as "AGREEMENT") is made and entered into this 30th day of March, 2023, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), RINCON CONSULTANTS, INC., a California Corporation (herein referred to as "CONSULTANT").

SECTION A. RECITALS

1. The CITY has a need for professional services for environmental, permitting, and arborist services related to projects for emergency repair to public property, trees, parks, and other infrastructure caused by severe storms in 2023; and
2. 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
3. Goleta Municipal Code Section 2.10.040(A)(6)(b) allows the City Manager (referenced as "Director of Emergency Services") to "obtain vital supplies, equipment and such other properties found lacking and needed for the protection of life and property and to bind the City for the fair value thereof"; and
4. An emergency exists in the CITY due to the severe storms of 2023 which caused significant damage to roadways and CITY infrastructure. Therefore, it is necessary to the public health and safety that the City Manager immediately authorize the start of work on emergency mitigation measures, subject to ratification by City Council; and
5. The CITY procured these services in compliance with Goleta Municipal Code Section 3.05.260. Goleta Municipal Code Section 3.05.260(G) expressly authorizes the City Manager to declare urgency subject to confirmation by the City Council at its next meeting in order to authorize any purchase of up to \$45,000.00 and over. By executing this Agreement, the City Manager declares that there are imminent public health and safety risks due to severe flooding and damage from the 2023 storms; and

City of Goleta
Public Works Department and Rincon Consultants, Inc.
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6. The City Manager approved this AGREEMENT pursuant to Goleta Municipal Code section 3.05.070.

SECTION B. TERMS

1. RECITALS INCORPORATED

The recitals above are true and correct and are incorporated herein by reference.

2. 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.

3. DESCRIPTION OF SERVICES

The services to be performed by CONSULTANT are as follows:

Professional Environmental Services shall generally include environmental, permitting and arborist services related to Emergency Storm Damage Repair projects 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".

4. 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 \$44,999 (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, 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.

(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.

5. 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 Exhibit B, if one is included as part of this agreement. 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.

6. 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 Luz "Nina" Buelna 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.

7. TERM, PROGRESS AND COMPLETION

The term of this AGREEMENT is from the date first written above to December 31, 2023, 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.

8. 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.

9. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

This AGREEMENT is for professional services which are personal to CITY. Mr. Christopher Julian 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.

Althouse and Meade Darcee Guttilla 805-237-9626

10. HOLD HARMLESS AND INDEMNITY

(a) Hold Harmless for CONSULTANT's Damages. CONSULTANT holds CITY, its elected officials, officers, agents, and employees, harmless from all of CONSULTANT's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to CONSULTANT, to CONSULTANT's employees, to CONSULTANT's contractors or subcontractors, or to the owners of CONSULTANT's firm, which damages, losses, injuries or liability occur during the work required under this AGREEMENT, or occur while CONSULTANT is on CITY property, or which are connected, directly or indirectly, with CONSULTANT's performance of any activity or work required under this AGREEMENT.

(b) Defense and Indemnity of Third Party Claims/Liability. CONSULTANT shall investigate, defend, and indemnify CITY, its elected officials, officers, agents, and employees, from any claims, lawsuits, demands, judgments, and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, or professional errors and omissions arising out of, directly or indirectly, an error, negligence, or omission of CONSULTANT or any of

City of Goleta
Public Works Department and Rincon Consultants, Inc.
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CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, or the willful misconduct of CONSULTANT or any of CONSULTANT's officers, agents, employees, representatives, subconsultants, or subcontractors, in performing the services described in, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions concerning any activity, product or work required under this AGREEMENT, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related thereto.

(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.

11. 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) Except for professional liability insurance, 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) Except for professional liability insurance, 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.

12. 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.

13. 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.

14. 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

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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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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

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Public Works Department and Rincon Consultants, Inc.
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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.

25. 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.

26. USE OF THE TERM "CITY"

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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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: Robert Nisbet, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

TO CONSULTANT: Attention: Chris Julian, Principal
Rincon Consultants, Inc.
209 East Victoria Street
Santa Barbara, CA 93101

33. 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.

34. FEDERAL REQUIREMENTS

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.

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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.

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:
Robert Nisbet
1AEBACAD159E4D7...
Robert Nisbet, City Manager

CONSULTANT

DocuSigned by:
Steven Hongola
8DE69ADB0855423...
Steven Hongola, Vice President

ATTEST

DocuSigned by:
Deborah Lopez
A3E09F3473CA47E...
Deborah Lopez, City Clerk

DocuSigned by:
Lacrisa Davis
799B3F21211B48F...
Lacrisa Davis,
Chief Financial Officer

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:
Megan Garibaldi
5E1B3B29ABE0406...
Megan Garibaldi, City Attorney

Exhibit A

Scope of Work

This Scope of Work is intended to provide support to the City and shall be completed as needed and as directed by the City. Support shall be provided at several project locations that may include, but not be limited to, Ellwood Beach Drive Drain Repair, San Pedro Creek Westmoreland Place Storm Drain Repair, Ellwood Mesa Access Road and Devereux Creek Culvert Repair, San Rossano and Padova Drain Replacement, and Maria Ygnacio Creek and Bike Path Debris Cleanup at Hollister Overcrossing. For any of these projects, emergency support shall include the following tasks as needed.

Task 1 Field Assessment

The emergency notification (Regional General Permit [RGP] 63) submitted to the U.S. Army Corps of Engineers (USACE) requires a brief description of the project area's existing conditions and anticipated environmental impacts resulting from the proposed work (amount of dredge or fill material, acreage of disturbance, removal of significant vegetation, loss of habitat, etc.).

This task shall include time to conduct a brief field reconnaissance survey of the project area and a 100-foot buffer to map potentially jurisdictional resources and assess the potential for threatened or endangered species to occur. The Consultant has conducted numerous studies of sensitive biological resources in the city and would leverage existing reports to conduct this task in a cost-efficient manner.

Task 2 Emergency Permit Notifications

For emergency work that may result in discharges of dredged or fill material into Waters of the U.S./state a notification under Regional General Permit 63 (RGP 63) shall be submitted to the USACE and the State Water Resources Control Board (SWRCB) and Central Coast Regional Water Quality Control Board shall be notified under the Water Quality Certification for RGP 63. Additionally, for emergency work that may substantially affect the bed, bank, or streambed, the California Department of Fish and Wildlife shall be notified through their Environmental Permit Information Management System (EPIMS). If any repair work occurs in the Coastal Zone, as is envisioned at some of the sites identified by the City, the California Coastal Commission requires an application for an emergency permit to be submitted prior to initiating the activity. The Consultant shall also support the City with their internal emergency permit process, including noticing requirements and hearing support.

Each notification requires the same general information, broadly summarized below:

- The applicant's name and contact information,
- The location of the project, illustrated map,
- A brief explanation of why the project qualifies as an emergency, including explanation of the imminent threat to life or property.
- A description of methods anticipated to be used to rectify the situation, including photographs, plans, drawings or sketches showing the area to be impacted, and a short narrative describing how the work is to be completed.
- A brief description of the existing site conditions and anticipated environmental impacts.

The Consultant shall be available to prepare the majority of each notification but shall work with the City to address items related to the project details, such as work limits, volumes of materials, etc.

Task 3 Permit Submittal Coordination

The Consultant shall be prepared to develop and submit each permit notification to the respective resource agency on behalf of the City, as directed, and shall be available to field questions from agency staff related to the project. The Consultant shall confirm the approach with the City prior to responding and shall be available for field visits or virtual meetings to help streamline the permitting process. The USACE is required to coordinate with other resources agencies (i.e., Environmental Protection Agency, U.S. Fish and Wildlife Service, State Historic Preservation Officer, etc.) and are required to fully consider any comments received. The USACE may impose terms and conditions to avoid and minimize adverse effects on aquatic resources and may require mitigation to reduce the project's adverse environmental effects to a minimal level. The Consultant shall support any coordination efforts or provide support on further technical reports such as a mitigation plan.

Task 4 Construction Support

The Consultant shall provide construction monitoring support as directed by the City. The Consultant has biologists, and ISA certified arborists on staff and shall subcontract additional specialists as needed to meet the needs of each project. The Consultant has intimate knowledge of the biological resources present in the city, and understands that the projects could potentially affect monarch butterflies, tidewater goby, Southern California steelhead, and California red-legged frog, as well as nesting birds. The Consultant shall subcontract Althouse

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and Meade, Inc. for support with monarch butterfly related items. The Consultant shall provide archaeologists and native American monitors during earth disturbing activities, as required by resource agencies.

Task 5 Project Completion Notifications

The USACE, SWRCB, and CDFW require project completion documentation which includes a summary of the work performed, measures incorporated to protect the environment, and actual impacts sustained, with photo documentation of before/after conditions. The Consultant shall take the lead on completing each completion report in coordination with the City.

Task 6 Project Management and Coordination

This task includes coordination with the Consultant's project team to efficiently execute this Scope of Work. This task includes financial management and monthly invoicing in the City's preferred format.

Assumptions

- All tasks will be initiated as directed by the City.
- All agency notification fees will be paid directly to the respective resource agency by the City, unless directed otherwise.
- All materials shall be submitted to the City in draft form and submitted to the resource agencies after City approval.

Standard Fee Schedule for Environmental Sciences and Planning Services

Professional, Technical and Support Personnel*	Hourly Rate
Principal II	\$295
Director II	\$295
Principal I	\$285
Director I	\$285
Senior Supervisor II	\$268
Supervisor I	\$250
Senior Professional II	\$234
Senior Professional I	\$218
Professional IV	\$194
Professional III	\$180
Professional II	\$160
Professional I	\$143
Associate III	\$120
Associate II	\$107
Associate I	\$100
Field Technician	\$86
Data Solutions Architect	\$180
Senior GIS Specialist	\$172
GIS/CADD Specialist II	\$153
GIS/CADD Specialist I	\$138
Technical Editor	\$135
Project Accountant	\$115
Billing Specialist	\$98
Publishing Specialist	\$110
Clerical	\$98

* Professional classifications include environmental scientists, urban planners, biologists, geologists, marine scientists, GHG verifiers, sustainability experts, cultural resources experts, and other professionals.

Reimbursable Expenses

Direct Cost	Rates
Photocopies – Black and White	\$0.25 (single-sided), \$0.45 (double-sided)
Photocopies – Color	\$1.55 (single-sided), \$3.10 (double-sided)
Photocopies – 11 x 17	\$0.55 (B&W), \$3.40 (color)
Oversized Maps	\$8.50/square foot
Digital Production	\$15/CD, \$20/flash drive
Light-Duty and Passenger Vehicles*	\$90/day
4WD and Off-road Vehicles*	\$150/day

*Current IRS mileage rate for mileage over 50 and for all miles incurred in employee-owned vehicles.

Other direct costs associated with the execution of a project, that are not included in the hourly rates above, are billed at cost plus 5%. These may include, but are not limited to, subcontractor services. No mark-up will be included on subcontractor direct expenses (i.e., mileage, field equipment).

Payment Terms. All fees will be billed to Client monthly and shall be due and payable upon receipt or as indicated in the contract provisions for the assignment. Invoices are delinquent if not paid within ten (10) days from receipt or per the contractually required payment terms.

Equipment	Rate
Environmental Site Assessment	
Soil Vapor Extraction Monitoring Equipment	\$160
Four Gas Monitor	\$137
Flame Ionization Detector	\$110
Photo Ionization Detector	\$82
Hand Auger Sampler	\$62
Water Level Indicator, DC Purge Pump	\$46
CAPDash	\$7,500
Natural Resources Field Equipment	
UAS Drone	\$276
Spotting or Fiberoptic Scope	\$170
Pettersson Bat Ultrasound Detector/Recording Equipment	\$170
Sound Level Metering Field Package (Anemometer, Tripod and Digital Camera)	\$113
GPS (Sub-meter Accuracy)	\$87
Infrared Sensor Digital Camera or Computer Field Equipment	\$57
Scent Station	\$23
Laser Rangefinder/Altitude	\$11
Pit-fall Traps, Spotlights, Anemometer, GPS Units, Sterilized Sample Jar	\$9
Mammal Trap, Large/Small	\$1.55/\$0.55
Water and Marine Resources Equipment	
Boat (26 ft. Radon or Similar)	\$621
Boat (20 ft. Boston Whaler or Similar)	\$345
Multi Parameter Sonde (Temp, Cond, Turbidity, DO, pH) with GPS	\$170
Water Quality Equipment (DO, pH, Turbidity, Refractometer, Temperature)	\$62
Refractometer (Salinity) or Turbidity Meter	\$38
Large Block Nets	\$114
Minnow Trap	\$98
Net, Hand/Large Seine	\$57
Field Equipment Packages	
Standard Field Package (Digital Camera, GPS, Thermometer, Binoculars, Tablet, Safety Equipment, and Botanic Collecting Equipment)	\$114
Remote Field Package (Digital Camera, GPS, Thermometer, Binoculars, Tablet and Mifi, Delorme Satellite Beacon, 24-Hour Safety Phone)	\$144
Amphibian/Vernal Pool Field Package (Digital Camera, GPS, Thermometer, Decon Chlorine, Waders, Float Tube, Hand Net, Field Microscope)	\$170
Fisheries Equipment Package (Waders, Wetsuits, Dip Nets, Seine Nets, Bubbles, Buckets)	\$57
Underwater and Marine Sampling Gear (U/W Photo/Video Camera, Scuba Equipment (Tanks, BCD, Regulators, Wetsuits, etc.))	\$57/diver
Marine Field Package (PFDs - Personal Flotation Devices, 100-foot Reel Tapes with Stainless Carabiners, Pelican Floats, Underwater Slates, Thermometer, Refractometer, Anemometer, Various Field Guides)	\$57
Insurance, Hazard and Fees	
Historic Research Fees	\$55
L&H Dive Insurance	\$57/diver
Level C Health and Safety	\$70/person

Effective January 1, 2023

EXHIBIT C

FEDERAL CONTRACT PROVISIONS

During the performance of this contract, Rincon Consultants, 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

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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 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

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("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

City of Goleta
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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.

ATTACHMENT 6

General Services Agreement No. 2023-026 with Nick's Tree Service

Project Name: January 2023 Winter Storm Emergency Response Tree Work

**AN AGREEMENT FOR GENERAL SERVICES
BETWEEN THE CITY OF GOLETA
AND
NICK'S TREE SERVICE**

THIS GENERAL SERVICES AGREEMENT ("Agreement"), made and entered into this 3rd day of March 2023, by and between the **CITY OF GOLETA**, a municipal corporation (hereinafter referred to as "City"), and **NICK'S TREE SERVICE**, a California Corporation (hereinafter referred to as "Service Provider").

SECTION A. RECITALS

1. The CITY has a need for general services for environmental, permitting, and arborist services related to projects for emergency repair to public property, trees, parks, and other infrastructure caused by severe storms in January 2023;
2. 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
3. This Service Provider will be providing emergency tree trimming and removal services in conjunction with the January 2023 Winter Storm Emergency Response Tree Work Project; and
4. Service Provider represents that it is sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the City; and
5. Goleta Municipal Code Section 2.10.040(A)(6)(a) allows the City Manager (referenced as "Director of Emergency Services") to "make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided however, such rules and regulations must be confirmed at the earliest practicable time by the City Council"; and
6. An emergency exists in the CITY due to the severe storms of 2023 which caused significant damage to roadways and CITY infrastructure. Therefore, it is necessary to the public health and safety that the City Manager immediately authorize the start of work on emergency mitigation measures, subject to ratification by City Council; and

7. The City Manager authorized this agreement pursuant to Goleta Municipal Code Section 2.10.040(A)(6)(a) and the City Council ratified this agreement at its next public meeting.

SECTION B.TERMS

1. RETENTION OF SERVICE PROVIDER

City hereby retains Service Provider, and Service Provider hereby accepts such engagement, to perform emergency tree trimming and removal services, as requested, and attached herein as **Exhibit "A"**. Service Provider warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. COMPENSATION AND PAYMENT

(a) **Maximum and Rate**. The total compensation earned by or payable to the Service Provider, by the City, for any and all services under this Agreement are estimated to be **\$25,000**, and **SHALL NOT EXCEED** the sum of **\$25,000** over the life of the Agreement, and shall be earned on the following basis:

Hourly at the hourly rates and with reimbursement to the Service Provider for those expenses set forth in Service Provider's Schedule of Fees marked **Exhibit "B,"** attached and incorporated herein.

(b) **Payment**. All payments shall be made within 30 days after the Service Provider has provided the City with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to the City's Project Manager.

3. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by the Service Provider shall be accomplished under the general direction of, and coordinate with, the City's "Project Manager", as that staff person is designated by the City from time to time, and who presently is George Thomson, Parks and Open Space Manager.

4. PROGRESS AND COMPLETION

Project Manager shall assign, in writing, Service Provider with discrete projects, which shall in no event exceed \$25,000. Service Provider shall commence work on the services to be performed on each project as requested and authorized by the Project Manager.

For each discrete job requested by the Project Manager, Service Provider must respond to provide at least an initial assessment of the project. Service Provider will

provide an estimate to the Project Manager and only start work upon written authorization from the Project Manager.

5. AGREEMENT PERFORMANCE

Non-Exclusivity. This Agreement is non-exclusive. City reserves the right to retain, employ, Agreement with other qualified providers of services during the term of this Agreement on such occasions and in such circumstances as City shall determine are appropriate.

Ability to Perform. The Service Provider warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal, state, county, city, and special district laws, ordinances, and regulations.

Laws to be Observed. The Service Provider shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City of Goleta ordinances, regulations and adopted codes during its performance of the work.

Payment of Taxes. The Agreement prices shall include full compensation for all taxes which the Service Provider is required to pay.

Permits and Licenses. The Service Provider shall procure all permits and licenses, pay all charges and fees, and give all notices necessary.

Prevailing Wage. The Service Provider is obligated to pay prevailing wages under the California Labor Code. Service Provider agrees to indemnify, defend and hold City harmless from any claim that prevailing wages should have been paid, and shall be liable for the payment of the same and any penalties thereon. It is the responsibility of the Service Provider to be familiar with the California Labor Code, and failure or neglect of the Service Provider to understand the California Labor Code shall in no way relieve him from any obligations.

Safety Provisions. The Service Provider shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.

Preservation of City Property. The Service Provider shall provide and install suitable safeguards, approved by City, to protect City property from injury or damage. If City property is injured or damaged as a result of the Service Provider's operations, it shall be replaced or restored at the Service Provider's expense. The facilities shall be replaced or restored to a condition as good as when the Service Provider began work.

Immigration Act of 1986. The Service Provider warrants on behalf of itself, and all subcontractor Providers engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

Service Provider Non-Discrimination. The Service Provider shall not discriminate based on race, color, gender, gender identity/expression, pregnancy, sexual orientation, disability, marital status, or any other characteristic protected under applicable federal or state law.

Work Delays. Should the Service Provider be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at City's sole option, be extended for such periods as may be agreed upon by City and the Service Provider. In the event that there is insufficient time to grant such extensions prior to the completion date of the Agreement, City may, at the time of acceptance of the work, waive liquidated damages which may have accrued for failure to complete on time, due to any of the above, after hearing evidence as to the reasons for such delay, and making a finding as to the causes of same.

Inspection. The Service Provider shall furnish City with every reasonable opportunity for City to ascertain that the services of the Service Provider are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to City's inspection and approval. The inspection of such work shall not relieve Service Provider of any of its obligations to fulfill its Agreement requirements.

Audit. City shall have the option of inspecting and/or auditing all records and other written materials used by Service Provider in preparing its invoices to City as a condition precedent to any payment to Service Provider.

Interests of Service Provider. The Service Provider covenants that it presently has no interest, and shall not acquire any interest, direct or indirect or otherwise, which would conflict in any manner or degree with the performance of the work hereunder. The Service Provider further covenants that, in the performance of this work, no subcontractor or person having such an interest shall be employed. The Service Provider certifies that no one who has or will have any financial interest in performing this work is an officer or employee of City. It is hereby expressly agreed that, in the performance of the work hereunder, the Service Provider shall at all times be deemed an independent Service Provider and not an agent or employee of City.

6. TERM

This Agreement shall expire on December 31, 2023.

7. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports, and other documentation (other than Service Provider's drafts, notes and internal memorandum), including duplication of same prepared by Service Provider in the performance of these services, shall become the property of the City upon termination of the consulting services pursuant to this Agreement and upon payment in full of all compensation then due Service Provider. If requested by the City, all, or the designated portions of such, shall be delivered to the City. The City agrees to hold the Service Provider 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 the Service Provider is first obtained.

8. PERSONAL SERVICES/NO ASSIGNMENT/SUBSERVICE PROVIDER

This Agreement is for general services which are personal to City. Nick Gosnell, President, is deemed to be specially experienced and is a key lead for services provided, and shall be directly involved in performing, supervising or assisting 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. Service Provider must ensure that subcontractors must adhere to all applicable provisions of this Agreement relating to providing services to City.

9. HOLD HARMLESS AND INDEMNITY

(a) Hold Harmless for Service Provider's Damages. The Service Provider holds the City, its elected officials, officers and employees, harmless from all of Service Provider's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to the Service Provider, to the Service Provider's employees, to Service Provider's Service Providers or subcontractor, or to the owners of the Service Provider's firm, which damages, losses, injuries or liability occur during the work or services required under this Agreement, or occur while Service Provider is in a City building or on City property, or which are connected, directly or indirectly, with the Service Provider's performance of any activity or work required under this Agreement.

(b) Defense and Indemnity of Third Party Claims/Liability. Service Provider shall investigate, defend, and indemnify the City, its elected officials, officers and

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Public Works Agreement with Nicks Tree Service

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employees, from any claims, lawsuits, demands, judgments and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, professional errors and omissions arising out of, directly or indirectly, an error, a negligent act or negligent omission of the Service Provider or of Service Provider's subcontractor, or the willful misconduct of the Service Provider or Service Provider's Service Providers/subcontractor, in performing the services described in, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions in law or equity concerning any activity, product or work required under this Agreement, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related to such litigation.

(c) Nonwaiver. The 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 the City, or the deposit with the City, of any insurance certificates or policies described in section 10.

10. INSURANCE

Service Provider shall, at Service Provider'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 in the 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.

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

- a) Except for professional liability insurance, 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 Agreement. 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) Except for professional liability insurance, liability coverage shall be primary and non-contributing with any insurance maintained by City.
- d) 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.
- e) No liability insurance coverage provided to comply with this Agreement shall prohibit Service Provider, or Service Provider's employees, or agents, from waiving the right of recovery prior to a loss. Service Provider waives its right of recovery against City.
- f) Service Provider agrees to deposit with City within fifteen days of Notice to Proceed of the Agreement certificates of insurance and required endorsements.
- g) There shall be no recourse against City for payment of premiums or other amounts with respect to the insurance required to be provided by Service Provider 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 Service Provider or City will withhold amounts sufficient to pay premium from Service Provider payments.

- h) Service Provider agrees to provide immediate notice to City of any claim or loss against Service Provider 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. RELATION OF THE PARTIES

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

12. TERMINATION BY CITY

The City, by notifying Service Provider in writing, may upon five (5) calendar days notice, terminate any portion or all of the services agreed to be performed under this Agreement. In the event of such termination, Service Provider 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 Service Provider within 30 days following submission of a final statement by Service Provider.

13. CORRECTIONS

The Service Provider shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Service Provider's work. Should Service Provider fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to Service Provider.

14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by Service Provider of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to Service Provider for anything done, furnished, or relating to Service Provider'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 five (5) calendar

days of the receipt of that check, whichever occurs first. However, any approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of Service Provider, its employees, subcontractors, agents and Service Providers 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 the City for any defect or error in the work prepared by Service Provider, its employees, subcontractor, agents and Service Providers.

15. 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.

16. CONFLICT OF INTEREST

Service Provider is unaware of any City employee or official that has a financial interest in Service Provider's business. During the term of this Agreement and/or as a result of being awarded this Agreement, the Service Provider shall not offer, encourage or accept any financial interest in Service Provider's business by any City employee or official. If a portion of Service Provider's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an Agreement with a developer of any land within the City or with a City franchisee, the Service Provider warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any Agreement or request to perform services for that identified developer/franchisee during the term of this Agreement.

17. 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 and, should litigation occur, venue shall be in the Superior Court of Santa Barbara.

18. 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.

19. ENTIRE AGREEMENT BETWEEN PARTIES

Except for Service Provider'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.

20. 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:

Robert Nisbet, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

TO SERVICE PROVIDER:

Attention: Nick Gosnell
Nick's Tree Service
2416 De la Bina St. APT #5
Santa Barbara, CA 93105

21. 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.

22. FEDERAL REQUIREMENTS

FEMA financial assistance will be used to fund all or a portion of this contract. The Service Provider 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.

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:

Robert Nisbet

1AEBACAD159E4D7...
ROBERT NISBET, City Manager

SERVICE PROVIDER

DocuSigned by:

Nick Gosnell

D7E8588099A6444...
NICK GOSNELL
Owner

ATTEST:

DocuSigned by:

Deborah Lopez

A3E09F3473CA47E...
Deborah Lopez, City Clerk

APPROVED AS TO FORM:

MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:

Winnie Cai

A1BF8F896161498...

Winnie Cai, Assistant City Attorney

DS
WC

4/17/2023

EXHIBIT A
SCOPE OF WORK

Service provider shall provide emergency and storm removal and tree trimming services in conjunction with the emergency and storm response services and tree trimming project as directed by the Parks and Open Space Manager in consultation with the consulting city arborist and consulting biologist for emergency services. The scope of work includes but is not limited to:

- Emergency Tree Trimming
- Emergency Tree Removal
- Haul and disposal of any large wood
- Chip and Broadcast, Onsite, any remaining wood associated with tree trimming under this Scope of Work

EXHIBIT B SCHEDULE OF FEES

Tree work:

- \$75 per hour - *Includes all equipment for climbing trees and maintaining safe work conditions*
- \$75 on-time inspection fee by certified arborist (Nick Gosnell)

Stump grinding:

- Large hydraulic grinder - @ \$225 per hour - *includes grinder and maintenance plus 2 workers*
- Small walk behind - @ \$175 per hour - *includes grinder and maintenance plus 2 workers*

Debris chipping:

- 3 men plus truck and chipper @ \$275 per hour

EXHIBIT C FEDERAL CONTRACT PROVISIONS

During the performance of this contract, Nick Gosnell (the "Service Provider") 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 Service Provider.

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

A. Service Provider 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.

Service Provider 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)

City of Goleta
Public Works Agreement with Nicks Tree Service
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- 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 Service Provider.

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

- A. Service Provider 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 Service Provider personnel for the purpose of interview and discussion related to the books and records.
- B. The Service Provider 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 Service Provider 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

Public Works Agreement with Nicks Tree Service

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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 Service Provider, terminate this contract for convenience, in whole or in part, at any time by giving written notice to Service Provider 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. Service Provider shall provide documentation deemed adequate by the Agency to show the work actually completed or materials provided by Service Provider 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 Service Provider fails to perform pursuant to the terms of this contract, the Agency shall provide written notice to Service Provider specifying the default ("Notice of Default"). If Service Provider 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 Service Provider fails to cure a default as set forth above, the Agency may, by written notice to Service Provider, 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, Service Provider 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 Service Provider's deficiencies and charge the cost thereof to Service Provider, 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 Service Provider performance of the work.

- iv. Additional Termination Provisions. Upon receipt of a Notice of Termination, either for cause or for convenience, Service Provider shall promptly discontinue the work unless the Notice directs to the contrary. Service Provider 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. Service Provider 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. Service Provider 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, Service Provider shall be entitled to receive only the amounts payable under this Section, and Service Provider 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, Service Provider 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. Service Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Service Provider 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. Service Provider 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. Service Provider will, in all solicitations or advertisements for employees placed by or on behalf of Service Provider, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- iii. Service Provider 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 Service Provider's legal duty to furnish information.
- iv. Service Provider 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. Service Provider 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. Service Provider 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 Service Provider'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. Service Provider 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 Service Provider. Service Provider 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 Service Provider becomes involved in, or is threatened with, litigation with a subcontractor or Service Provider as a result of such direction, Service Provider 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, Service Provider 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 Service Provider 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 Service Provider 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, Service Provider 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) Service Provider 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) Service Provider 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) Service Provider agrees to include these requirements in each subcontract exceeding \$150,000.
- ii. Pursuant to the Federal Water Pollution Control Act, (1) Service Provider 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) Service Provider 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) Service Provider 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 Service Provider is required to verify that none of the Service Provider, 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. Service Provider 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 Service Provider 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. Service Provider warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Service Provider 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. Service Provider further agrees to notify the Agency in writing immediately if Service Provider 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, Service Provider 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, Service Provider shall file with the Agency the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying.” Service Providers 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. Service Provider 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 Service Provider 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 Service Provider 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 Service Provider will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- C. Service Provider acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Service Provider'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, Service Provider, 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 Service Provider, the Service Provider'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 Service Provider exceeds at its own risk.

ATTACHMENT 7

General Services Agreement No. 2023-031 with Mark Crane's Tree and
Arborist Services

Project Name: January 2023 Winter Storm Emergency Response Tree Work

**AN AGREEMENT FOR GENERAL SERVICES
BETWEEN THE CITY OF GOLETA
AND
MARK CRANE'S TREE AND ARBORIST SERVICES**

THIS GENERAL SERVICES AGREEMENT ("Agreement"), made and entered into this ^{7th} day of ^{March} 2023, by and between the **CITY OF GOLETA**, a municipal corporation (hereinafter referred to as "City"), and **MARK CRANE'S TREE AND ARBORIST SERVICES**, a California Corporation (hereinafter referred to as "Service Provider").

SECTION A. RECITALS

1. The CITY has a need for general services for environmental, permitting, and arborist services related to projects for emergency repair to public property, trees, parks, and other infrastructure caused by severe storms in January 2023;
2. 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
3. This Service Provider will be providing emergency tree trimming and removal services in conjunction with the January 2023 Winter Storm Emergency Response Tree Work Project; and
4. Service Provider represents that it is sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the City; and
5. Goleta Municipal Code Section 2.10.040(A)(6)(a) allows the City Manager (referenced as "Director of Emergency Services") to "make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided however, such rules and regulations must be confirmed at the earliest practicable time by the City Council"; and
6. An emergency exists in the CITY due to the severe storms of 2023 which caused significant damage to roadways and CITY infrastructure. Therefore, it is necessary to the public health and safety that the City Manager immediately authorize the start of work on emergency mitigation measures, subject to ratification by City Council; and

7. The City Manager authorized this agreement pursuant to Goleta Municipal Code Section 2.10.040(A)(6)(a) and the City Council ratified this agreement at its next public meeting.

SECTION B. TERMS

1. RETENTION OF SERVICE PROVIDER

City hereby retains Service Provider, and Service Provider hereby accepts such engagement, to perform emergency tree trimming and removal services, as requested, and attached herein as **Exhibit "A"**. Service Provider warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. COMPENSATION AND PAYMENT

(a) **Maximum and Rate**. The total compensation earned by or payable to the Service Provider, by the City, for any and all services under this Agreement are estimated to be **\$100,000**, and **SHALL NOT EXCEED** the sum of **\$100,000** over the life of the Agreement, and shall be earned on the following basis:

Hourly at the hourly rates and with reimbursement to the Service Provider for those expenses set forth in Service Provider's Schedule of Fees marked **Exhibit "B,"** attached and incorporated herein.

(b) **Payment**. All payments shall be made within 30 days after the Service Provider has provided the City with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to the City's Project Manager.

3. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by the Service Provider shall be accomplished under the general direction of, and coordinate with, the City's "Project Manager", as that staff person is designated by the City from time to time, and who presently is George Thomson, Parks and Open Space Manager.

4. PROGRESS AND COMPLETION

Project Manager shall assign, in writing, Service Provider with discrete projects, which shall in no event exceed \$100,000 per project. Service Provider shall commence work on the services to be performed on each project as requested and authorized by the Project Manager.

For each discrete job requested by the Project Manager, Service Provider must respond to provide at least an initial assessment of the project. Service Provider will

provide an estimate to the Project Manager and only start work upon written authorization from the Project Manager.

5. AGREEMENT PERFORMANCE

Non-Exclusivity. This Agreement is non-exclusive. City reserves the right to retain, employ, Agreement with other qualified providers of services during the term of this Agreement on such occasions and in such circumstances as City shall determine are appropriate.

Ability to Perform. The Service Provider warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal, state, county, city, and special district laws, ordinances, and regulations.

Laws to be Observed. The Service Provider shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City of Goleta ordinances, regulations and adopted codes during its performance of the work.

Payment of Taxes. The Agreement prices shall include full compensation for all taxes which the Service Provider is required to pay.

Permits and Licenses. The Service Provider shall procure all permits and licenses, pay all charges and fees, and give all notices necessary.

Prevailing Wage. The Service Provider is obligated to pay prevailing wages under the California Labor Code. Service Provider agrees to indemnify, defend and hold City harmless from any claim that prevailing wages should have been paid, and shall be liable for the payment of the same and any penalties thereon. It is the responsibility of the Service Provider to be familiar with the California Labor Code, and failure or neglect of the Service Provider to understand the California Labor Code shall in no way relieve him from any obligations.

Safety Provisions. The Service Provider shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.

Preservation of City Property. The Service Provider shall provide and install suitable safeguards, approved by City, to protect City property from injury or damage. If City property is injured or damaged as a result of the Service Provider's operations, it shall be replaced or restored at the Service Provider's expense. The facilities shall be replaced or restored to a condition as good as when the Service Provider began work.

Immigration Act of 1986. The Service Provider warrants on behalf of itself, and all subcontractor Providers engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

Service Provider Non-Discrimination. The Service Provider shall not discriminate based on race, color, gender, gender identity/expression, pregnancy, sexual orientation, disability, marital status, or any other characteristic protected under applicable federal or state law.

Work Delays. Should the Service Provider be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at City's sole option, be extended for such periods as may be agreed upon by City and the Service Provider. In the event that there is insufficient time to grant such extensions prior to the completion date of the Agreement, City may, at the time of acceptance of the work, waive liquidated damages which may have accrued for failure to complete on time, due to any of the above, after hearing evidence as to the reasons for such delay, and making a finding as to the causes of same.

Inspection. The Service Provider shall furnish City with every reasonable opportunity for City to ascertain that the services of the Service Provider are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to City's inspection and approval. The inspection of such work shall not relieve Service Provider of any of its obligations to fulfill its Agreement requirements.

Audit. City shall have the option of inspecting and/or auditing all records and other written materials used by Service Provider in preparing its invoices to City as a condition precedent to any payment to Service Provider.

Interests of Service Provider. The Service Provider covenants that it presently has no interest, and shall not acquire any interest, direct or indirect or otherwise, which would conflict in any manner or degree with the performance of the work hereunder. The Service Provider further covenants that, in the performance of this work, no subcontractor or person having such an interest shall be employed. The Service Provider certifies that no one who has or will have any financial interest in performing this work is an officer or employee of City. It is hereby expressly agreed that, in the performance of the work hereunder, the Service Provider shall at all times be deemed an independent Service Provider and not an agent or employee of City.

6. TERM

This Agreement shall expire on December 31, 2023.

7. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports, and other documentation (other than Service Provider's drafts, notes and internal memorandum), including duplication of same prepared by Service Provider in the performance of these services, shall become the property of the City upon termination of the consulting services pursuant to this Agreement and upon payment in full of all compensation then due Service Provider. If requested by the City, all, or the designated portions of such, shall be delivered to the City. The City agrees to hold the Service Provider 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 the Service Provider is first obtained.

8. PERSONAL SERVICES/NO ASSIGNMENT/SUBSERVICE PROVIDER

This Agreement is for general services which are personal to City. Mark Crane, President, is deemed to be specially experienced and is a key lead for services provided, and shall be directly involved in performing, supervising or assisting 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. Service Provider must ensure that subcontractors must adhere to all applicable provisions of this Agreement relating to providing services to City.

9. HOLD HARMLESS AND INDEMNITY

(a) Hold Harmless for Service Provider's Damages. The Service Provider holds the City, its elected officials, officers and employees, harmless from all of Service Provider's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to the Service Provider, to the Service Provider's employees, to Service Provider's Service Providers or subcontractor, or to the owners of the Service Provider's firm, which damages, losses, injuries or liability occur during the work or services required under this Agreement, or occur while Service Provider is in a City building or on City property, or which are connected, directly or indirectly, with the Service Provider's performance of any activity or work required under this Agreement.

(b) Defense and Indemnity of Third Party Claims/Liability. Service Provider shall investigate, defend, and indemnify the City, its elected officials, officers and

City of Goleta

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employees, from any claims, lawsuits, demands, judgments and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, professional errors and omissions arising out of, directly or indirectly, an error, a negligent act or negligent omission of the Service Provider or of Service Provider's subcontractor, or the willful misconduct of the Service Provider or Service Provider's Service Providers/subcontractor, in performing the services described in, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions in law or equity concerning any activity, product or work required under this Agreement, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related to such litigation.

(c) Nonwaiver. The 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 the City, or the deposit with the City, of any insurance certificates or policies described in section 10.

10. INSURANCE

Service Provider shall, at Service Provider'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 in the 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.

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

- a) Except for professional liability insurance, 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 Agreement. 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) Except for professional liability insurance, liability coverage shall be primary and non-contributing with any insurance maintained by City.
- d) 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.
- e) No liability insurance coverage provided to comply with this Agreement shall prohibit Service Provider, or Service Provider's employees, or agents, from waiving the right of recovery prior to a loss. Service Provider waives its right of recovery against City.
- f) Service Provider agrees to deposit with City within fifteen days of Notice to Proceed of the Agreement certificates of insurance and required endorsements.
- g) There shall be no recourse against City for payment of premiums or other amounts with respect to the insurance required to be provided by Service Provider 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 Service Provider or City will withhold amounts sufficient to pay premium from Service Provider payments.

- h) Service Provider agrees to provide immediate notice to City of any claim or loss against Service Provider 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. RELATION OF THE PARTIES

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

12. TERMINATION BY CITY

The City, by notifying Service Provider in writing, may upon five (5) calendar days notice, terminate any portion or all of the services agreed to be performed under this Agreement. In the event of such termination, Service Provider 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 Service Provider within 30 days following submission of a final statement by Service Provider.

13. CORRECTIONS

The Service Provider shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Service Provider's work. Should Service Provider fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to Service Provider.

14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by Service Provider of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to Service Provider for anything done, furnished, or relating to Service Provider'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 five (5) calendar

days of the receipt of that check, whichever occurs first. However, any approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of Service Provider, its employees, subcontractors, agents and Service Providers 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 the City for any defect or error in the work prepared by Service Provider, its employees, subcontractor, agents and Service Providers.

15. 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.

16. CONFLICT OF INTEREST

Service Provider is unaware of any City employee or official that has a financial interest in Service Provider's business. During the term of this Agreement and/or as a result of being awarded this Agreement, the Service Provider shall not offer, encourage or accept any financial interest in Service Provider's business by any City employee or official. If a portion of Service Provider's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an Agreement with a developer of any land within the City or with a City franchisee, the Service Provider warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any Agreement or request to perform services for that identified developer/franchisee during the term of this Agreement.

17. 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 and, should litigation occur, venue shall be in the Superior Court of Santa Barbara.

18. 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.

19. ENTIRE AGREEMENT BETWEEN PARTIES

Except for Service Provider'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.

20. 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: Robert Nisbet, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

TO SERVICE PROVIDER: Attention: Mark Crane, President
Mark Crane's Tree and Arborist Services
PO Box 983
Goleta, CA 93116

21. 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.

22. FEDERAL REQUIREMENTS

FEMA financial assistance will be used to fund all or a portion of this contract. The Service Provider 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.

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:

Robert Nisbet

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Robert Nisbet, City Manager

SERVICE PROVIDER

DocuSigned by:

Mark Crane

8E4FEECE597E41A...

By: Mark Crane

Title: President

ATTEST:

DocuSigned by:

Deborah Lopez

A3E09F3473CA47E...

Deborah Lopez, City Clerk

DocuSigned by:

Kim Crane

906901BDB1B4489...

By: Kim Crane

Title: Vice President

APPROVED AS TO FORM:

MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:

Winnie Cai

A1BF3F09E16142B...

Winnie Cai, Assistant City Attorney

EXHIBIT A

SCOPE OF WORK

Service provider shall provide emergency and storm removal and tree trimming services in conjunction with the emergency and storm response services and tree trimming project as directed by the Parks and Open Space Manager in consultation with the consulting city arborist and consulting biologist for emergency services. The scope of work includes but is not limited to:

- Emergency Tree Trimming
- Emergency Tree Removal
- Haul and disposal of any large wood
- Chip and Broadcast, Onsite, any remaining wood associated with tree trimming under this Scope of Work

EXHIBIT B**SCHEDULE OF FEES****Mark Cranes Tree Inc.,
Labor and Equipment Rate Sheet****Labor – Billed port to port from our yard at 150c David Love Place, Goleta CA
93117****Regular Time**

\$105.00 per hour

Groundman / Rigger

\$131.25 per hour

Climber / Aerial lift and other large equipment

Overtime

\$157.50 per hour

Groundman / Rigger

\$196.85 per hour

Climber / Aerial lift and other large equipment

***Holidays or Emergency**

\$210.00 per hour

Groundman / Rigger

\$262.50 per hour

Climber / Aerial lift and other large equipment

*The labor rate includes 1 dump truck, 1 chipper, and or 1 aerial lift per crew.

Equipment Day Rate

\$735.00 per day

299 CAT Skid Steer with Bucket

\$210.00 per day

Grapple

\$300.00 per day

Mower

\$210.00 per day

Drill

\$3,150.00 per day

Pal Finger 5002 Grapple Crane

\$787.50 per day

Spider 83-foot lift

\$200.00 per day

Mid Skid Steer

Additional Equipment Day Rate

\$210.00 per day

Dump Trucks

\$210.00 per day

Vermeer BC 1000 Chipper

\$420.00 per day

Vermeer BC 1800 Chipper

\$525.00 per day

Vermeer SC60TX

EXHIBIT C

FEDERAL CONTRACT PROVISIONS

During the performance of this contract, Mark Crane (the "Service Provider") 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 Service Provider.

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

A. Service Provider 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.

Service Provider 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 Service Provider.

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

- A. Service Provider 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 Service Provider personnel for the purpose of interview and discussion related to the books and records.
- B. The Service Provider 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 Service Provider 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

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manner by which it will be effected and the basis for settlement, then the 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 Service Provider, terminate this contract for convenience, in whole or in part, at any time by giving written notice to Service Provider 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. Service Provider shall provide documentation deemed adequate by the Agency to show the work actually completed or materials provided by Service Provider 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 Service Provider fails to perform pursuant to the terms of this contract, the Agency shall provide written notice to Service Provider specifying the default ("Notice of Default"). If Service Provider 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 Service Provider fails to cure a default as set forth above, the Agency may, by written notice to Service Provider, 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, Service Provider 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 Service Provider's deficiencies and charge the cost thereof to Service Provider, 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 Service Provider performance of the work.

- iv. Additional Termination Provisions. Upon receipt of a Notice of Termination, either for cause or for convenience, Service Provider shall promptly discontinue the work unless the Notice directs to the contrary. Service Provider 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. Service Provider 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. Service Provider 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, Service Provider shall be entitled to receive only the amounts payable under this Section, and Service Provider 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, Service Provider 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. Service Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Service Provider 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. Service Provider 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. Service Provider will, in all solicitations or advertisements for employees placed by or on behalf of Service Provider, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- iii. Service Provider 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 Service Provider's legal duty to furnish information.

- iv. Service Provider 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. Service Provider 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. Service Provider 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 Service Provider'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. Service Provider 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 Service Provider. Service Provider 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 Service Provider becomes involved in, or is threatened with, litigation with a subcontractor or Service Provider as a result of such direction, Service Provider 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, Service Provider 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 Service Provider 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 Service Provider 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, Service Provider 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) Service Provider 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) Service Provider 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) Service Provider agrees to include these requirements in each subcontract exceeding \$150,000.

- ii. Pursuant to the Federal Water Pollution Control Act, (1) Service Provider 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) Service Provider 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) Service Provider 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 Service Provider is required to verify that none of the Service Provider, 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. Service Provider 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 Service Provider 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. Service Provider warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal

programs. Service Provider 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. Service Provider further agrees to notify the Agency in writing immediately if Service Provider 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, Service Provider 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, Service Provider shall file with the Agency the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying.” Service Providers 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. Service Provider 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 Service Provider 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 Service Provider 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 Service Provider will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- C. Service Provider acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Service Provider'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, Service Provider, 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 Service Provider, the Service Provider'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 Service Provider exceeds at its own risk.

ATTACHMENT 8

General Services Agreement No. 2023-030 with Nick's Tree Services

Project Name: March 2023 Winter Storm Emergency Response Tree Work

**AN AGREEMENT FOR GENERAL SERVICES
BETWEEN THE CITY OF GOLETA
AND
NICK'S TREE SERVICE**

THIS GENERAL SERVICES AGREEMENT ("Agreement"), made and entered into this 7th day of March 2023, by and between the **CITY OF GOLETA**, a municipal corporation (hereinafter referred to as "City"), and **NICK'S TREE SERVICE**, a California Corporation (hereinafter referred to as "Service Provider").

SECTION A. RECITALS

1. The CITY has a need for general services for environmental, permitting, and arborist services related to projects for emergency repair to public property, trees, parks, and other infrastructure caused by severe storms in March 2023;
2. 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
3. This Service Provider will be providing emergency tree trimming and removal services in conjunction with the March 2023 Winter Storm Emergency Response Tree Work Project; and
4. Service Provider represents that it is sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the City; and
5. Goleta Municipal Code Section 2.10.040(A)(6)(a) allows the City Manager (referenced as "Director of Emergency Services") to "make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided however, such rules and regulations must be confirmed at the earliest practicable time by the City Council"; and
6. An emergency exists in the CITY due to the severe storms of 2023 which caused significant damage to roadways and CITY infrastructure. Therefore, it is necessary to the public health and safety that the City Manager immediately authorize the start of work on emergency mitigation measures, subject to ratification by City Council; and

7. The City Manager authorized this agreement pursuant to Goleta Municipal Code Section 2.10.040(A)(6)(a) and the City Council ratified this agreement at its next public meeting.

SECTION B.TERMS

1. RETENTION OF SERVICE PROVIDER

City hereby retains Service Provider, and Service Provider hereby accepts such engagement, to perform emergency tree trimming and removal services, as requested, and attached herein as **Exhibit "A"**. Service Provider warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. COMPENSATION AND PAYMENT

(a) **Maximum and Rate**. The total compensation earned by or payable to the Service Provider, by the City, for any and all services under this Agreement are estimated to be **\$10,000**, and **SHALL NOT EXCEED** the sum of **\$10,000** over the life of the Agreement, and shall be earned on the following basis:

Hourly at the hourly rates and with reimbursement to the Service Provider for those expenses set forth in Service Provider's Schedule of Fees marked **Exhibit "B,"** attached and incorporated herein.

(b) **Payment**. All payments shall be made within 30 days after the Service Provider has provided the City with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to the City's Project Manager.

3. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by the Service Provider shall be accomplished under the general direction of, and coordinate with, the City's "Project Manager", as that staff person is designated by the City from time to time, and who presently is George Thomson, Parks and Open Space Manager.

4. PROGRESS AND COMPLETION

Project Manager shall assign, in writing, Service Provider with discrete projects, which shall in no event exceed \$10,000. Service Provider shall commence work on the services to be performed on each project as requested and authorized by the Project Manager.

For each discrete job requested by the Project Manager, Service Provider must respond to provide at least an initial assessment of the project. Service Provider will

provide an estimate to the Project Manager and only start work upon written authorization from the Project Manager.

5. AGREEMENT PERFORMANCE

Non-Exclusivity. This Agreement is non-exclusive. City reserves the right to retain, employ, Agreement with other qualified providers of services during the term of this Agreement on such occasions and in such circumstances as City shall determine are appropriate.

Ability to Perform. The Service Provider warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal, state, county, city, and special district laws, ordinances, and regulations.

Laws to be Observed. The Service Provider shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City of Goleta ordinances, regulations and adopted codes during its performance of the work.

Payment of Taxes. The Agreement prices shall include full compensation for all taxes which the Service Provider is required to pay.

Permits and Licenses. The Service Provider shall procure all permits and licenses, pay all charges and fees, and give all notices necessary.

Prevailing Wage. The Service Provider is obligated to pay prevailing wages under the California Labor Code. Service Provider agrees to indemnify, defend and hold City harmless from any claim that prevailing wages should have been paid, and shall be liable for the payment of the same and any penalties thereon. It is the responsibility of the Service Provider to be familiar with the California Labor Code, and failure or neglect of the Service Provider to understand the California Labor Code shall in no way relieve him from any obligations.

Safety Provisions. The Service Provider shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.

Preservation of City Property. The Service Provider shall provide and install suitable safeguards, approved by City, to protect City property from injury or damage. If City property is injured or damaged as a result of the Service Provider's operations, it shall be replaced or restored at the Service Provider's expense. The facilities shall be replaced or restored to a condition as good as when the Service Provider began work.

Immigration Act of 1986. The Service Provider warrants on behalf of itself, and all subcontractor Providers engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

Service Provider Non-Discrimination. The Service Provider shall not discriminate based on race, color, gender, gender identity/expression, pregnancy, sexual orientation, disability, marital status, or any other characteristic protected under applicable federal or state law.

Work Delays. Should the Service Provider be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at City's sole option, be extended for such periods as may be agreed upon by City and the Service Provider. In the event that there is insufficient time to grant such extensions prior to the completion date of the Agreement, City may, at the time of acceptance of the work, waive liquidated damages which may have accrued for failure to complete on time, due to any of the above, after hearing evidence as to the reasons for such delay, and making a finding as to the causes of same.

Inspection. The Service Provider shall furnish City with every reasonable opportunity for City to ascertain that the services of the Service Provider are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to City's inspection and approval. The inspection of such work shall not relieve Service Provider of any of its obligations to fulfill its Agreement requirements.

Audit. City shall have the option of inspecting and/or auditing all records and other written materials used by Service Provider in preparing its invoices to City as a condition precedent to any payment to Service Provider.

Interests of Service Provider. The Service Provider covenants that it presently has no interest, and shall not acquire any interest, direct or indirect or otherwise, which would conflict in any manner or degree with the performance of the work hereunder. The Service Provider further covenants that, in the performance of this work, no subcontractor or person having such an interest shall be employed. The Service Provider certifies that no one who has or will have any financial interest in performing this work is an officer or employee of City. It is hereby expressly agreed that, in the performance of the work hereunder, the Service Provider shall at all times be deemed an independent Service Provider and not an agent or employee of City.

6. TERM

This Agreement shall expire on December 31, 2023.

7. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports, and other documentation (other than Service Provider's drafts, notes and internal memorandum), including duplication of same prepared by Service Provider in the performance of these services, shall become the property of the City upon termination of the consulting services pursuant to this Agreement and upon payment in full of all compensation then due Service Provider. If requested by the City, all, or the designated portions of such, shall be delivered to the City. The City agrees to hold the Service Provider 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 the Service Provider is first obtained.

8. PERSONAL SERVICES/NO ASSIGNMENT/SUBSERVICE PROVIDER

This Agreement is for general services which are personal to City. Nick Gosnell, President, is deemed to be specially experienced and is a key lead for services provided, and shall be directly involved in performing, supervising or assisting 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. Service Provider must ensure that subcontractors must adhere to all applicable provisions of this Agreement relating to providing services to City.

9. HOLD HARMLESS AND INDEMNITY

(a) Hold Harmless for Service Provider's Damages. The Service Provider holds the City, its elected officials, officers and employees, harmless from all of Service Provider's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to the Service Provider, to the Service Provider's employees, to Service Provider's Service Providers or subcontractor, or to the owners of the Service Provider's firm, which damages, losses, injuries or liability occur during the work or services required under this Agreement, or occur while Service Provider is in a City building or on City property, or which are connected, directly or indirectly, with the Service Provider's performance of any activity or work required under this Agreement.

(b) Defense and Indemnity of Third Party Claims/Liability. Service Provider shall investigate, defend, and indemnify the City, its elected officials, officers and

City of Goleta

Public Works Agreement with Nicks Tree Service

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employees, from any claims, lawsuits, demands, judgments and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, professional errors and omissions arising out of, directly or indirectly, an error, a negligent act or negligent omission of the Service Provider or of Service Provider's subcontractor, or the willful misconduct of the Service Provider or Service Provider's Service Providers/subcontractor, in performing the services described in, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions in law or equity concerning any activity, product or work required under this Agreement, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related to such litigation.

(c) Nonwaiver. The 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 the City, or the deposit with the City, of any insurance certificates or policies described in section 10.

10. INSURANCE

Service Provider shall, at Service Provider'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 in the 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.

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

- a) Except for professional liability insurance, 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 Agreement. 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) Except for professional liability insurance, liability coverage shall be primary and non-contributing with any insurance maintained by City.
- d) 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.
- e) No liability insurance coverage provided to comply with this Agreement shall prohibit Service Provider, or Service Provider's employees, or agents, from waiving the right of recovery prior to a loss. Service Provider waives its right of recovery against City.
- f) Service Provider agrees to deposit with City within fifteen days of Notice to Proceed of the Agreement certificates of insurance and required endorsements.
- g) There shall be no recourse against City for payment of premiums or other amounts with respect to the insurance required to be provided by Service Provider 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 Service Provider or City will withhold amounts sufficient to pay premium from Service Provider payments.

- h) Service Provider agrees to provide immediate notice to City of any claim or loss against Service Provider 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. RELATION OF THE PARTIES

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

12. TERMINATION BY CITY

The City, by notifying Service Provider in writing, may upon five (5) calendar days notice, terminate any portion or all of the services agreed to be performed under this Agreement. In the event of such termination, Service Provider 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 Service Provider within 30 days following submission of a final statement by Service Provider.

13. CORRECTIONS

The Service Provider shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Service Provider's work. Should Service Provider fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to Service Provider.

14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by Service Provider of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to Service Provider for anything done, furnished, or relating to Service Provider'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 five (5) calendar

days of the receipt of that check, whichever occurs first. However, any approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of Service Provider, its employees, subcontractors, agents and Service Providers 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 the City for any defect or error in the work prepared by Service Provider, its employees, subcontractor, agents and Service Providers.

15. 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.

16. CONFLICT OF INTEREST

Service Provider is unaware of any City employee or official that has a financial interest in Service Provider's business. During the term of this Agreement and/or as a result of being awarded this Agreement, the Service Provider shall not offer, encourage or accept any financial interest in Service Provider's business by any City employee or official. If a portion of Service Provider's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an Agreement with a developer of any land within the City or with a City franchisee, the Service Provider warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any Agreement or request to perform services for that identified developer/franchisee during the term of this Agreement.

17. 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 and, should litigation occur, venue shall be in the Superior Court of Santa Barbara.

18. 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.

19. ENTIRE AGREEMENT BETWEEN PARTIES

Except for Service Provider'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.

20. 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:

Robert Nisbet, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

TO SERVICE PROVIDER:

Attention: Nick Gosnell
Nick's Tree Service
2416 De la Bina St. APT #5
Santa Barbara, CA 93105

21. 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.

22. FEDERAL REQUIREMENTS

FEMA financial assistance will be used to fund all or a portion of this contract. The Service Provider 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.

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:

Robert Nisbet

1AEBACAD159E4D7...
ROBERT NISBET, City Manager

SERVICE PROVIDER

DocuSigned by:

Nick Gosnell

D7E8588099A6444...
NICK GOSNELL
Owner

ATTEST:

DocuSigned by:

Deborah Lopez

A3E09F3473CA47E...
Deborah Lopez, City Clerk

APPROVED AS TO FORM:

MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:

Winnie Cai

A1BF8F8961B1498...
Winnie Cai, Assistant City Attorney

EXHIBIT A
SCOPE OF WORK

Service provider shall provide emergency and storm removal and tree trimming services in conjunction with the emergency and storm response services and tree trimming project as directed by the Parks and Open Space Manager in consultation with the consulting city arborist and consulting biologist for emergency services. The scope of work includes but is not limited to:

- Emergency Tree Trimming
- Emergency Tree Removal
- Haul and disposal of any large wood
- Chip and Broadcast, Onsite, any remaining wood associated with tree trimming under this Scope of Work

EXHIBIT B SCHEDULE OF FEES

Tree work:

- \$75 per hour - *Includes all equipment for climbing trees and maintaining safe work conditions*
- \$75 on-time inspection fee by certified arborist (Nick Gosnell)

Stump grinding:

- Large hydraulic grinder - @ \$225 per hour - *includes grinder and maintenance plus 2 workers*
- Small walk behind - @ \$175 per hour - *includes grinder and maintenance plus 2 workers*

Debris chipping:

- 3 men plus truck and chipper @ \$275 per hour

EXHIBIT C FEDERAL CONTRACT PROVISIONS

During the performance of this contract, Nick Gosnell (the "Service Provider") 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 Service Provider.

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

A. Service Provider 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.

Service Provider 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)

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- 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 Service Provider.

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

- A. Service Provider 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 Service Provider personnel for the purpose of interview and discussion related to the books and records.
- B. The Service Provider 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 Service Provider 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

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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 Service Provider, terminate this contract for convenience, in whole or in part, at any time by giving written notice to Service Provider 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. Service Provider shall provide documentation deemed adequate by the Agency to show the work actually completed or materials provided by Service Provider 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 Service Provider fails to perform pursuant to the terms of this contract, the Agency shall provide written notice to Service Provider specifying the default ("Notice of Default"). If Service Provider 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 Service Provider fails to cure a default as set forth above, the Agency may, by written notice to Service Provider, 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, Service Provider 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 Service Provider's deficiencies and charge the cost thereof to Service Provider, 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 Service Provider performance of the work.
 - iv. Additional Termination Provisions. Upon receipt of a Notice of Termination, either for cause or for convenience, Service Provider shall promptly discontinue the work unless the Notice directs to the contrary. Service Provider 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. Service Provider 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. Service Provider 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, Service Provider shall be entitled to receive only the amounts payable under this Section, and Service Provider 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, Service Provider 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. Service Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Service Provider 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. Service Provider 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. Service Provider will, in all solicitations or advertisements for employees placed by or on behalf of Service Provider, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- iii. Service Provider 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 Service Provider's legal duty to furnish information.
- iv. Service Provider 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. Service Provider 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. Service Provider 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 Service Provider'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. Service Provider 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 Service Provider. Service Provider 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 Service Provider becomes involved in, or is threatened with, litigation with a subcontractor or Service Provider as a result of such direction, Service Provider 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, Service Provider 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 Service Provider 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 Service Provider 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, Service Provider 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) Service Provider 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) Service Provider 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) Service Provider agrees to include these requirements in each subcontract exceeding \$150,000.
- ii. Pursuant to the Federal Water Pollution Control Act, (1) Service Provider 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) Service Provider 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) Service Provider 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 Service Provider is required to verify that none of the Service Provider, 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. Service Provider 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 Service Provider 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. Service Provider warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Service Provider 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. Service Provider further agrees to notify the Agency in writing immediately if Service Provider 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, Service Provider 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, Service Provider shall file with the Agency the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying.” Service Providers 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. Service Provider 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 Service Provider 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 Service Provider 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 Service Provider will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- C. Service Provider acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Service Provider'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, Service Provider, 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 Service Provider, the Service Provider'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 Service Provider exceeds at its own risk.

ATTACHMENT 9

General Services Agreement No. 2023-032 with Mark Crane's Tree and
Arborist Services

Project Name: March 2023 Winter Storm Emergency Response Tree Work

**AN AGREEMENT FOR GENERAL SERVICES
BETWEEN THE CITY OF GOLETA
AND
MARK CRANE'S TREE AND ARBORIST SERVICES**

THIS GENERAL SERVICES AGREEMENT ("Agreement"), made and entered into this 7th day of March 2023, by and between the **CITY OF GOLETA**, a municipal corporation (hereinafter referred to as "City"), and **MARK CRANE'S TREE AND ARBORIST SERVICES**, a California Corporation (hereinafter referred to as "Service Provider").

SECTION A. RECITALS

1. The CITY has a need for general services for environmental, permitting, and arborist services related to projects for emergency repair to public property, trees parks, and other infrastructure caused by severe storms in March 2023;
2. 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
3. This Service Provider will be providing emergency tree trimming and removal services in conjunction with the March 2023 Winter Storm Emergency Response Tree Work Project; and
4. Service Provider represents that it is sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the City; and
5. Goleta Municipal Code Section 2.10.040(A)(6)(a) allows the City Manager (referenced as "Director of Emergency Services") to "make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided however, such rules and regulations must be confirmed at the earliest practicable time by the City Council"; and
6. An emergency exists in the CITY due to the severe storms of 2023 which caused significant damage to roadways and CITY infrastructure. Therefore, it is necessary to the public health and safety that the City Manager immediately authorize the start of work on emergency mitigation measures, subject to ratification by City Council; and

7. The City Manager authorized this agreement pursuant to Goleta Municipal Code Section 2.10.040(A)(6)(a) and the City Council ratified this agreement at its next public meeting.

SECTION B. TERMS

1. RETENTION OF SERVICE PROVIDER

City hereby retains Service Provider, and Service Provider hereby accepts such engagement, to perform emergency tree trimming and removal services, as requested, and attached herein as **Exhibit "A"**. Service Provider warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. COMPENSATION AND PAYMENT

(a) **Maximum and Rate**. The total compensation earned by or payable to the Service Provider, by the City, for any and all services under this Agreement are estimated to be **\$50,000**, and **SHALL NOT EXCEED** the sum of **\$50,000** over the life of the Agreement, and shall be earned on the following basis:

Hourly at the hourly rates and with reimbursement to the Service Provider for those expenses set forth in Service Provider's Schedule of Fees marked **Exhibit "B,"** attached and incorporated herein.

(b) **Payment**. All payments shall be made within 30 days after the Service Provider has provided the City with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to the City's Project Manager.

3. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by the Service Provider shall be accomplished under the general direction of, and coordinate with, the City's "Project Manager", as that staff person is designated by the City from time to time, and who presently is George Thomson, Parks and Open Space Manager.

4. PROGRESS AND COMPLETION

Project Manager shall assign, in writing, Service Provider with discrete projects, which shall in no event exceed \$50,000 per project. Service Provider shall commence work on the services to be performed on each project as requested and authorized by the Project Manager.

For each discrete job requested by the Project Manager, Service Provider must respond to provide at least an initial assessment of the project. Service Provider will

provide an estimate to the Project Manager and only start work upon written authorization from the Project Manager.

5. AGREEMENT PERFORMANCE

Non-Exclusivity. This Agreement is non-exclusive. City reserves the right to retain, employ, Agreement with other qualified providers of services during the term of this Agreement on such occasions and in such circumstances as City shall determine are appropriate.

Ability to Perform. The Service Provider warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal, state, county, city, and special district laws, ordinances, and regulations.

Laws to be Observed. The Service Provider shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City of Goleta ordinances, regulations and adopted codes during its performance of the work.

Payment of Taxes. The Agreement prices shall include full compensation for all taxes which the Service Provider is required to pay.

Permits and Licenses. The Service Provider shall procure all permits and licenses, pay all charges and fees, and give all notices necessary.

Prevailing Wage. The Service Provider is obligated to pay prevailing wages under the California Labor Code. Service Provider agrees to indemnify, defend and hold City harmless from any claim that prevailing wages should have been paid, and shall be liable for the payment of the same and any penalties thereon. It is the responsibility of the Service Provider to be familiar with the California Labor Code, and failure or neglect of the Service Provider to understand the California Labor Code shall in no way relieve him from any obligations.

Safety Provisions. The Service Provider shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.

Preservation of City Property. The Service Provider shall provide and install suitable safeguards, approved by City, to protect City property from injury or damage. If City property is injured or damaged as a result of the Service Provider's operations, it shall be replaced or restored at the Service Provider's expense. The facilities shall be replaced or restored to a condition as good as when the Service Provider began work.

Immigration Act of 1986. The Service Provider warrants on behalf of itself, and all subcontractor Providers engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

Service Provider Non-Discrimination. The Service Provider shall not discriminate based on race, color, gender, gender identity/expression, pregnancy, sexual orientation, disability, marital status, or any other characteristic protected under applicable federal or state law.

Work Delays. Should the Service Provider be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at City's sole option, be extended for such periods as may be agreed upon by City and the Service Provider. In the event that there is insufficient time to grant such extensions prior to the completion date of the Agreement, City may, at the time of acceptance of the work, waive liquidated damages which may have accrued for failure to complete on time, due to any of the above, after hearing evidence as to the reasons for such delay, and making a finding as to the causes of same.

Inspection. The Service Provider shall furnish City with every reasonable opportunity for City to ascertain that the services of the Service Provider are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to City's inspection and approval. The inspection of such work shall not relieve Service Provider of any of its obligations to fulfill its Agreement requirements.

Audit. City shall have the option of inspecting and/or auditing all records and other written materials used by Service Provider in preparing its invoices to City as a condition precedent to any payment to Service Provider.

Interests of Service Provider. The Service Provider covenants that it presently has no interest, and shall not acquire any interest, direct or indirect or otherwise, which would conflict in any manner or degree with the performance of the work hereunder. The Service Provider further covenants that, in the performance of this work, no subcontractor or person having such an interest shall be employed. The Service Provider certifies that no one who has or will have any financial interest in performing this work is an officer or employee of City. It is hereby expressly agreed that, in the performance of the work hereunder, the Service Provider shall at all times be deemed an independent Service Provider and not an agent or employee of City.

6. TERM

This Agreement shall expire on December 31, 2023.

7. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports, and other documentation (other than Service Provider's drafts, notes and internal memorandum), including duplication of same prepared by Service Provider in the performance of these services, shall become the property of the City upon termination of the consulting services pursuant to this Agreement and upon payment in full of all compensation then due Service Provider. If requested by the City, all, or the designated portions of such, shall be delivered to the City. The City agrees to hold the Service Provider 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 the Service Provider is first obtained.

8. PERSONAL SERVICES/NO ASSIGNMENT/SUBSERVICE PROVIDER

This Agreement is for general services which are personal to City. Mark Crane, President, is deemed to be specially experienced and is a key lead for services provided, and shall be directly involved in performing, supervising or assisting 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. Service Provider must ensure that subcontractors must adhere to all applicable provisions of this Agreement relating to providing services to City.

9. HOLD HARMLESS AND INDEMNITY

(a) Hold Harmless for Service Provider's Damages. The Service Provider holds the City, its elected officials, officers and employees, harmless from all of Service Provider's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to the Service Provider, to the Service Provider's employees, to Service Provider's Service Providers or subcontractor, or to the owners of the Service Provider's firm, which damages, losses, injuries or liability occur during the work or services required under this Agreement, or occur while Service Provider is in a City building or on City property, or which are connected, directly or indirectly, with the Service Provider's performance of any activity or work required under this Agreement.

(b) Defense and Indemnity of Third Party Claims/Liability. Service Provider shall investigate, defend, and indemnify the City, its elected officials, officers and

City of Goleta

Public Works Agreement with Mark Crane's Tree & Arborist Services

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employees, from any claims, lawsuits, demands, judgments and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, professional errors and omissions arising out of, directly or indirectly, an error, a negligent act or negligent omission of the Service Provider or of Service Provider's subcontractor, or the willful misconduct of the Service Provider or Service Provider's Service Providers/subcontractor, in performing the services described in, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions in law or equity concerning any activity, product or work required under this Agreement, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related to such litigation.

(c) Nonwaiver. The 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 the City, or the deposit with the City, of any insurance certificates or policies described in section 10.

10. INSURANCE

Service Provider shall, at Service Provider'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 in the 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.

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

- a) Except for professional liability insurance, 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 Agreement. 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) Except for professional liability insurance, liability coverage shall be primary and non-contributing with any insurance maintained by City.
- d) 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.
- e) No liability insurance coverage provided to comply with this Agreement shall prohibit Service Provider, or Service Provider's employees, or agents, from waiving the right of recovery prior to a loss. Service Provider waives its right of recovery against City.
- f) Service Provider agrees to deposit with City within fifteen days of Notice to Proceed of the Agreement certificates of insurance and required endorsements.
- g) There shall be no recourse against City for payment of premiums or other amounts with respect to the insurance required to be provided by Service Provider 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 Service Provider or City will withhold amounts sufficient to pay premium from Service Provider payments.

- h) Service Provider agrees to provide immediate notice to City of any claim or loss against Service Provider 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. RELATION OF THE PARTIES

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

12. TERMINATION BY CITY

The City, by notifying Service Provider in writing, may upon five (5) calendar days notice, terminate any portion or all of the services agreed to be performed under this Agreement. In the event of such termination, Service Provider 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 Service Provider within 30 days following submission of a final statement by Service Provider.

13. CORRECTIONS

The Service Provider shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Service Provider's work. Should Service Provider fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to Service Provider.

14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by Service Provider of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to Service Provider for anything done, furnished, or relating to Service Provider'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 five (5) calendar

days of the receipt of that check, whichever occurs first. However, any approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of Service Provider, its employees, subcontractors, agents and Service Providers 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 the City for any defect or error in the work prepared by Service Provider, its employees, subcontractor, agents and Service Providers.

15. 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.

16. CONFLICT OF INTEREST

Service Provider is unaware of any City employee or official that has a financial interest in Service Provider's business. During the term of this Agreement and/or as a result of being awarded this Agreement, the Service Provider shall not offer, encourage or accept any financial interest in Service Provider's business by any City employee or official. If a portion of Service Provider's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an Agreement with a developer of any land within the City or with a City franchisee, the Service Provider warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any Agreement or request to perform services for that identified developer/franchisee during the term of this Agreement.

17. 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 and, should litigation occur, venue shall be in the Superior Court of Santa Barbara.

18. 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.

19. ENTIRE AGREEMENT BETWEEN PARTIES

Except for Service Provider'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.

20. 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:

Robert Nisbet, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

TO SERVICE PROVIDER:

Attention: Mark Crane, President
Mark Crane's Tree and Arborist Services
PO Box 983
Goleta, CA 93116

21. 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.

22. FEDERAL REQUIREMENTS

FEMA financial assistance will be used to fund all or a portion of this contract. The Service Provider 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.


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:

1AEBACAD159E4D7...
Robert Nisbet, City Manager

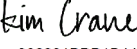
SERVICE PROVIDER

DocuSigned by:

8E4FEECE597E41A...
By: Mark Crane
Title: President

ATTEST:

DocuSigned by:

A3E09F3473CA47E...
Deborah Lopez, City Clerk

DocuSigned by:

906901BDB1B4489...
By: Kim Crane
Title: Vice President

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:

A1BF8F896161498...
Winnie Cai, Assistant City Attorney

EXHIBIT A

SCOPE OF WORK

Service provider shall provide emergency and storm removal and tree trimming services in conjunction with the emergency and storm response services and tree trimming project as directed by the Parks and Open Space Manager in consultation with the consulting city arborist and consulting biologist for emergency services. The scope of work includes but is not limited to:

- Emergency Tree Trimming
- Emergency Tree Removal
- Haul and disposal of any large wood
- Chip and Broadcast, Onsite, any remaining wood associated with tree trimming under this Scope of Work

EXHIBIT B**SCHEDULE OF FEES****Mark Cranes Tree Inc.,
Labor and Equipment Rate Sheet****Labor – Billed port to port from our yard at 150c David Love Place, Goleta CA
93117****Regular Time**

\$105.00 per hour

Groundman / Rigger

\$131.25 per hour

Climber / Aerial lift and other large equipment

Overtime

\$157.50 per hour

Groundman / Rigger

\$196.85 per hour

Climber / Aerial lift and other large equipment

***Holidays or Emergency**

\$210.00 per hour

Groundman / Rigger

\$262.50 per hour

Climber / Aerial lift and other large equipment

*The labor rate includes 1 dump truck, 1 chipper, and or 1 aerial lift per crew.

Equipment Day Rate

\$735.00 per day

299 CAT Skid Steer with Bucket

\$210.00 per day

Grapple

\$300.00 per day

Mower

\$210.00 per day

Drill

\$3,150.00 per day

Pal Finger 5002 Grapple Crane

\$787.50 per day

Spider 83-foot lift

\$200.00 per day

Mid Skid Steer

Additional Equipment Day Rate

\$210.00 per day

Dump Trucks

\$210.00 per day

Vermeer BC 1000 Chipper

\$420.00 per day

Vermeer BC 1800 Chipper

\$525.00 per day

Vermeer SC60TX

EXHIBIT C

FEDERAL CONTRACT PROVISIONS

During the performance of this contract, Mark Crane (the "Service Provider") 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 Service Provider.

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

- A. Service Provider 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.

Service Provider 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 Service Provider.

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

- A. Service Provider 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 Service Provider personnel for the purpose of interview and discussion related to the books and records.
- B. The Service Provider 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 Service Provider 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

City of Goleta

Public Works Agreement with Mark Crane’s Tree & Arborist Services

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manner by which it will be effected and the basis for settlement, then the 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 Service Provider, terminate this contract for convenience, in whole or in part, at any time by giving written notice to Service Provider 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. Service Provider shall provide documentation deemed adequate by the Agency to show the work actually completed or materials provided by Service Provider 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 Service Provider fails to perform pursuant to the terms of this contract, the Agency shall provide written notice to Service Provider specifying the default ("Notice of Default"). If Service Provider 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 Service Provider fails to cure a default as set forth above, the Agency may, by written notice to Service Provider, 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, Service Provider 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 Service Provider's deficiencies and charge the cost thereof to Service Provider, 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 Service Provider performance of the work.

- iv. Additional Termination Provisions. Upon receipt of a Notice of Termination, either for cause or for convenience, Service Provider shall promptly discontinue the work unless the Notice directs to the contrary. Service Provider 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. Service Provider 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. Service Provider 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, Service Provider shall be entitled to receive only the amounts payable under this Section, and Service Provider 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, Service Provider 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. Service Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Service Provider 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. Service Provider 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. Service Provider will, in all solicitations or advertisements for employees placed by or on behalf of Service Provider, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- iii. Service Provider 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 Service Provider's legal duty to furnish information.

- iv. Service Provider 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. Service Provider 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. Service Provider 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 Service Provider'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. Service Provider 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 Service Provider. Service Provider 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 Service Provider becomes involved in, or is threatened with, litigation with a subcontractor or Service Provider as a result of such direction, Service Provider 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, Service Provider 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 Service Provider 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 Service Provider 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, Service Provider 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) Service Provider 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) Service Provider 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) Service Provider agrees to include these requirements in each subcontract exceeding \$150,000.

- ii. Pursuant to the Federal Water Pollution Control Act, (1) Service Provider 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) Service Provider 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) Service Provider 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 Service Provider is required to verify that none of the Service Provider, 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. Service Provider 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 Service Provider 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. Service Provider warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal

programs. Service Provider 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. Service Provider further agrees to notify the Agency in writing immediately if Service Provider 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, Service Provider 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, Service Provider shall file with the Agency the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying.” Service Providers 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. Service Provider 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 Service Provider 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 Service Provider 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 Service Provider will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- C. Service Provider acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Service Provider'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, Service Provider, 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 Service Provider, the Service Provider'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 Service Provider exceeds at its own risk.

Policy Number: CS TMGL0000448-00

Effective Date: 9/15/2022

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU (PRIMARY & NONCONTRIBUTORY)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II - Who is An Insured is amended to include as an insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf; in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded these additional insureds, the following additional exclusion apply:

This insurance does not apply to:

1. "Bodily injury", "property damage", "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.
2. "Bodily injury", "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project; or
 - c. "Property Damage" which manifests after expiration of the Policy.

If required by written contract or agreement, such insurance as is afforded by this policy shall be primary insurance, and any insurance or self insurance maintained by the above additional insured(s) shall be excess of the insurance afforded to the Named Insured and shall not contribute to it.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

ATTACHMENT 10

Public Works Contract No. 2023-045 with Toro Enterprises, Inc.

**PUBLIC WORKS CONTRACT
BETWEEN THE CITY OF GOLETA
AND
TORO ENTERPRISES**

This Public Works Contract (herein referred to as "CONTRACT") is made and entered into by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **TORO ENTERPRISES INC.**, a California Corporation (hereinafter referred to as "CONTRACTOR").

SECTION A. RECITALS

1. The CITY has a need for construction services related to projects for emergency repair to public property, trees, parks, and other infrastructure caused by severe storms in 2023; and
2. 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 construction services to accomplish this work; and
3. Goleta Municipal Code Section 2.10.040(A)(6)(a) allows the City Manager (referenced as "Director of Emergency Services") to "make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided however, such rules and regulations must be confirmed at the earliest practicable time by the City Council"; and
4. An emergency exists in the CITY due to the severe storms of 2023 which caused significant damage to roadways and CITY infrastructure. Therefore, it is necessary to the public health and safety that the City Manager immediately authorize the start of work on emergency mitigation measures, subject to ratification by City Council; and
5. The City Manager authorized this agreement pursuant to Goleta Municipal Code Section 2.10.040(A)(6)(a) and the City Council ratified this agreement at its next public meeting.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, it is agreed:

SECTION B. TERMS

1. **GENERAL SCOPE OF WORK: CITY agrees to engage CONTRACTOR and CONTRACTOR** agrees to furnish all necessary labor, tools, materials, appliances, and equipment for and do the work for the Cathedral Oaks Slope Stability Project in the City of Goleta as provided for in the Exhibit A. The work shall be performed

in accordance with the instructions of the City Engineer, or City's Manager's designee.

2. **COMPENSATION:** CONTRACTOR agrees to receive and accept the prices set forth in its Proposal as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder (Contract Price). Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof in the manner and time specified in this CONTRACT; and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work.
3. **TIME OF PERFORMANCE:** CONTRACTOR agrees to complete the work within the timeframe of one month from the date of the notice to proceed. By signing this CONTRACT, CONTRACTOR represents to CITY that the Contract Time is reasonable for completion of the work and that CONTRACTOR will complete such work within the Contract Time. In accordance with Government Code Section 53069.85, CONTRACTOR agrees to forfeit and pay CITY as liquidated damages, not as a penalty, the sum of \$1000 per day for each and every day of unauthorized delay beyond the completion date, which amount shall be deducted from any payments due or to become due the CONTRACTOR.
4. **PREVAILING WAGES:**
 - A. Pursuant to Labor Code Sections §§1720 *et seq.*, including but not limited to sections 1771, 1774 and 1775, and as specified in Title 8, California Code of Regulations, Section 16000 *et seq.*, CONTRACTOR must pay its workers prevailing wages. It is CONTRACTOR's responsibility to interpret and implement any prevailing wage requirements and CONTRACTOR agrees to pay any penalty or civil damages resulting from a violation of the prevailing wage laws.
 - B. In accordance with Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are available upon request from CITY's Engineering Division or the website for State of California Prevailing wage determination at <http://www.dir.ca.gov/DLSR/PWD>. CONTRACTOR must post a copy of the prevailing rate of per diem wages at the job site.
 - C. CITY directs CONTRACTOR's attention to Labor Code Sections 1777.5, 1777.6 and 3098 concerning the employment of apprentices by CONTRACTOR or any subcontractor.

D. Labor Code Section 1777.5 requires CONTRACTOR or subcontractor employing tradesmen in any apprenticeship occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate must also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases will not be less than one to five except:

- (1) When employment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent in the 90 days before the request for certificate, or
- (2) When the number of apprentices in training in the area exceeds a ratio of one to five, or
- (3) When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally, or
- (4) When assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

Pursuant to Labor Code § 1776, CONTRACTOR shall comply with all Department of Industrial Relations registration requirements.

E. CONTRACTOR is required to make contributions to funds established for the administration of apprenticeship programs if CONTRACTOR employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

F. CONTRACTOR and any subcontractor must comply with Labor Code Sections 1777.5 and 1777.6 in the employment of apprentices.

G. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the Director of Industrial Relations (DIR), ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

- H. CONTRACTOR and its subcontractors must keep an accurate certified payroll records showing the name, occupation, and the actual per diem wages paid to each worker employed in connection with this CONTRACT. The record will be kept open at all reasonable hours to the inspection of the body awarding the contract and to the Division of Labor Law Enforcement. If requested by CITY, CONTRACTOR must provide copies of the records at its cost.
5. **LEGAL HOURS OF WORK:** CONTRACTOR agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. Except as provided by Labor Code Section 1815, the CONTRACTOR shall, as a penalty to the CITY, forfeit twenty five dollars (\$25) for each worker employed in the execution of the Contract by the CONTRACTOR or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 (commencing at Section 1810) of the California Labor Code.
6. **TRAVEL AND SUBSISTENCE PAY:** CONTRACTOR agrees to pay travel and subsistence pay to each worker needed to execute the work required by this CONTRACT as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.
7. **CONTRACTOR'S LIABILITY:** The CITY and its officers, agents and employees ("Indemnitees") shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof, or for any of the materials or other things used or employed in performing the work; or for injury or damage to any person or persons, either workers or employees of CONTRACTOR, of its subcontractors or the public, or for damage to adjoining or other property from any cause whatsoever arising out of or in connection with the performance of the work. CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever.

CONTRACTOR will indemnify Indemnities against and will hold and save Indemnitees harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of CONTRACTOR, its agents, employees, subcontractors or invitees provided for herein, whether or not there is concurrent passive negligence on the part of CITY. In connection therewith:

- a. CONTRACTOR will defend any action or actions filed in connection with any such claims, damages, penalties, obligations or liabilities and will pay all costs and expenses, including attorneys' fees, expert fees and costs incurred in connection therewith.
- b. CONTRACTOR will promptly pay any judgment rendered against CONTRACTOR or Indemnitees covering such claims, damages, penalties, obligations and liabilities arising out of or in connection with such work, operations or activities of CONTRACTOR hereunder, and CONTRACTOR agrees to save and hold the Indemnitees harmless therefrom.
- c. In the event Indemnitees are made a party to any action or proceeding filed or prosecuted against CONTRACTOR for damages or other claims arising out of or in connection with the work, operation or activities hereunder, CONTRACTOR agrees to pay to Indemnitees and any all costs and expenses incurred by Indemnitees in such action or proceeding together with reasonable attorneys' fees.

CONTRACTOR'S obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnatee. However, without affecting the rights of CITY under any provision of this CONTRACT, Contractor shall not be required to indemnify and hold harmless CITY for liability attributable to the active negligence of CITY, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where CITY is shown to have been actively negligent and where CITY active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

So much of the money due to CONTRACTOR under and by virtue of the contract as shall be considered necessary by CITY may be retained by CITY until disposition has been made of such actions or claims for damages as aforesaid.

It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California. This indemnity provision shall survive the termination of the CONTRACT and is in addition to any other rights or remedies which Indemnitees may have under the law.

This indemnity is effective without reference to the existence or applicability of any insurance coverage which may have been required under this CONTRACT or any additional insured endorsements which may extend to Indemnitees.

CONTRACTOR, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the CONTRACTOR regardless of any prior, concurrent, or subsequent passive negligence by the Indemnitees.

8. **THIRD PARTY CLAIMS:** In accordance with Public Contracts Code Section 9201, CITY will promptly inform CONTRACTOR regarding third-party claims against CONTRACTOR, but in no event later than ten (10) business days after CITY receives such claims. Such notification will be in writing and forwarded in accordance with the "Notice" section of this CONTRACT. CONTRACTOR agrees to indemnify, hold harmless and defend the City against any third-party claim.
9. **POTENTIAL CLAIMS AND DISPUTE RESOLUTION:** Refer to Exhibit C for potential claims and dispute resolution information.
10. **WORKERS COMPENSATION:** In accordance with California Labor Code Sections 1860 and 3700, CONTRACTOR and each of its subcontractors will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, CONTRACTOR, by signing this contract, certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
11. **INSURANCE:** With respect to performance of work under this CONTRACT, CONTRACTOR shall maintain and shall require all of its subcontractors to maintain insurance as required in the Standard Specifications.
12. **ASSIGNMENT:** This CONTRACT is not assignable nor the performance of either party's duties delegable without the prior written consent of the other party. Any attempted or purported assignment or delegation of any of the rights or obligations of either party without the prior written consent of the other shall be void and of no force and effect.

- 13. INDEPENDENT CONTRACTOR:** CONTRACTOR is and shall at all times remain as to the CITY, a wholly independent contractor. Neither the CITY nor any of its agents shall have control of the conduct of CONTRACTOR or any of CONTRACTOR'S employees, except as herein set forth. CONTRACTOR shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of CITY.
- 14. TAXES:** CONTRACTOR is responsible for paying all retail sales and use, transportation, export, import, special or other taxes and duties applicable to, and assessable against any work, materials, equipment, services, processes and operations incidental to or involved in this contract. CONTRACTOR is responsible for ascertaining and arranging to pay them. The prices established in the contract shall include compensation for any taxes CONTRACTOR is required to pay by laws and regulations in effect at the notice to proceed .
- 15. LICENSES:** CONTRACTOR represents and warrants to CITY that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required of CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to CITY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this CONTRACT any licenses, permits, insurance, and approvals which are legally required of CONTRACTOR to practice its profession. CONTRACTOR shall maintain a City of Goleta business license, if required under CITY ordinance.
- 16. RECORDS:** CONTRACTOR shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this CONTRACT and such other records as may be deemed necessary by CITY or any authorized representative, and will be retained for three years after the expiration of this CONTRACT. All such records shall be made available for inspection or audit by CITY at any time during regular business hours.
- 17. SEVERABILITY:** If any portion of tthis CONTRACT are declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this CONTRACT will continue in full force and effect provided that it does not frustrate the mutual intent of the parties herein.
- 18. WHOLE AGREEMENT:** This CONTRACT supersedes any and all other agreements either oral or written, between the parties and contains all of the covenants and agreements between the parties pertaining to the work of

improvements described herein. Each party to this contract acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statements or promise not contained in this contract shall not be valid or binding. Any modifications of this contract will be effective only if signed by the party to be charged.

19. AUTHORITY: CONTRACTOR affirms that the signatures, titles, and seals set forth hereinafter in execution of this CONTRACT represent all individuals, firm members, partners, joint ventures, and/or corporate officers having a principal interest herein. Each party warrants that the individuals who have signed this CONTRACT have the legal power, right, and authority to make this CONTRACT and to bind each respective party. This CONTRACT may be modified by written amendment. CITY's City Manager may execute any such amendment on CITY's behalf.

20. NOTICES: All notices permitted or required under this CONTRACT shall be in writing, and shall be deemed made when delivered to the applicable party's representative as provided in this CONTRACT. Additionally, such notices may be given to the respective parties at the following addresses, or at such other addresses as the parties may provide in writing for this purpose.

Such notices shall be deemed made when personally delivered or when mailed forty-eight (48) hours after deposit in the U.S. mail, first-class postage prepaid, and addressed to the party at its applicable address. Courtesy copies of notices may be sent via electronic mail, provided that the original notice is deposited in the U.S. mail or personally delivered as specified in this Section.

CITY OF GOLETA
130 Cremona Drive, Suite B
Goleta, CA 93117
Attn: City Manager

CONTRACTOR
Toro Enterprises, Inc.
2101 Ventura Blvd
Oxnard, CA 93031

21. DISPUTES: Disputes arising from this contract will be determined in accordance with Exhibit C of this Contract .

22. NON-DISCRIMINATION: No discrimination shall be made in the employment of persons in the work contemplated by this CONTRACT because of race, religion, color, medical condition, sex, sexual orientation, national origin, political affiliation or opinion, or pregnancy or pregnancy-related condition. A violation of this section exposes CONTRACTOR to the penalties provided for in Labor Code Section 1735.

23. NO THIRD PARTY BENEFICIARY: This CONTRACT and every provision herein is for the exclusive benefit of CONTRACTOR and CITY and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of the CONTRACTOR's or the CITY's obligations under this Contract.

24. TIME IS OF ESSENCE: Time is of the essence for each and every provision of this Contract.

25. ACCEPTANCE OF FACSIMILE OR ELECTRONIC SIGNATURES: The Parties agree that this CONTRACT, agreements ancillary to this CONTRACT, and related documents to be entered into in connection with this CONTRACT will be considered signed when the signature of a party is delivered by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.

26. GOVERNING LAW: This CONTRACT shall be governed by the laws of the State of California, and exclusive venue for any action involving this CONTRACT will be in Santa Barbara County.

27. FEDERAL REQUIREMENTS

FEMA financial assistance will be used to fund all or a portion of this contract. The Contractor 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 B 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.

IN WITNESS WHEREOF, the parties hereto have executed this CONTRACT with all the formalities required by law on the respective dates set forth opposite their signatures.

This CONTRACT is executed on this 31st day of May, at Goleta, California, and effective as of May 31, 2023.

CITY OF GOLETA:

DocuSigned by:
Robert Nisbet
1AE8ACAD159E4D7...
Robert Nisbet, City Manager

ATTEST:

DocuSigned by:
Deborah Lopez
A3E09F3473CA47E...
Deborah Lopez, City Clerk

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:
Winnie Cai
A1BF8F896161498...
Winnie Cai, Assistant City Attorney

CONTRACTOR:

DocuSigned by:
Sean Castillo
9A0D7B67DDB44EE...
Sean Castillo, Owner

State of California License No.

710580

Department of Industrial Relations Registration
No.

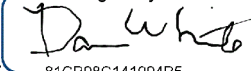
Business Phone No.

(805) 964-9951

CONTRACTOR'S Emergency Phone No. at
which contractor can be reached at any time

Dann White Superintendent

DocuSigned by:



81CB98C141994B5...

**EXHIBIT A
PROPOSAL**

At the maximum cost of \$600,000, the Contractor shall perform the following work:

- Investigatory trenching/potholing of slope on either side of the sinkhole to check for voids in the soil and gauge risk of further erosion. This work shall include:
 - Excavation
 - Backfill and compaction
- Future storm protection and reinforcement measures including the extension of plastic sheeting and sandbags to the northern fencing limit.
- Sinkhole repair and road protection measure options, as recommended by the Geotechnical Emergency Repairs Report. These options may include one or a combination of the following as directed by the City:
 - Pressure injection of polymer foam/grout to fill sinkhole with either polymer foam or 1.5-sack slurry, and construct barrier between west edge of the sinkhole and easternmost void composed of sacrificial steel shore.
 - Conventional earthwork with soil bulkhead and sinkhole backfill. This method includes excavation of minimum 5-foot wide and 3-foot deep trench parallel to Cathedral Oaks Road between sinkhole and western guard rail, extending to minimum of 5 feet from north and south end of the sinkhole. This would be backfilled with cohesive soils as approved by a geotechnical consultant or cement treated soils as a bulkhead to prevent soil migration, followed by the backfill of the sinkhole with soil or slurry.
 - Bulkhead and backfill composition must meet standards outlined in the Geotechnical Emergency Repairs Report.
 - Installation of secant pile wall. This method would install secant piles to the specifications as recommended by the Geotechnical Emergency Repairs Report a minimum of 15 feet beyond each edge of the sinkhole to prevent future enlargement.



Proposal and Contract

Toro Enterprises, Inc.

P.O. Box 6285

Oxnard, CA. 93031

P: 805-483-4515

F: 805-483-2001

05/12/2023

www.toroenterprises.com

License No. 710580 A

CA DIR #1000002410

Toro Enterprises, Inc. Is an
Equal Opportunity Employer

QUOTE CATHEDRAL OAKS SLOPE STABILITY

BID #13374

TO CITY OF GOLETA

130 CREMONA

GOLETA, CA 93117

Client #	Description	Quantity	U/M	Unit Price	Ext Price
1	MOBILIZATION	1.000	EA	\$3,421.00	\$3,421.00
2	EXCAVATE AND PREP FOR VOID FILL/STABILIZATION	1.000	LS	\$28,553.00	\$28,553.00
3	URETEK STABILIZATION INJECTION	1.000	LS	\$100,099.00	\$100,099.00
4	CLEAR/GRUB VEG SWALE AND INSTALL PLASTIC	1.000	LS	\$10,320.00	\$10,320.00
Grand Total:					\$142,393.00

ESTIMATOR: IAN MACISAAC

Date: _____ Accepted By: _____

STANDARD CONDITIONS

1. THE ABOVE PRICES EXPIRE ON 6/30/2023
2. ALL PROPOSALS MUST BE SIGNED AND RETURNED WITHIN 30 DAYS OF BID IN ORDER TO SECURE MATERIAL PRICES AND AVAILABILITY.
3. THE ABOVE PRICE IS BASED ON 1 MOVE IN. COST FOR ADDITIONAL MOVES ARE \$2,500.00 EACH
4. PRICES ARE SUBJECT TO CHANGE IF THERE ARE ANY VARIATIONS TO THE ABOVE QUALIFIED STRUCTURAL SECTIONS AND FINISH.

5. PRICING IS FOR ONLY THE ITEMS OUTLINED ABOVE.
6. THIS PROPOSAL AND TERMS MUST BE ACCEPTED AS PART OF THE CONTRACT AND SO SPECIFIED IF A SPECIAL CONTRACT FORM IS USED.
7. TWO WEEK ADVANCE NOTICE IS REQUIRED FOR SCHEDUELING.
8. IF STAKES FOR CONCRETE FORMWORK CAN NOT BE DRIVIN DUE TO FOOTINGS OR ANY OTHER OBSTRUCTIONS; IT SHALL BE PAID ON A TIME AND MATERIAL BASIS.
9. IF ROCK OR ANY OTHER UNSUITABLE MATERIAL IS ENCOUNTERED IT WILL BE PAID ON A TIME AND MATERIAL BASIS.
10. REMOVAL OR HANDLING OF WET OR UNSUITABLE MATERIAL WILL BE PAID FOR ON A TIME AND MATERIAL BASIS.
11. TERMS OF PAYMENT: 95% 30 DAYS. 5% RETENTION WITHIN 30 DAYS OF COMPLETION.
12. THE ABOVE BID IS NOT DIVISIBLE. ALL ITEMS IN THIS QUOTATION MUST BE ACCEPTED FOR THE PRICES SET FORTH ABOVE TO BE EFFECTIVE.
13. ALL WORK IS TO BE FIELD MEASURED AND PAID FOR AT THE APPROPRIATE UNIT OR LUMP SUM PRICES. WORK FOR WHICH THERE IS NO UNIT OR LUMP SUM PRICES WILL BE PAID FOR AS EXTRA WORK.
14. ENGINEERING COMPACTION TEST, CONCRETE TESTING, & SUFFICIENT CONCRETE STAKING, INCLUDING A SET OF CURB AND GUTTER AND CROSSGUTTER STAKES TO BE PROVIDED BY OTHERS.
15. QUANTITIES ARE APPROXIMATE AND ACTUAL QUANTITIES WILL BE FIELD MEASURED AT COMPLETION OF WORK TO DETERMINE PAYMENT AT THE ABOVE UNIT PRICES.
16. TORO ENTERPRISES, INC. IS NOT RESPONSIBLE FOR DAMAGE TO CONCRETE AND/OR UTILITIES CAUSED BY OTHERS.
17. ALL UNIT PRICES ARE SUBJECT TO THE AVAILABILITY OF MATERIALS FROM LOCALLY APPROVED SUPPLIERS.
18. ALL WORK COMPLETED IN ANY ONE MONTH WILL BE BILLED BY THE 25TH OF SAID MONTH WITH PAYMENT OF 95% DUE BY THE 10TH OF THE FOLLOWING MONTH. THE REMAINING 5%(RETENTION) IS DUE AND PAYABLE NOT LATER THAN 35 DAYS FROM COMPLETION OF OUR CONTRACT ITEMS.
19. TIME AND MATERIAL (RENTAL) IF REQUIRED TO BE PAID IN FULL MONTHLY, WITH NO RETENTION HELD.
20. IF QUANTITIES DECREASE MORE THAN 15%, UNIT PRICES ARE SUBJECT TO CHANGE.
21. IF WORK IS NOT COMPLETED BY 6/30/2023 PRICES ARE SUBJECT TO CHANGE.

STANDARD EXCLUSIONS

1. TRAFFIC CONTROL, TRAFFIC CONTROL PLAN, CONSTRUCTION SIGNS, POSTING.
2. RE-PAVING OF BIKE PATH
3. CONSTRUCTION WATER
4. ENGINEERING, TESTING, PERMITS, BONDS, SURVEY STAKING, SPECIAL INSURANCE.
5. REMOVAL/REPLACEMENT/RELOCATION OF WATER METER BOXES/VALVES/UTILITIES
6. WALLS AND FOOTINGS OF ANY KIND, MONUMENT SIGN.
7. LOCAL DEPRESSIONS, FRAMES AND GRATES, AREA DRAINS, CATCH BASINS, FILTERS.
8. PARKWAY DRAINS
9. TRENCH DRAINS
10. TRUNCATED DOMES AND WARNING STRIPS
11. STRIPING, MARKING, AND SIGNAGE.
12. ROOT PRUNING OR GRINDING.
13. ANY AND ALL STRUCTURAL CONCRETE UNLESS STATED ABOVE.
14. COLORED CONCRETE
15. SEATWALLS
16. REMOVAL OR HANDLING OF HAZARDOUS, TOXIC AND LEAD MATERIALS IS EXCLUDED.
17. CURB BACKFILL
18. STORM WATER POLLUTION CONTROL PLAN OR IMPLEMENTION.
19. COMPACTION TESTING
20. LIQUIDATED DAMAGES
21. WEED KILL
22. HAUL OFF
23. SPECIFICALLY EXCLUDED FROM THIS PROPOSAL ARE BACK-FILL OF CONCRETE.

24. EROSION CONTROL
25. UNLESS SPECIFICALLY STATED ELSEWHERE, CLEANUP OF SPOILS CAUSED BY "OTHERS" IS EXCLUDED.
26. TORO ENTERPRISES, INC. ASSUMES NO RESPONSIBILITY FOR SETTLEMENT WITHIN THE LIMITS OF UTILITY TRENCHES DONE BY OTHERS.
27. CONCRETE PAVING HEADER
28. REDWOOD HEADER
29. SUBGRADE PREPARATION
30. BASE MATERIAL
31. TREEWELL FRAME AND GRATES
32. SAWCUTS / LAYOUT
33. ROOT BARRIER
34. BIO SWALE
35. DEWATERING
36. HOME OWNER NOTIFICATION
37. LANDSCAPE RESTORATION
38. IRRIGATION RELOCATION

Fuel & Lubricants Price Escalation:

Prices in Toro's bid for projects with high fuel & lubricants consumption (i.e. including but not limited to grading jobs) are based substantially on fuel & lubricants prices that were in effect on the date of Toro's final bid (**Base Price**). Due to extreme volatility in fuel & lubricants market, project Owner and/or General Contractor concur that by entering into Subcontract Agreement with Toro in this project, project Owner and/or General Contractor agree to reimburse Toro for fuel & lubricants price escalation that occurred during the life of this project as stipulated herein:

- The contractual base prices for fuel & lubricants are the prices that were in effect on the date of Toro's final bid (**Base Price**).
- Toro shall absorb the initial 10% percent increase in fuel & lubricants prices above the **Base Price**.
- Project Owner and/or General Contractor agree to reimburse Toro for fuel & lubricants price increase that exceeds the initial 10%.
- Reimbursement for fuel & lubricants price increase shall not include any markup for overhead and profit.
- The burden of proof to demonstrate fuel & lubricants price increase shall rest solely on Toro, and it shall consist of proving documented difference between fuel & lubricants prices on final bid date (**Base Price**) vs. prices at any given date during the life of the project, in which the price exceeds the **Base Price** plus 10%.
- Calculations of fuel & lubricants price increase shall be prepared and submitted by Toro to project Owner and/or General Contractor at the end of each month. Upon review and approval, project Owner and/or General Contractor shall issue an Add Change Order to reimburse Toro for the monthly increase in fuel & lubricants price.

Important Bid Note:

- A. *Prices in Toro's bid for this project are based in part on labor and materials cost that were in effect on the date of Toro's final bid. Due to dynamic market conditions, labor & materials cost are expected to rise during the life of this project. Therefore, by entering into Contract with Toro, project Owner and/or GC agree to pay Toro for price escalation in labor and/or materials, for escalation that occurs between Toro's final bid date and final completion of the project. In such cases, the burden of proof to demonstrate escalated cost of labor and/or materials rests solely on Toro, and it shall consist of*

proving documented difference between labor and/or materials prices on final bid date vs. prices at any given date during the life of the project. Payment to Toro for escalated prices of labor and/or materials shall be limited to actual proven cost increase, without any markup.

- B. In case that actual number of Mobilizations per specific discipline and/or phase exceed the number stipulated in Toro's Bid, then each additional mobilization for such discipline and/or phase shall be paid to Toro as an extra at unit price stipulated in the Bid. One continued operation per period in specific discipline and/or phase counts for one mobilization in that discipline and/or phase.***



LABOR & EQUIPMENT RATES
LABOR RATES

DESCRIPTION	UNIT	S/T Rate	O/T Rate	D/T Rate
LABORER	HR	94.00	124.00	155.00
LABORER SAW MAN	HR	105.00	140.00	174.00
LABORER VAC TRUCK	HR	100.00	133.00	166.00
CARPENTER	HR	100.00	135.00	169.00
CEMENT MASON	HR	98.00	130.00	162.00
OPERATOR	HR	121.00	163.00	205.00
TRUCK DRIVER/WATER TRUCK	HR	95.00	126.00	157.00
FOREMAN - Carpenter	HR	112.00	153.00	193.00
FOREMAN - Concrete	HR	112.00	153.00	193.00
FOREMAN - Grading/Paving/Utility	HR	140.00	192.00	244.00
STRIPER	HR	99.00	133.00	167.00
STRIPER FOREMAN	HR	106.00	141.00	177.00
SUPERINTENDENT	HR	165.00	222.00	278.00

Effective: 3/01/2023

OPERATED & MAINTAINED EQUIPMENT

DESCRIPTION	UNIT	S/T Rate	O/T Rate	D/T Rate
MOTOR GRADER CAT 120M	HR	189.00	231.00	273.00
MOTOR GRADER CAT 140M	HR	204.00	246.00	288.00
SKIP LOADER JOHN DEERE 210LE	HR	162.00	204.00	246.00
SCRAPER CAT 613 C	HR	246.00	288.00	330.00
SCRAPER CAT 623 E	HR	277.00	319.00	361.00
DOZER CAT D3	HR	209.00	251.00	293.00
DOZER CAT D6-R	HR	217.00	259.00	301.00
CAT 815F COMPACTOR	HR	209.00	251.00	293.00
CAT 824H COMPACTOR	HR	241.00	283.00	325.00
LOADER CAT 938	HR	211.00	253.00	295.00
LOADER CAT 950	HR	221.00	263.00	305.00
PICKUP TRUCK (BARE)	HR	40.00	40.00	40.00
TOOL TRUCK 550F	HR	55.00	55.00	55.00
TACK TRUCK	HR	60.00	60.00	60.00
FORM TRUCK (BARE)	HR	65.00	65.00	65.00
TRAFFIC CONTROL TRUCK	HR	70.00	70.00	70.00
**SAW TRUCK (BARE) **	HR	90.00	90.00	90.00
CAT SKIDSTEER 289 With breaker or grinder add \$90.00	HR	197.00	239.00	281.00
BACKHOE CAT J. DEERE 410 with breaker or auger add \$80.00	HR	199.00	241.00	283.00
BACKHOE CAT 420 with breaker or auger add \$80.00	HR	179.00	221.00	263.00
BACKHOE CAT 430 with breaker or auger add \$80.00	HR	206.00	248.00	290.00
BACKHOE CAT 450 with breaker or auger add \$80.00	HR	231.00	273.00	315.00
MILLER FORMLESS M1000	HR	280.00	322.00	364.00
EXCAVATOR DEERE 50G	HR	159.00	201.00	243.00
EXCAVATOR J.DEERE 75G	HR	162.00	204.00	246.00
EXCAVATOR CAT 305.5	HR	159.00	201.00	243.00
EXCAVATOR CAT 315	HR	236.00	278.00	320.00
EXCAVATOR CAT 316	HR	296.00	338.00	380.00
EXCAVATOR CAT 320	HR	247.00	289.00	331.00
EXCAVATOR CAT 325	HR	257.00	299.00	341.00
EXCAVATOR CAT 335	HR	292.00	334.00	376.00
EXCAVATOR CAT 336	HR	287.00	329.00	371.00
EXCAVATOR CAT 349	HR	312.00	354.00	396.00
EXCAVATOR CAT 374 FL (Mobilizations are individually priced)	HR	516.00	558.00	600.00
WATER TRUCK (2,500 GAL)	HR	135.00	166.00	197.00



LABOR & EQUIPMENT RATES
LABOR RATES

CAT ROLLER 214	HR	157.00	199.00	241.00
CAT ROLLER CB224	HR	162.00	204.00	246.00
CAT ROLLER CC34D	HR	177.00	219.00	261.00
CAT ROLLER CB36B	HR	185.00	227.00	269.00
CAT ROLLER CB434D	HR	192.00	234.00	276.00
CAT ROLLER CB534XW	HR	197.00	239.00	281.00
CAT ROLLER CB7	HR	197.00	239.00	281.00
CAT ROLLER CB10	HR	197.00	239.00	281.00
CAT ROLLER CS423	HR	187.00	229.00	271.00
CAT ROLLER CS66	HR	207.00	249.00	291.00
CAT ROLLER CB54B PAD FOOT	HR	224.00	266.00	308.00
CAT ROLLER PS 150 PNEUMATIC	HR	172.00	214.00	256.00
HAMM ROLLER HD8VV	HR	152.00	194.00	236.00
HAMM ROLLER HD10CVV	HR	157.00	199.00	241.00
HAMM ROLLER HD12VV	HR	162.00	204.00	246.00
TRAILING EQUIPMENT TRAILER	HR	50.00	50.00	50.00
LEE BOY 250 GALLON EMULSION SPREADER (material not included)	HR	70.00	70.00	70.00
Weiler Windrow Elevator (BARE)	HR	155.00	155.00	155.00
DOOSAN light tower	HR	12.00	12.00	12.00
COMPRESSOR 185CFM	HR	70.00	70.00	70.00
WATER TRAILER 500 GAL. (BARE)	HR	54.00	54.00	54.00
VERMEER T300B (OPERATED)	HR	164.00	206.00	248.00
LAYMORE SWEEPER	HR	109.00	139.00	170.00
ZIPPER (AZ360X-173E)	HR	171.00	213.00	255.00
GRACO LINE LAZER (BARE)	HR	10.00	10.00	10.00
THERMO TRAILER (BARE)	HR	40.00	40.00	40.00
PAINT STRIPER TRUCK (BARE)	HR	135.00	135.00	135.00
GRACO GRIND LAZER (BARE)	HR	15.00	15.00	15.00
GRACO VACUUM (BARE)	HR	15.00	15.00	15.00
PETERBILT 2 AXLE HYDROVAC (BARE)	HR	155.00	155.00	155.00
MRL 4-8000 THERMOPLASTIC (BARE)	HR	255.00	255.00	255.00

EQUIPMENT MOVE CHARGES APPLY AT \$165.00 PER HOUR. 9 AXLE MOVES AT \$210.00 PER HOUR.

SAW TRUCK, TRAVEL TIME IF LESS THAN THE 4 HOUR MINIMUM WILL BE CHARGED \$104.00 PER HOUR

Operator rates are based upon a four hour minimum. Toro Enterprises, Inc. is an insured, bondable union contractor. All equipment rates are operated and maintained.

Prices in Toro Enterprises, Inc.'s bid for projects with high fuel and lubricant consumption (including but not limited to grading jobs) are based substantially on fuel and lubricant prices that were in effect on the date of Toro Enterprises, Inc.'s final bid (Base Price). Due to the extreme volatility in the fuel and lubricant market, project Owner and / or General Contractor concur that by entering into a Subcontract Agreement with Toro Enterprises, Inc. on this project, project Owner and / or General Contractor agrees to reimburse Toro Enterprises, Inc. for fuel and lubricant price escalations that occur during the life of this project.

In addition, there will be a 10% fuel surcharge added to the existing rates during this time of fuel uncertainty.

RATES GOOD THROUGH: 7/01/2023

EXHIBIT B**FEDERAL CONTRACT PROVISIONS**

During the performance of this contract, Toro Enterprises, Inc. (the "Contractor") 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 Contractor.

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

A. Contractor 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.

Contractor 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 Contractor.

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

- A. Contractor 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 Contractor personnel for the purpose of interview and discussion related to the books and records.
- B. The Contractor 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 Contractor 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 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 Contractor, terminate this contract for convenience, in whole or in part, at any time by giving written notice to Contractor 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. Contractor shall provide documentation deemed adequate by the Agency to show the work actually completed or materials provided by Contractor 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 Contractor fails to perform pursuant to the terms of this contract, the Agency shall provide written notice to Contractor specifying the default ("Notice of Default"). If Contractor 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 Contractor fails to cure a default as set forth above, the Agency may, by written notice to Contractor, 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, Contractor 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 Contractor's deficiencies and charge the cost thereof to Contractor, 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 Contractor performance of the work.

iv. Additional Termination Provisions. Upon receipt of a Notice of Termination, either for cause or for convenience, Contractor shall promptly discontinue the work unless the Notice directs to the contrary. Contractor 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. Contractor 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. Contractor 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, Contractor shall be entitled to receive only the amounts payable under this Section, and Contractor 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, Contractor 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. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor 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. Contractor 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. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- iii. Contractor 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 Contractor's legal duty to furnish information.
- iv. Contractor 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. Contractor 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. Contractor 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 Contractor'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. Contractor 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 Contractor. Contractor 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 Contractor becomes involved in, or is threatened with, litigation with a subcontractor or Contractor as a result of such direction, Contractor 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, Contractor 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 Contractor 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 Contractor 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, Contractor 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) Contractor 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) Contractor 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) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
- ii. Pursuant to the Federal Water Pollution Control Act, (1) Contractor 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) Contractor 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) Contractor 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 Contractor is required to verify that none of the Contractor, 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. Contractor 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 Contractor 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. Contractor warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Contractor 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. Contractor further agrees to notify the Agency in writing immediately if Contractor 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, Contractor 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, Contractor shall file with the Agency the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying.” Contractors 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. Contractor 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 Contractor 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 Contractor 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 Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- C. Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor'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, Contractor, 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 Contractor , the Contractor'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 Contractor exceeds at its own risk.

EXHIBIT C**DISPUTE RESOLUTION****Section 10 – Potential Claims and Dispute Resolution****Section 10-1 Potential Claim**

Any demand or assertion by the Contractor seeking an adjustment of Contract Price and/or Contract Time, or other relief, for any reason whatsoever, must be in strict compliance with the requirements of the Contract. For purposes of this Section 10-1, any and all work relating to any such demand or assertion shall be referred to as “Disputed Work,” regardless of whether the basis of the demand or assertion arises from an interpretation of the Contract, an action or inaction of the Contractor, the Engineer, or the City, or any other event, issue, or circumstance. The Contractor shall bear all costs incurred in complying with the provisions of this Section 10-1.

Promptly upon becoming aware of any event, issue, or circumstance including, but not limited to, disputes arising under the Contract, the acts or omissions of the Engineer or City or by operation of law, which the Contractor believes, in whole or in part, provides a basis for an adjustment of Contract Price and/or Contract Time. Or that Contractor’s performance is excused, or other relief, Contractor shall provide a signed written Initial Notice of Potential Claim to the Engineer in a format acceptable to the City. Contractor shall provide a signed written initial notice of potential claim to the Engineer within 5 days from the date the dispute first arose and before commencing any disputed work. The initial notice of potential claim shall provide the nature and circumstances involved in the dispute which shall remain consistent through the dispute. The initial notice of potential claim shall be submitted on Form CEM 6201A available on Caltrans’ website and shall be certified with reference to the California False Claims Act, Government Code Sections 12650 12655. Assign an exclusive identification number for each dispute, determined by chronological sequencing, based on the date of the dispute.

The exclusive identification number for each dispute shall be used on the following corresponding documents:

1. Initial notice of potential claim.
2. Supplemental notice of potential claim.
3. Full and final documentation of potential claim.
4. Corresponding claim included in the Contractor’s written statement of claims.

Provide the Engineer the opportunity to examine the site of work within 5 days from the date of the initial notice of potential claim. Proceed with the performance of contract work unless otherwise specified or directed by the Engineer.

Throughout the disputed work, maintain records that provide a clear distinction between the incurred direct costs of disputed work and that of undisputed work. Allow the Engineer access to your project records deemed necessary by the Engineer to evaluate the potential claim within 20 days of the date of the Engineer's written request.

Within 15 days of submitting the initial notice of potential claim, submit a signed supplemental notice of potential claim to the Engineer that provides the following information:

1. The complete nature and circumstances of the dispute which caused the potential claim.
2. The contract provisions that provide the basis of claim.
3. The estimated cost of the potential claim, including an itemized breakdown of individual costs and how the estimate was determined.
4. A time impact analysis of the project schedule that illustrates the effect on the scheduled completion date due to schedule changes or disruptions where a request for adjustment of contract time is made.

Include your complete reasoning for additional compensation or adjustments.

Submit the supplemental notice of potential claim on Form CEM 6201B furnished by the Department and certify with reference to the California False Claims Act, Government Code Sections 12650 12655. The Engineer will evaluate the information presented in the supplemental notice of potential claim and provide a written response within 20 days of receipt. If the estimated cost or effect on the scheduled completion date changes, update information in items 3 and 4 above as soon as the change is recognized and submit this information to the Engineer.

Within 30 days of the completion of work related to the potential claim, submit the full and final documentation of potential claim to the Engineer that provides the following information:

- (1.) A detailed factual narration of events fully describing the nature and circumstances that caused the dispute, including, but not limited to, necessary dates, locations, and items of work affected by the dispute.
- (2.) The specific provisions of the contract that support the potential claim and a statement of the reasons these provisions support and provide a basis for entitlement of the potential claim.

(3.) When additional monetary compensation is requested, the exact amount requested calculated in conformance with the Contract including an itemized breakdown of individual costs. These costs shall be segregated into the following cost categories:

3.1. Labor – A listing of individuals, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information related to the requested reimbursement of labor costs.

3.2. Materials – Invoices, purchase orders, location of materials either stored or incorporated into the work, dates materials were transported to the project or incorporated into the work, and other pertinent information related to the requested reimbursement of material costs.

3.3. Equipment – Listing of detailed description (make, model, and serial number), hours of use, dates of use, and equipment rates. Equipment rates shall be at the applicable State rental rate as listed in the Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates," in effect when the affected work related to the dispute was performed.

3.4. Other categories as specified by the Contractor or the Engineer.

(4.) When an adjustment of contract time is requested, include the following:

4.1. The specific dates for which contract time is being requested.

4.2. The specific reasons for entitlement to a contract time adjustment.

4.3. The specific provisions of the contract that provide the basis for the requested contract time adjustment.

4.4. A detailed time impact analysis of the project schedule. The time impact analysis shall show the effect of changes or disruptions on the scheduled completion date to demonstrate entitlement to a contract time adjustment.

(5.) The identification and copies of documents and the substance of oral communications that support the potential claim.

The full and final documentation of the potential claim shall be submitted on Form CEM 6201C furnished by the Department and shall be certified with reference to the California False Claims Act, Government Code Sections 12650 12655.

Pertinent information, references, arguments, and data to support the potential claim shall be included in the full and final documentation of potential claim. Information submitted subsequent to the full and final documentation submittal will not be considered. Information required in the full and final documentation of potential claim, as listed in items 1 to 5 above, that is not applicable to the dispute may be exempted as determined by the Engineer. No full and final documentation of potential claim will be considered that does not have the same nature and circumstances, and basis of claim as those specified on the initial and supplemental notices of potential claim.

If you, in conjunction with or subsequent to the assertion of a potential claim, request inspection and copying of documents or records in the possession of the City that pertain to the potential claim, you must make your records of the project, as deemed by the City to be pertinent to the potential claim, available to the City for inspection and copying."

Unless otherwise specified, the Engineer will evaluate the information presented in the full and final documentation of potential claim and provide a written response within 30 days of receipt. The Engineer's receipt of the full and final documentation of potential claim shall be evidenced by postal receipt or the Engineer's written receipt if delivered by hand. If you submit full and final documentation of potential claim after acceptance of the work by the City, the Engineer need not provide a written response.

10-2 Dispute Resolution

All disputes and claims arising under or by virtue of this contract shall be directed to and be determined by the Public Works Director. The Director's determination can be appealed to City Manager or their designee. The determination by the City Manager or their designee of disputes and claims shall constitute the decision of the City of Goleta; provided, however, that Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code shall apply to the public works claim of \$375,000 or less.

10-3 Dispute Resolution - Claims exceeding \$375,000

Any claim, dispute, or other matter in question arising out of or related to the Contract or Project exceeding three-hundred seventy-five thousand dollars (\$375,000.00) that cannot be resolved between the City and the Contractor shall be resolved by the Santa Barbara County Superior Court.

10-4 Claims Procedures as a Prerequisite to Filing Suit

Contractor acknowledges and agrees that its failure to submit any notice of potential claim or claim arising under this Contract in accordance with Section 10, shall constitute a waiver of Contractor's right to additional compensation and/or extension of time. Failure to follow the provisions set forth in this Contract shall constitute a waiver of Contractor's right to receive any additional time or money as a result of any event giving rise to a claim or request for change order. Notwithstanding any other provisions in the Contract relating to any additional time or money which Contractor may be entitled to upon the occurrence of any directive or other event, or any other circumstance, Contractor must comply with the provisions of Section 10 to avoid a waiver of any such entitlement to any additional time or money. Contractor's failure, neglect, or refusal to comply with the requirements of Section 10, or any portion thereof, shall bar Contractor's request for additional

compensation or adjustments to contract time. Such failure, neglect, or refusal prejudices the City's and the Engineer's ability to recognize and mitigate delay, and such failure, neglect, or refusal prevent the timely analysis of requests for adjustment of contract time, and whether such adjustments may be warranted. Contractor hereby waives all rights to additional compensation or adjustments of contract time due to delays or accelerations that result from or occur during periods of time for which Contractor fails, neglects, or refuses to fully comply with the requirements of Section 10.

Section 10-5 Government Code Claims.

Notwithstanding Contractor's participation in dispute resolution proceedings or other claims procedures under the Contract, such proceedings are in addition to Contractor's obligation to present a written Government Code claim in accordance with Section 900 et al of the California Government Code, which is a prerequisite to filing a lawsuit for money or damages against the City. Contractor further acknowledges that notwithstanding Contractor's compliance with the claims procedures set forth in Section 10 or in the Contract, such procedures are in addition to Contractor's obligation to comply with the claims procedures set forth in Government Code sections 900 et al prior to filing a lawsuit against the City for any such claim. Failure to submit a Government Code claim, or comply with the claims provision contained in Section 10 or in the City Special Provisions, shall bar Contractor from bringing and maintaining a valid lawsuit against the City.

Section 10-6 Participation in Dispute Resolution Proceedings.

Contractor and the City agree that all parties necessary to resolve a claim or dispute should be parties to the same dispute resolution proceeding. Contractor agrees upon request of the City to be joined in any mediation or arbitration when Contractor's presence is required if complete relief is to be accorded and to prevent the possibility of conflicting rulings on a common issue of law or fact and otherwise to prevent the risk of the parties being subjected to inconsistent obligations or decisions.

Section 10-7 Contractor's Continuing Obligations.

At all times during the processing of the Contractor's potential Claim, including, but not limited to, in response to a work directive issued by the Engineer, the Contractor shall diligently proceed with the performance of the Disputed Work and other Work, unless otherwise specified or directed by the Engineer.

The Contractor shall provide the Engineer the opportunity to examine the site of the Disputed Work as soon as reasonably possible, and in no event later than five (5) days from the date of the Initial Notice of Potential Claim. Throughout the processing of the Contractor's potential Claim, the Contractor shall provide the Engineer a reasonable

opportunity to examine the site of the Disputed Work within five (5) days of the date of Engineer's written request therefor.

The Contractor shall promptly respond to any requests for further information or documentation regarding the Contractor's potential Claim.

Although not to be construed as proceeding with force account work, throughout the performance of the Disputed Work, the Contractor shall maintain daily records in accordance with the Contact Documents that provide a clear distinction between the incurred direct costs of Disputed Work and other Work. The Contractor shall allow the Engineer access to its project records deemed necessary by the Engineer to evaluate the potential Claim within fifteen (15) days of the date of the Engineer's written request.

All Subcontractor's and material supplier's claims of any type shall be brought only through Contractor pursuant to the provisions of this Section 10 and Contractor's prior good faith review pursuant to the Contract. Under no circumstances shall any Subcontractor or material supplier make any direct claim against City.

Except where provided by law, or elsewhere in these, THE CITY SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES AND THE CONTRACTOR SHALL NOT INCLUDE THEM IN ITS CLAIMS. Contractor shall be limited in its recovery on any Claim(s) to the adjustments allowed in the Contract .

During each step in the processing of the Contractor's Claim, each notice shall be accompanied by the Contractor's written statement that the adjustment or relief claimed is the entire adjustment or relief to which the claimant believes it is entitled as a result of the event, issue, or circumstance giving rise to the Claim.

Under no circumstances may the Contractor submit an Initial Notice of Potential Claim, Supplemental Notice of Potential Claim, or Notice of Final Claim after the date of final payment.

Section 10-8 Notice of Third-Party Claims.

The City shall provide Contractor with prompt written notice of the receipt of any third-party claim relating to the Contract in accordance with Public Contract Code section 9201 by sending a copy of the third-party claim to Contractor at the address indicated in the Agreement via first class.