



**Agenda Item B.20**  
**CONSENT CALENDAR**  
**Meeting Date: June 6, 2023**

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**TO:** Mayor and Councilmembers

**FROM:** Charles W. Ebeling, Public Works Director

**CONTACT:** Melissa Nelson, Environmental Services Manager

**SUBJECT:** Public Works Environmental Services Professional Services Agreements for Fiscal Year 2023-2024

**RECOMMENDATION:**

Authorize the City Manager to execute Amendment No. 3 to Professional Services Agreement No. 2021-008 with MNS Engineers Inc., for Stormwater Engineering Services for Construction Project Review, to increase compensation by \$200,000 for a new total not-to-exceed amount of \$593,000, extend the termination date by one year to June 30, 2024, and to update the schedule of fees.

**BACKGROUND:**

The Public Works Department (Public Works) has contracted with MNS Engineers Inc. (MNS) for support of stormwater development review and stormwater programs required by the City's Phase II Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge and Elimination Permit. On February 4, 2021, MNS was awarded Professional Services Agreement No. 2021-008 with the City and staff recommends an amendment to the agreement to provide continued service through Fiscal Year 2023-24.

The MS4 Permit requires the City to implement a stormwater construction and post-construction program, which entails document and plan reviews, site inspections, post-construction stormwater structural control measures maintenance agreements, final site approval, tracking numerous projects and metrics, regulatory reporting and communication, and construction documentation.

**DISCUSSION:**

The number of active stormwater-relevant private development projects has increased roughly ten times from last year, and staff expects an increasing trend to continue in FY 2023-24. With the current number of private development projects, we anticipate an increase in workload reflected in Amendment No. 3. Time spent on the review of private development is reimbursed by the applicant and therefore not a fiscal impact to the General Fund. It is therefore justified to continue a professional services agreement with MNS, based on their performance and experience with Goleta's programs. MNS is also on the City's pre-authorized qualified list of Environmental Services consultants.

Public Works staff recommends amending the contract with MNS to provide document and plan review for stormwater compliance for private development projects, in addition to other aspects of compliance related to construction and post-construction stormwater requirements. The recommended Amendment No. 3 to Professional Services Agreement No. 2021-008 with MNS Engineers, Inc. is provided in Attachment 1. The original MNS Engineers, Inc. Agreement No. 2021-008 and subsequent Amendments are provided in Attachment 2.

#### **FISCAL IMPACTS:**

There are sufficient funds in the proposed FY 2023-24 budget for the subject amendments, so no new additional appropriations are necessary. The MNS contract amount will be billed primarily to developer deposit accounts so City funding will only be needed for the non-reimbursable component.

<b>GL Account</b>	<b>Funding Source</b>	<b>Proposed Budget FY 2023-24</b>	<b>Amended Contract Amounts</b>
211-50-5900-51200	Solid Waste Fund	\$75,000	\$50,000
Developer Deposit Accounts	Developer Deposit	N/A	\$150,000

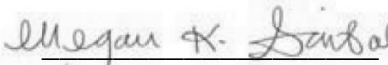
#### **ALTERNATIVES:**

The City Council may elect not to authorize this agreement amendment and direct the Public Works Department to seek statements of qualifications and proposals from additional qualified firms. Depending on which agreements the City Council does not authorize, doing so could cause regulatory noncompliance, resulting enforcement action/litigation, and potentially future fiscal impacts, depending on the nature of any non-compliance.

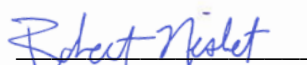
#### **Reviewed By:**

  
Kristine Schmidt  
Assistant City Manager

#### **Legal Review By:**

  
Megan Garibaldi  
City Attorney

#### **Approved By:**

  
Robert Nisbet  
City Manager

#### **ATTACHMENTS:**

1. Amendment No. 3 to Professional Services Agreement No. 2021-008 with MNS Engineers, Inc.
2. MNS Engineers, Inc. Agreement No. 2021-008, Amendment No. 1 to Agreement No. 2021-008 and Amendment No. 2 to Agreement No. 2021-008

## **ATTACHMENT 1**

Amendment No. 3 for MNS., Inc. Agreement No. 2021-008 for Professional Services

**AMENDMENT NO. 3  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
MNS ENGINEERS, INC**

This Amendment No. 3 to the PROFESSIONAL SERVICES Agreement by and between the **City of Goleta**, a municipal corporation ("City") and **MNS Engineers, Inc.**, a California Corporation, ("Consultant") dated February 4th, 2021 ("Agreement," Agreement No. 2021-008) is made on this 6th day of June 2023.

**SECTION A. RECITALS**

1. This Agreement is for professional stormwater engineering services for construction project review; and
2. This Agreement has been amended to provide additional compensation and extend the termination date (Amendment No. 1 and 2); and
3. The Agreement currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed \$393,000; and
4. The parties desire to amend the Agreement to provide for additional compensation in the amount of \$200,000 for continued tasks; and
5. The agreement currently provides in Section 6 for the termination of the Agreement on June 30, 2023; and
6. The parties desire to amend the Agreement to extend the termination of the Agreement to June 30, 2024; and
7. The Agreement currently provides in Exhibit B-1 entitled "Schedule of Fees" the hourly rates; and
8. The parties desire to amend Exhibit B-1 of the Agreement to identify the new hourly rates, attached as "Exhibit B-2"; and
9. The City Council approved this Amendment No. 3, on this 6th day of June 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 \$200,000 and to read in its entirety:

(a) **Maximum (a) Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$593,000 (herein "not-to-exceed amount") and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B-2," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2024, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

2. **Section 6. TERM, PROGRESS AND COMPLETION** of the Agreement is amended to extend the term for an additional 1 year to read in its entirety.

The term of this Agreement is from the date first written above to June 30<sup>th</sup>, 2024 unless the term of this Agreement is extended or the Agreement is terminated as provided for herein.

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

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

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

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

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

**CITY OF GOLETA**

**CONSULTANT**

\_\_\_\_\_  
Robert Nisbet, City Manager

\_\_\_\_\_  
Greg Chelini, Vice President

**ATTEST:**

\_\_\_\_\_  
Deborah Lopez, City Clerk

\_\_\_\_\_  
Jeff Edwards, Vice President

**APPROVED AS TO FORM:**  
MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:  
  
\_\_\_\_\_  
A1BF3F896161498  
Winnie Cai, Assistant City Attorney

**EXHIBIT B-2**  
**Schedule of Fees**

<b>Name</b>	<b>Title</b>	<b>\$/Hr</b>
Mark Schleich, PE	Senior Project Coordinator	\$175
Craig Snell, QSD/QSP, CPESC	Stormwater Specialist	\$140
Kent Yankee, PE, QSD/QSP	Project Engineer	\$175
Sheri Lubin, QSP/D, CPESC, MS	Stormwater Specialist	\$140
Mary Zepeda, CPESC-IT	Stormwater Program Coordinator	\$140
Beth Reineke, CPESC-IT	Stormwater Program Coordinator	\$140

## **ATTACHMENT 2**

MNS Engineers, Inc. Agreement No. 2021-008, MNS Engineers, Inc.  
Amendment No. 1 to Agreement No. 2021-008, and MNS Engineers, Inc.  
Amendment No. 2 to Agreement No. 2021-008



**AMENDMENT NO. 2  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
MNS ENGINEERS, INC.**

This Amendment No. 2 to the PROFESSIONAL SERVICES Agreement by and between the **City of Goleta**, a municipal corporation ("City") and **MNS Engineers, Inc.**, a California Corporation, ("Consultant") dated February 4, 2021 ("Agreement," Agreement No. 2021-008) is made on this 7<sup>th</sup> day of June, 2022.

**SECTION A. RECITALS**

1. This Agreement is for professional stormwater engineering services for construction project review; and
2. This Agreement was amended on June 15, 2021, so as to provide additional compensation in the amount of \$163,001 for a total not-to-exceed amount of \$208,000 and extended the termination date to June 30, 2021; and
3. The Agreement currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed \$208,000; and
4. The parties desire to amend the Agreement so as to provide for additional compensation in the amount of \$185,000 for continued tasks; and
5. The agreement currently provides in Section 6 for the termination of the Agreement on June 30, 2022; and
6. The parties desire to amend the Agreement so as to extend the termination of the Agreement to June 30, 2023; and
7. The Agreement currently provides in Exhibit B entitled "Compensation" the hourly rates; and
8. The parties desire to amend Exhibit B of the Agreement to identify the new hourly rates, attached as "Exhibit B-1"; and
9. The City Council approved this Amendment No. 2, on this 7<sup>th</sup> day of June, 2022.

**SECTION B. AMENDED TERMS**

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

1. **Subsection (a) of Section 3. COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$185,000 and to read in its entirety:

(a) **Maximum (a) Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$393,000 (herein "not-to-exceed amount") and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B-1," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2023, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

2. **Section 6. TERM, PROGRESS AND COMPLETION** of the Agreement is amended to extend the term for an additional 1 year to read in its entirety.

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

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

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

**Exhibit B "Compensation"** with **Exhibit B-1 "Compensation"** attached hereto and incorporated herein.


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

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


**CITY OF GOLETA**

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Michelle Greene, City Manager

**CONSULTANT**

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James Salvito, President

**ATTEST:**

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Deborah Lopez, City Clerk

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Jeff Edwards, Vice President

**APPROVED AS TO FORM:**  
MEGAN GARIBALDI, CITY ATTORNEY

DocuSigned by:  
  
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Winnie Cai, Assistant City Attorney

**EXHIBIT B-1**  
**Schedule of Fees**

<b>Name</b>	<b>Title</b>	<b>\$/Hr</b>
Mark Schleich, PE	Senior Project Coordinator	\$175
Craig Snell, QSD/QSP, CPESC	Stormwater Specialist	\$140
Kent Yankee, PE, QSD/QSP	Project Engineer	\$175
Sheri Lubin, QSP/D, CPESC, MS	Stormwater Specialist	\$140
Mary Zepeda, CPESC-IT	Stormwater Program Coordinator	\$140

2021-008.1

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

This **Amendment No. 1** to the PROFESSIONAL SERVICES Agreement by and between the **City of Goleta**, a municipal corporation ("City") and MNS Engineers, Inc., a California Corporation, ("Consultant") dated February 4th, 2021 ("Agreement," Agreement No. 2021-008) is made on this 15 day of June, 2021.

**RECITALS**

**WHEREAS**, this Agreement is for professional stormwater engineering services for construction project review; and

**WHEREAS**, on February 4, 2021, the parties entered into an agreement for a total not-to-exceed amount of \$44,999 and a termination date of June 30, 2022; and

**WHEREAS**, the Agreement currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed \$44,999; and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of \$163,001 for continued tasks; and

**WHEREAS**, the Agreement currently provides in Exhibit A entitled "Scope of Work" the complete and particular description of services; and

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

**WHEREAS**, the City Council approved this Amendment No. 1, on this 15 day of June, 2021.

**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 \$163,001 and to read in its entirety:

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$208,000 (herein "not-to-exceed amount") and shall be earned as the work progresses. Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2022, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

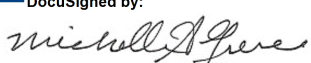
2. This Agreement is amended to delete and replace in its entirety:

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

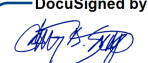
3. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect

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

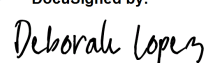
**CITY OF GOLETA**

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Michelle Greene, City Manager

**CONSULTANT**

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James Salvito, President

**ATTEST:**

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Jeff Edwards, Vice President

**APPROVED AS TO FORM:**  
MICHAEL JENKINS, CITY ATTORNEY

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Winnie Cai, Assistant City Attorney

## **EXHIBIT A-1**

### **Scope of Work**

CONSULTANT shall provide the City with professional stormwater services to assist with construction project advisement, inspections, and document review for compliance with the Phase II MS4 Permit and Construction General Permit issued by the State Water Resources Control Board (SWRCB), and any additional related requirements from the Regional Water Quality Control Board (RWQCB), such as post-construction requirements. CONSULTANT shall provide all necessary Stormwater services as needed by the City. In performing all professional stormwater services, CONSULTANT shall work to protect the interests of the City and to provide the highest quality services possible for the City.

CONSULTANT is a qualified professional capable of providing the services listed below to the City. CONSULTANT may be selected to provide stormwater services for one or more construction projects, as needed. Scope elements include:

#### **Development Review – Reimbursable Work**

- Review/QA/QC of Stormwater Pollution Prevention Plans (SWPPPs), with approval from QSP/QSD consultant. Projects range in size and scope, and there are typically 2-3 new projects per month, and 10-20 open projects at any given time.
- Review/QA/QC of Stormwater Control Plans (SWCPs) including Operation & Maintenance (O&M) Plans with approval from QSP/QSD staff.
- Review of engineering drawings and plan sets for stormwater compliance as well as as-builts to ensure consistency with approved SWCP, Conditions of Approval and field construction prior to acceptance and issuance of Certificate of Occupancy.
- Complete Erosion and Sediment Control (E&SC) Plan Review Checklist, Stormwater Control Plan Review Checklist.
- Review and Processing of Maintenance Agreement:
  - Forward draft maintenance agreement and insurance for review and approval by City Attorney's office.
  - Email approved maintenance agreement to property owner to complete and notarize for final processing.
  - Review notarized maintenance agreement and forward package of agreement with memorandum for processing and recordation and to PWD for routing.
- Attend Pre-construction meetings and conduct a Pre-Land Disturbance Inspection (during the rainy season) to verify BMPs are installed prior to active construction.
- Perform construction site inspections as required.



- Complete and maintain construction site inspection forms/checklists that record all best management practices (BMPs) observed during inspection and any illicit discharges if found during inspection.
- Conduct Final PCR Field Verification of all Stormwater Control Measures (SMC) that are installed onsite; and record finding on the Final PCR Field Verification Form
- Responses to project-related regulatory requests, as needed, including letters and memorandums.
- Tracking of all stormwater information, dates, and communication, within the City's database system. Assurance that all key metrics, milestones, conditions of approval and more are updated in a timely manner in the database system.
- Attend Weekly Stormwater status meetings with staff (2 MNS Representative).
- Attend Weekly Development Review Committee (DRC) Meeting with staff
- Attend Weekly Planning Environmental Review/Public Works (PER/PW) Meeting with staff
- Communication/advisement to property owners, developers, and City of Goleta staff (including any other affective stakeholders) related to the development of the project.
- Other tasks common to stormwater construction project review and inspections.
- Utilization of environmental and general regulations relevant to construction activities.
- Provide education and educational materials during project pre-construction meeting with developers and document this practice per MS4 requirements.

#### MS4 Compliance – Non-Reimbursable Work

- Assurance of MS4 and CGP compliance as related to development projects.
- Retroactive database entry for closed projects
- Provide additional training or outreach as part of program/process improvement.
- Program and process improvement tasks, such as but not limited to: website improvements, application process improvements, and outreach materials development, as budget allows.
- Post Certificate of Occupancy Stormwater Monitoring (Currently No Mechanism or Ordinance in place for reimbursable work)

The scope of work is for reimbursable projects, and all work conducted shall have an associated billing number.

Deliverables:

- Deliverable: Written review documentation by licensed qualified SWPPP practitioner (QSP) or qualified SWPPP Developer (QSD) for all documents reviewed.
- Deliverable: Written approval forms/documentation by QSP or QSD for all documents approved.
- Deliverable: Written comment and approval forms by QSP or QSD for all inspections conducted.
- Deliverable: Issuance of Final PCR Field Verification Inspection approval letters by QSP or QSD
- Deliverable: draft memos/letters to applicants, RWQCB, and other entities as needed.
- Deliverable: updates of stormwater database on an ongoing basis for all projects MNS is involved with, with a full update prior to annual report submittal.
- Deliverable: training documentation for construction crew trainings conducted.

Cost Estimate

The cost of work is a time and materials contract for **\$163,000** per year. This includes \$130,000 for reimbursable work and \$33,000 for non-reimbursable work. Based upon current project workload for various clients within the state, CONSULTANT'S estimate uses a model of 10 to 15 projects on average per month at the rates described in Exhibit B, 98 hours per month as described in the table below, which equals \$13,550 per month.

Reimbursable Work		Non-Reimbursable Work	
80 hours per month	Craig Snell or Mary Zepeda	10 hours per month	Mary Zepeda
		8 hours per month	Mark Schleich

**Project Name: Stormwater Engineering Services for Construction Project Review**

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
MNS ENGINEERS, INC.**

This AGREEMENT FOR PROFESSIONAL SERVICES (herein referred to as "AGREEMENT") is made and entered into this 4th day of February, 2021, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **MNS ENGINEERS, INC.**, a California Corporation (herein referred to as "CONSULTANT").

**WHEREAS**, the CITY has a need for professional stormwater engineering services for construction project review; and

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

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

**WHEREAS**, the City Manager approved this AGREEMENT pursuant to Goleta Municipal Code section 3.05.070.

CITY and CONSULTANT agree as follows:

**1. RETENTION AS CONSULTANT**

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

**2. DESCRIPTION OF SERVICES**

The services to be performed by CONSULTANT are as follows:

Professional Stormwater Consulting Services in conjunction with Engineering Services shall generally include Construction Project Compliance Review 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 \$44,999 (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 June 30, 2022, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

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

### **4. EXTRA SERVICES**

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

### **5. CITY PROJECT MANAGER AND SERVICES BY CITY**

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is Melissa Nelson, Environmental Services Coordinator. 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 June 30, 2022, unless term of this AGREEMENT is extended, or the AGREEMENT is terminated as provided for herein.

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

## **7. OWNERSHIP OF DOCUMENTS**

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

## **8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR**

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

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

#### **11. RELATIONSHIP OF CONSULTANT TO CITY**

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

#### **12. CORRECTIONS**

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

#### **13. TERMINATION BY CITY**

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



**14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

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

**15. AUDIT OF RECORDS**

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

**16. WAIVER; REMEDIES CUMULATIVE**

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

**17. CONFLICT OF INTEREST**

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

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

**18. CONSTRUCTION OF LANGUAGE OF AGREEMENT**

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

**19. MITIGATION OF DAMAGES**

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

**20. GOVERNING LAW**

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

**21. NONDISCRIMINATION**

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

**22. TAXPAYER IDENTIFICATION NUMBER**

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

**23. NON-APPROPRIATION OF FUNDS**

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

**24. MODIFICATION OF AGREEMENT**

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

**25. USE OF THE TERM "CITY"**

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

**26. PERMITS AND LICENSES**

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

**27. CAPTIONS**

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

**28. AUTHORIZATION**

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

**29. ENTIRE AGREEMENT BETWEEN PARTIES**

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

**30. PARTIAL INVALIDITY**

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

**31. NOTICES**

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

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

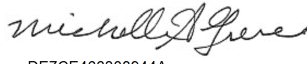
TO CONSULTANT: Attention: Mark Schleich, Project Manager  
201 N. Calle Cesar Chavez, Suite 300  
Santa Barbara, CA 93101

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

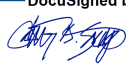
This Agreement may be executed in several counterparts, which may be facsimile or electronic copies. Each counterpart is fully effective as an original, and together constitutes one and the same instrument.

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

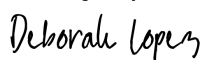
**CITY OF GOLETA**


DocuSigned by:  
  
DE7CE466308944A...  
Michelle Greene, City Manager

**CONSULTANT**

DocuSigned by:  
  
D7A4F4B73D14468...  
James Salvito, President

**ATTEST**

DocuSigned by:  
  
A3E08F3473CA47E...  
Deborah Lopez, City Clerk

DocuSigned by:  
  
717C0137DB1041C...  
Jeff Edwards, Vice President

**APPROVED AS TO FORM:**  
MICHAEL JENKINS, CITY ATTORNEY

DocuSigned by:  
  
A1BE8F896161498...  
Winnie Cai, Assistant City Attorney

## **EXHIBIT A**

### **SCOPE OF WORK**

CONSULTANT shall provide the City with professional stormwater services to assist with construction project advisement, inspections, and document review for compliance with the Phase II MS4 Permit and Construction General Permit issued by the State Water Resources Control Board (SWRCB), and any additional related requirements from the Regional Water Quality Control Board (RWQCB), such as post-construction requirements. CONSULTANT shall provide all necessary Stormwater services as needed by the City. In performing all professional stormwater services, CONSULTANT shall work to protect the interests of the City and to provide the highest quality services possible for the City.

CONSULTANT is a qualified professional capable of providing the services listed below to the City. CONSULTANT may be selected to provide stormwater services for one or more construction projects, as needed. Scope elements include:

- Review/QA/QC of Stormwater Pollution Prevention Plans (SWPPPs), with approval from QSP/QSD consultant. Projects range in size and scope, and there are typically 2-3 new projects per month, and 10-20 open projects at any given time.
- Review/QA/QC of Stormwater Control Plans with approval from QSP/QSD staff.
- Review of engineered drawings and plans for stormwater compliance.
- Pre-construction meetings and site visits.
- Maintain inspection logs and records of bmp and site control measure (SCM) elements.
- Provide education and educational materials to construction contractors, developers, and workers, and document this practice per MS4 construction outreach requirements.
- Site inspections for construction best management practices, post-construction requirements, and final site verification.
- Issuance of final stormwater verification and approval letters.
- Responses to project-related regulatory requests, as needed, including letters and memorandums.
- Entry, management, and maintenance of the construction database spreadsheet, per Phase II MS4 Permit and regulatory requirements.
- Tracking of all stormwater information, dates, and communication, within the City's online database system. Assurance that all key metrics, milestones, conditions of approval and more are updated in a timely manner in the database system.
- Weekly to monthly status meetings with staff.
- Training of staff during inspections and project reviews.

- Communication/advisement to property owners, developers, and City of Goleta staff.
- Other tasks common to stormwater construction project review.
- Understanding of environmental and general regulations relevant to construction activities.
- Assurance of MS4 and CGP compliance as related to development projects.

The scope of work is for reimbursable projects, and all work conducted shall have an associated billing number.

Deliverables:

- Deliverable: Written review documentation by licensed qualified SWPPP practitioner (QSP) or qualified SWPPP Developer (QSD) for all documents reviewed.
- Deliverable: Written approval forms/documentation by QSP or QSD for all documents approved.
- Deliverable: Written comment and approval forms by QSP or QSD for all inspections conducted.
- Deliverable: Issuance of final stormwater verification approval letters by QSP or QSD
- Deliverable: draft memos/letters to applicants, RWQCB, and other entities as needed.
- Deliverable: updates of stormwater database on an ongoing basis, with a full update prior to annual report submittal.
- Deliverable: training documentation for construction crew trainings conducted.

## EXHIBIT B

### Schedule of Fees

<b>Name</b>	<b>Title</b>	<b>\$/Hr</b>
Mark Schleich, PE	Project Manager	\$175
Craig Snell, QSD/QSP, CPESC	Senior Stormwater Specialist	\$135
Kent Yankee, PE, QSD/QSP	Supervising Engineer	\$175
Sheri Lubin, QSP/D, CPESC, MS	Program Manager/Senior Stormwater Specialist	\$135
Mary Zepeda, CPESC-IT	Stormwater Program Coordinator	\$135