



**Agenda Item B.11**  
**CONSENT CALENDAR**  
**Meeting Date: June 19, 2018**

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**TO:** Mayor and Councilmembers

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

**CONTACT:** Maureen Gaasch, Senior Management Analyst

**SUBJECT:** Public Works Professional Services Contracts for Fiscal Year 2018-2019

**RECOMMENDATION:**

- A. Authorize the City Manager to execute Amendment No. 3 to Professional Services Agreement No. 2016-075 with COM3 Consulting Inc., for Project Management Services, increasing the maximum contract amount by \$186,500 for a total amount not-to-exceed \$600,000, and extending the agreement to June 30, 2019 (Attachment No. 1).
- B. Authorize the City Manager to execute Amendment No. 2 to Professional Services Agreement No. 2016-077 with Laura M. Bridley, AICP, for Land Use Planning Services for Capital Improvement Projects, increasing the maximum contract amount by \$60,345 for a total amount not-to-exceed \$179,565, increasing the hourly rate in the schedule of fees and extending the agreement to June 30, 2019 (Attachment No. 3).
- C. Authorize the City Manager to execute Amendment No. 1 to Professional Services Agreement No. 2017-037 for On-Call Right-of-Way Acquisitions Services with Beacon Integrated Professional Resources Inc. dba Hamner, Jewell and Associates (HJA), increasing the hourly rates in the schedule of fees, and extending the termination date to June 30, 2019 (Attachment No. 5).
- D. Authorize the City Manager to execute Amendment No. 4 to Professional Services Agreement No. 2014-062 with Santa Barbara Channelkeeper for monthly Stream Monitoring and Water Quality Testing Services, increasing the maximum contract amount by \$16,500 for a total amount not-to-exceed \$82,500, and extending the agreement to June 30, 2019 (Attachment No. 7).
- E. Authorize the City Manager to execute Amendment No. 4 to Professional Services Agreement No. 2014-101 with Explore Ecology for K-6 Storm Water Educational Outreach Services, increasing the maximum contract amount by \$11,880 for a total amount not-to-exceed \$57,114, and extending the agreement to June 30, 2019 (Attachment No. 9).

- F. Authorize the City Manager to execute Amendment No. 4 to Professional Services Agreement No. 2014-069 with ZWorld Geospatial Information Systems for professional GIS mapping services in conjunction with the City's Stormwater Management Plan, increasing the maximum contract amount by \$12,000 for a total amount not-to-exceed \$32,000, and extending the agreement to June 30, 2019 (Attachment No. 11).
- G. Authorize the City Manager to execute Amendment No. 3 to Professional Services Agreement 2016-132 with MSW Consultants, Inc., for professional solid waste analytical services, increasing the maximum contract amount by \$5,000 for a total amount not-to-exceed \$34,900, and extending the agreement to June 30, 2019 (Attachment No. 13).
- H. Authorize the City Manager to execute Amendment No. 2 to Agreement No. 2016-117 with Stantec Consulting Services Inc., for Traffic Engineering Services, increasing the maximum contract amount by \$75,000 for a total amount not-to-exceed \$175,000, and extending the agreement to June 30, 2019 (Attachment No. 15).
- I. Authorize the City Manager to execute Amendment No. 3 to Agreement No. 2015-068 with Flowers & Associates to provide On-Call Inspection and Construction Support Services, increasing the maximum contract amount by \$75,000 for a total amount not-to-exceed \$304,900, and extending the agreement to June 30, 2019 (Attachment No. 17).
- J. Authorize the City Manager to execute a Professional Services Agreement with Solid Waste Solutions, Inc. (SWS), for Engineering Support Services in an amount not-to-exceed \$90,000 and to expire on June 30, 2019 (Attachment No. 19).

**BACKGROUND:**

The Public Works Department has contracted for on-call engineering project management and professional services since incorporation in 2002.

On March 11, 2016, the Department solicited Statements of Qualifications (SOQ) with a Request for Qualifications (RFQ) for On-Call Professional Engineering and Environmental Services for the following services:

- Project Management
- Engineering
- Geotechnical Engineering
- Traffic Engineering
- Surveying
- Landscape Design
- Environmental Planning
- Development Review
- Construction Management, Inspection and Testing (CMIT)

SOQs were received on April 27, 2016. The Public Works Department selected the following consultants through the formal RFQ process based on qualifications for award of a consultant services agreement with the City: COM3 Consulting Inc.; Laura Bridley, AICP; Hamner, Jewell and Associates (HJA); Flowers & Associates; and Stantec Consulting Services Inc.

Goleta Municipal Code section 3.05.240(b) provides that “the acquiring of professional services shall be procured through negotiated contract process and may include requests for proposals/qualifications. Contracting for professional services is decentralized and shall be the responsibility of the Department Head requesting the service.” Factors to consider in awarding professional services contracts are also referenced in Goleta Municipal Code section 3.05.240(a) as follows:

“In contracting for those professional services, such contracts should only be awarded to firms or persons who have demonstrated ‘adequate competence’ meaning: an adequate level of experience, competence, resources/equipment, staffing and other professional qualifications necessary for more than a satisfactory performance of the services required in the time period needed. Once the department requesting the service has determined a firm has an adequate level of competence, the cost of the service may be considered, however, the lowest cost may not be the sole factor in deciding which firm or who shall be awarded the contract. It may be in the City’s best interest to award the contract to a higher priced contractor based on the scope of services available, unique skills, staffing levels, timing, prior experience, past working relationship, and other factors required by the department or proposed by that contractor. The information needed for determining that level of competence, other qualifications and the procedure for selecting such services shall be determined by each City department responsible for recommending the professional service contract.”

COM3 Consulting Inc., currently provides the Public Works Department with engineering design services and project management of Capital Improvement Program projects and issues requiring engineering support. Laura Bridley, AICP currently provides the Public Works Department with services for project management and environmental planning and permitting services.

The Public Works Department has also contracted for right-of-way acquisition services for various Capital Improvement Program projects. These services are currently provided by Hamner, Jewell and Associates (HJA).

The Department contracts for traffic engineering services to provide the expertise and personnel necessary to apply the requirements of the California Vehicle Code (CVC) and the California Manual on Uniform Traffic Control Devices (CMUTCD) to private, as well as City development projects, and to review current roadway configurations, traffic counts and modeling. Stantec Consulting Services Inc. currently provides these services.

Santa Barbara Channelkeeper (Channelkeeper) provides monthly stream monitoring and water quality testing services to the City through a professional services contract, while

Explore Ecology provides K-6 storm water educational outreach services on a contract basis as well.

Finally, the Department has also contracted with ZWorld Geospatial Information Systems (ZWorld), MSW Consultants, Inc. (MSW), Solid Waste Solutions (SWS) and Flowers & Associates (Flowers) for general engineering support services. Flowers provides on-call inspection services in conjunction with City issued encroachment permits for private construction within the public right of way. ZWorld provides GIS data development, maintenance, mapping and application support for the City's storm drains Atlas/Sub-drainage mapping program. MSW provides solid waste collection rate setting analytical services in conjunction with the City's participation in the Tajiguas Resource Recovery Project, as well as analytical support for the City's waste hauler franchise agreement. SWS provides engineering support services to support the Public Works Department.

## **DISCUSSION:**

### **COM3 Consulting Inc.: Engineering Design Services and Project Management**

The Public Works Department recommends amending the agreement with COM3 to continue COM3's management of current projects. COM3 has been working with the Public Works Department to finalize the Goleta Development Impact Fee Update and DIF ordinance update for the City. Additionally, COM3 continues to manage the Ekwill Street and Fowler Road Extensions Project, which has consisted of Coastal Commission permitting and right-of-way acquisition. COM3 currently provides services for the San Jose Creek Bike Path South Segment Project. In the beginning of 2018, COM3 prepared a grant application in conjunction with the Goleta Train Depot Project, which resulted in a \$13M award. COM3 is currently assisting the Public Works Department in execution of documents to receive the grant. It is not in the City's best interest to replace this contract project manager at this time.

The Public Works Department believes that retaining the current contract project manager is the most expeditious and effective way to keep these projects moving forward at this time. COM3 also has an established reputation with local, state and federal permitting agencies.

On June 21, 2016, the City Council awarded a professional services agreement for \$186,500 to COM3 following a formal Request for Qualifications process. On June 20, 2017, the City Council approved Amendment No. 1 to Agreement No. 2016-075 for an additional compensation amount of \$171,500 for a total amount not-to-exceed \$358,000. On February 20, 2018, the City Council approved Amendment No. 2 to Agreement 2016-075 for an additional compensation amount of \$55,500 for a total amount not-to-exceed \$413,500. This contract is set to expire on June 30, 2018. Public Works Department is pleased with the quality of professional services provided by COM3 and recommends approval of the proposed Amendment No. 3 to the current contract (Agreement No. 2016-075), for an additional compensation amount of \$186,500 for a total not-to-exceed amount of \$600,000 and extending the term to June 30, 2019.



COM3 will also assist the Public Works Department in managing other Capital Improvement Program (CIP) projects and miscellaneous issues that require engineering expertise.

**Laura M. Bridley, AICP: Land Use Planning Services**

The Public Works Department recommends extending the agreement with Laura Bridley to continue to provide assistance processing environmental documents and scoping proposed projects, acting as a liaison with permitting agencies, attending project related meetings, and providing project coordination and processing services on various Capital Improvement and Public Works projects. Specific projects include the Hollister Complete Streets Corridor project, Ekwill Fowler Road Extension, San Jose Creek Bike Path projects, Cathedral Oaks Interchange Landscaping project, Old Town Sidewalk Improvements, Hollister Avenue Bridge Replacement, Bicycle Pedestrian Master Plan, Amtrak Depot, and various sidewalk infill, street crossing and related projects. Ms. Bridley has been instrumental in coordinating and overseeing the environmental document and permitting phases of the Ekwill Fowler Road Extensions project. Because of her comprehensive knowledge and current involvement in various projects, the Public Works Department recommends she continue to work on these projects.

On June 21, 2016, the City Council awarded a professional services agreement for \$64,100 to Laura M. Bridley, AICP, following a formal RFQ process. On June 20, 2017, the City Council approved Amendment No. 1 to Agreement No. 2016-077 for an additional compensation amount of \$55,120 for a total amount not-to-exceed \$119,220. This contract is set to expire on June 30, 2018. The Public Works Department is pleased with the quality of services provided by Laura Bridley and recommends approval of the proposed Amendment No. 2 to the current contract (Agreement No. 2016-077), for an additional compensation amount of \$60,345 for a total amount not-to-exceed \$179,565, and extending the term to June 30, 2019. The Public Works Department also recommends the approval of the rate increase from \$130 per hour, established in 2013, to \$135 per hour (3.8% cost of living adjustment (COLA) increase).

**Beacon Integrated Professional Resources, Inc. dba Hamner, Jewell and Associates: On-Call Right-of-Way (ROW) Acquisition and Real Estate Services**

On April 27, 2016, Hamner, Jewell and Associates (HJA) was selected to provide on-call right-of-way acquisition and real estate services for various CIP projects. Since that time, they have assisted with the Hollister Avenue Class I Bike Path Project and San Jose Creek Bike Path Middle Extent Project. Under the proposed contract amendment, HJA will be performing right-of-way services on additional CIP projects, such as the Hollister Avenue Widening project, Storke Road Widening Phelps to City Limits project, bus stop relocations and any other projects that need right-of-way services.

On June 20, 2017, the City Council awarded a professional design services agreement for \$65,000 to Hamner, Jewell and Associates for on-call ROW acquisition and real estate services. The Public Works Department is satisfied with the quality of professional services provided by HJA and therefore recommends approval of Amendment No. 1 for the proposed COLA rate increases and adjustments, and to extend the term to June 30, 2019.

**Santa Barbara Channelkeeper: Stream Monitoring and Water Quality Testing Services**

On May 30, 2014, the City Manager awarded Professional Services Agreement (No. 2014-062) in the amount of \$16,500 to Santa Barbara Channelkeeper based upon qualifications, with a term ending June 30, 2015. On June 30, 2015, the City Council approved Amendment No. 1 for an additional compensation amount of \$16,500 for a new total amount not-to-exceed \$33,000, and extending the term to June 30, 2016. On June 21, 2016, the City Council approved Amendment No. 2 for an additional compensation amount of \$16,500 for a new total amount not-to-exceed \$49,500, and extending the term to June 30, 2017. Then on June 20, 2017, the City Council approved Amendment No. 3 for an additional compensation amount of \$16,500 for a new total amount not-to-exceed \$66,000, and extending the term to June 30, 2018. The Public Works Department is pleased with the quality of professional services provided by Channelkeeper and recommends approval of the proposed Amendment No. 4 to the current contract, increasing the contract amount by \$16,500 for a new total amount not-to-exceed \$82,500, and extending the term to June 30, 2019.

**Explore Ecology: K-6 Storm Water Educational Outreach Services**

On September 8, 2014, the City Manager awarded Professional Services Agreement No. 2014-101 for an amount not-to-exceed \$10,938 to Explore Ecology, based upon qualifications, with a term ending September 30, 2015. On August 31, 2015, the City Manager executed an Amendment No. 1 for an additional compensation amount of \$11,208 for a new total amount not-to-exceed \$22,146, and extending the term to June 30, 2016. On June 21, 2016, the City Council authorized an Amendment No. 2 for an additional compensation amount of \$11,208 for a new total amount not-to-exceed \$33,354, and extending the term to June 30, 2017. Then on June 20, 2017, the City Council authorized Amendment No. 3 for an additional compensation amount of \$11,880 for a new total amount not-to-exceed \$45,234, and extending the term to June 30, 2018. The Public Works Department is pleased with the quality of professional services provided by Explore Ecology and recommends approval of the proposed Amendment No. 4 to the current contract, increasing the contract by \$11,880 for a new total amount not-to-exceed \$57,114, and extending the term to June 30, 2019.

**ZWorld Geospatial Information Systems: GIS Mapping Services**

On June 26, 2014, the City Manager awarded a professional services agreement No. 2014-069 for an amount not-to-exceed \$10,000 to ZWorld Geospatial Information Systems, based upon qualifications, with a term ending June 20, 2015. On June 2, 2015, the City Manager executed Amendment No. 1 for an additional compensation amount of \$10,000 for a new total amount not-to-exceed \$20,000, and extending the term to June 30, 2016. On June 21, 2016, the City Manager executed Amendment No. 2 to extend the term to June 30, 2017. Then on July 31, 2017, the City Manager executed Amendment No. 3 to extend the term to June 30, 2018. The Public Works Department is pleased with the quality of professional services provided by ZWorld Geospatial Information Systems and recommends approval of the proposed Amendment No. 4 to the current contract, increasing the contract amount by \$12,000 for a new total amount not-to-exceed \$32,000, and extending the term to June 30, 2019.

**MSW Consultants, Inc.: Solid Waste Franchise Agreement Rate Setting Services**

On November 16, 2016, the City Manager awarded a professional services agreement No. 2016-132 for an amount not-to-exceed \$10,000 to MSW Consultants, Inc., based upon qualifications, with a term ending June 30, 2017. On June 27, 2017 the City Manager executed Amendment No. 1 for an additional compensation amount of \$6,000 for a new total amount not-to-exceed \$16,000, and extending the term to September 30, 2017. On October 23, 2017 the City Manager executed Amendment No. 2 for an additional compensation amount of \$13,900 for a new total amount not-to-exceed \$29,900, and extending the term to July 30, 2018. The Public Works Department is pleased with the quality of professional services provided by MSW Consultants, Inc., and recommends approval of the proposed Amendment No. 3 to the current contract, increasing the compensation amount by \$5,000 for a new total amount not-to-exceed \$34,900, and extending the agreement to June 30, 2019.

**Stantec Consulting Services Inc.: Engineering Support Services**

Stantec provides a variety of traffic related services that include field reviews (measurements, photos, notes etc.), reviews applicable guiding principles including California Manual on Uniform Traffic Control Devices (CAMUTCD), Highway Design Manual, Caltrans/GreenBook Standard Plans and Specifications, and the American Association of State Highway and Transportation Officials (AASHTO) Publications etc. Stantec prepares reports and recommendations for the Public Works Department on traffic related issues based on sound engineering criteria.

On September 19, 2016, the City Manager entered into an agreement (Agreement No. 2016-117) with Stantec Consulting Services Inc. (Stantec) for engineering support services for a total not-to-exceed amount of \$25,000 with a term ending December 31, 2017. On June 20, 2017, the City Council authorized the City Manager to execute Amendment No. 1 to increase the maximum compensation amount by \$75,000, for a new total not-to-exceed amount of \$100,000. This agreement is due to expire June 30, 2018. The Public Works Department is pleased with the quality of services provided by Stantec and recommends approval of the proposed Amendment No. 2 to the current contract, increasing the compensation amount by \$75,000 for a total amount not-to-exceed \$175,000, approving the revised schedule of fees for a COLA rate increase, and extending the termination date to June 30, 2019.

**Flowers & Associates: Construction Inspection Support Services**

The City retained Flowers to assist the Public Works Department with needed inspection services. The services include providing on-call inspection services, primarily nighttime inspection for encroachment permits that require special consideration, such as work that requires shutting down lanes on arterial roadways at busy intersections. The City has only one inspector for public works permits which makes it necessary for the City to provide for additional inspection support services in the Public Works Department during non-business hours.

On August 31, 2015, the City Manager entered into an Agreement No. 2015-068 for construction inspection and support services with Flowers & Associates (Flowers) for a total not-to-exceed amount of \$29,900 and a termination date of June 30, 2016. On April 5, 2016, the City Council authorized the City Manager to execute Amendment No. 1 with

Flowers to increase the maximum compensation amount by \$125,000 for a new total amount not-to-exceed amount of \$154,900, with an expiration date of June 30, 2017. On June 20, 2017, the City Council authorized the City Manager to execute Amendment No. 2 with Flowers to increase the maximum compensation amount by \$75,000, for a new total not-to-exceed amount of \$229,900. This agreement is due to expire June 30, 2018. The Public Works Department is satisfied with the quality of services provided by Flowers and recommends approval of the proposed Amendment No. 3 to the current contract, increasing the compensation amount by \$75,000 for a total amount not-to-exceed \$304,900, approving the revised schedule of fees for a COLA rate increase, and extending the termination date to June 30, 2019.

### **Solid Waste Solutions, Inc.: Engineering Support Services**

The City of Goleta initially retained SWS to assist the Public Works Department with existing workload. SWS' services included, but were not limited to: developing new permit processes, assisting with traffic engineering requests, encroachment permits, Capital Improvement Program project management, solid waste and storm water management, and general engineering tasks. SWS is included on the City's Pre-Authorized Qualified Consultant List that was adopted by City Council on December 20, 2016.

On November 20, 2014, the City Manager signed an Engineering Support Services Agreement (No. 2014-114) with Solid Waste Solutions (SWS) for engineering support services for the Public Works Department for an amount not to exceed \$29,000 with a termination date of November 1, 2015. On May 19, 2015, Council authorized the City Manager to execute Amendment No. 1 with SWS to increase the maximum compensation by \$38,500 for a total not exceed amount of \$67,500. On October 6, 2015 Council authorized the City Manager to execute Amendment No. 2 to the agreement for SWS to increase the maximum compensation by \$75,000 for a total not to exceed amount of \$142,500 and with a termination of June 30, 2016. On June 21, 2016, Council authorized the City Manager to execute Amendment No. 3 with SWS to increase the maximum compensation by \$90,000, for a new total not-to-exceed amount of \$232,500 with a termination date of June 30, 2017. On June 20, 2017 Council authorized the City Manager to execute Amendment No. 4 to the current contract (Agreement No.2014-114), increasing the contract by \$70,000 for a new total not-to-exceed amount of \$302,500. This contract is due to expire June 30, 2018.

There continues to be a need for additional engineering support services. The Public Works Department is pleased with the quality of professional services provided by SWS and recommends approval of a new agreement for a total not-to-exceed amount of \$90,000 and the contract term to expire on June 30, 2019.

### **FISCAL IMPACTS:**

The proposed FY 2018/19 Revised Budget includes sufficient funds to cover these contracts; therefore, no additional appropriations are necessary. Vendors listed in the table below have a term extension date of June 30, 2019, additional contract authority amounts, and are allocated by the funding source.

Vendor	General Fund	GTIP	CIP Projects	Deposit Accounts	Solid Waste Fund	Total
COM3	\$50,300	\$30,500	\$105,700			\$186,500
Laura Bridley	\$2,025		\$58,320			\$60,345
SB Channelkeeper					\$16,500	\$16,500
Explore Ecology					\$11,880	\$11,880
ZWorld Geospatial Information Systems					12,000	\$12,000
MSW Consultants, Inc.					5,000	\$5,000
Stantec	\$50,000		\$25,000			\$75,000
Flowers & Assoc.				\$75,000		\$75,000
Solid Waste Solutions	\$90,000					\$90,000
<b>Total</b>	<b>\$192,325</b>	<b>\$30,500</b>	<b>\$189,020</b>	<b>\$75,000</b>	<b>\$45,380</b>	<b>\$532,225</b>

Beacon Integrated Professional Resources, Inc. dba Hamner, Jewell and Associates recommended contract amendment is to extend the term date to June 30, 2019 and adjust rates for inflation. The current contract amount of \$65,000 is not recommended for increase Current FY 17/18 Purchase Orders will be carried over with various CIP project budgets, to support on-call services related to contract amount of total not-to-exceed \$65,000.

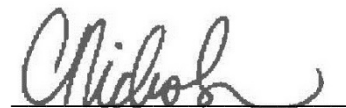
#### ALTERNATIVES:

The City Council may elect not to authorize these contract amendments and direct the Public Works Department to seek statements of qualifications and proposals from additional qualified firms. Depending on which contracts the City Council did not authorize, doing so could cause delays in the timing of some of the City's CIP projects.

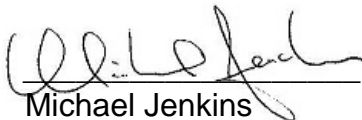
**Reviewed By:**

**Legal Review By:**

**Approved By:**



Carmen Nichols  
Deputy City Manager



Michael Jenkins  
City Attorney



Michelle Greene  
City Manager

**ATTACHMENTS:**

1. Amendment No. 3 for COM3 Consulting Agreement No. 2016-075 for Professional Services
2. COM3 Consulting Agreement No. 2016-075 for Professional Services and Amendments No. 1 and 2
3. Amendment No. 2 for Laura Bridley Consulting Agreement No. 2016-077 for Professional Services
4. Laura Bridley Consulting Agreement No. 2016-077 for Professional Services and Amendment No. 1
5. Amendment No. 1 for Hamner, Jewell and Associates Agreement No. 2017-037 for Professional Services
6. Hamner, Jewell and Associates Agreement No. 2017-037 for Professional Services
7. Amendment No. 4 for Santa Barbara Channelkeeper Agreement No. 2014-062 for Professional Services
8. Santa Barbara Channelkeeper Agreement No. 2014-062 for Professional Services and Amendments No. 1 through 3
9. Amendment No. 4 for Explore Ecology Agreement No. 2014-101 for Professional Services
10. Explore Ecology Agreement No. 2014-101 for Professional Services and Amendments No. 1 through 3
11. Amendment No. 4 for ZWorld Geospatial Information Systems Agreement No. 2014-069 for Professional Services
12. ZWorld Geospatial Information Systems Agreement No. 2014-069 for Professional Services and Amendments No. 1 through 3
13. Amendment No. 3 for MSW Consultants, Inc. Agreement No. 2016-132 for Professional Services
14. MSW Consultants, Inc., Agreement No. 2016-132 for Professional Services and Amendments No. 1 and 2
15. Amendment No. 2 for Stantec Consulting Services Inc. Agreement No. 2016-117 for Professional Design Services
16. Stantec Consulting Services Inc. Agreement No. 2016-117 for Professional Design Services and Amendment No. 1
17. Flowers & Associates Agreement No. 2015-068 for Professional Services and Amendment No. 3 for Flowers & Associates Agreement No. 2015-068 for Professional Services
18. Flowers & Associates Agreement No. 2015-068 for Professional Services and Amendments No. 1 and 2
19. Professional Services Agreement with Solid Waste Solutions, Inc. (SWS), for Engineering Support Services

## **ATTACHMENT 1**

Amendment No. 3 for COM3 Consulting Agreement No. 2016-075 for Professional  
Services





**AMENDMENT NO. 3  
TO A PROFESSIONAL DESIGN SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
COM3 CONSULTING, INC.**

**This Amendment No. 3** a PROFESSIONAL SERVICES AGREEMENT is made this 19<sup>h</sup> day of June, 2018, between the **CITY OF GOLETA**, a municipal corporation ("City") and **COM3 CONSULTING, INC.**, a California Corporation ("Consultant") dated June 21, 2016 ("Agreement," Agreement No. 2016-075).

**RECITALS**

**WHEREAS**, under the Agreement Consultant has provided the City with engineering and project management services in conjunction with the Ekwill Folwer Extension Project, San Jose Creek Bike Path South Segment, Goleta Transportation Improvement Plan (GTIP), and various other Capital Improvement Projects; and

**WHEREAS**, on June 21, 2016, the parties entered into an agreement for a total not-to-exceed amount of \$186,000; and

**WHEREAS**, on June 20, 2017, the Agreement was amended to provide additional compensation in the amount of \$171,500 for a total not-to-exceed amount of \$358,000 (Amendment No. 1); and

**WHEREAS**, on February 20, 2018, the Agreement was amended to provide additional compensation in the amount of \$55,500 for a not-to-exceed amount of \$413,500 (Amendment No. 2); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of one hundred eighty-six thousand five hundred dollars (\$186,500) for professional engineering and project management services; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on June 30, 2018; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the Agreement to June 30, 2019; and

**WHEREAS**, the City Council approved this Amendment No. 3, on this 19<sup>th</sup> day of June, 2018.

**AMENDED TERMS**

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

1. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$186,500 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 \$600,000 (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, 2019, 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 year, to read in its entirety.

The term of this Agreement is from the date first written above to June 30, 2019, 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. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

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

**CITY OF GOLETA**

**CONSULTANT**

\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
Gerald Comati, President

**ATTEST:**

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

\_\_\_\_\_  
Jenean Comati, Chief Financial Officer

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Deputy City Attorney



## **ATTACHMENT 2**

COM3 Consulting Agreement No. 2016-075 for Professional Services and Amendments  
No. 1 and 2





Project Name: Engineering Project Management Services

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
COM3 CONSULTING, INC.**

This AGREEMENT FOR PROFESSIONAL SERVICES is made and entered into this 21st day of June, 2016, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **COM3 CONSULTING, INC.**, (herein referred to as "CONSULTANT").

**WHEREAS**, CONSULTANT represents that they are sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the CITY; and

**WHEREAS**, CONSULTANT was recommended for award of this AGREEMENT by the Public Works Director through a competitive Request For Qualifications (RFQ) process based on his prior experience providing project management services on capital improvement projects; and

**WHEREAS**, CONSULTANT was selected for award of this AGREEMENT by City Council; and

**WHEREAS**, the City Council, on this 21st day of June, 2016, approved this AGREEMENT and authorized the City Manager to execute this AGREEMENT per the Goleta Municipal Code 3.05.240.

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 Engineering and Project Management services in conjunction with, but not limited to Ekwill Fowler Extension Project; Hollister Avenue Bridge Replacement; San Jose Creek Bike Path South Segment; Goleta Transportation Improvement Program (GTIP) and various other Capital Improvement Program (CIP) projects. Services shall include Project and

Program Management Assistance, 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 \$186,500 (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 June 30, 2017, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (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. 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 in advance. 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 Kathy Garcia. 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, 2017, 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 paragraph 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 the contract following the notice to proceed.

**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. Gerald Comati is deemed to be specially experienced and is a key member of CONSULTANT's firm, 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. This AGREEMENT is not assignable by CONSULTANT without CITY's prior consent in writing.

**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 level 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 0001 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 on a policy form appropriate to CONSULTANTS profession. Limits shall be no less than \$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 exact 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 with an edition date prior to 2004.
- b) CONSULTANT's insurance shall apply 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) 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 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.
- f) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract 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 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.

- h) 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. RELATION OF THE PARTIES**

The relationship of the parties to this AGREEMENT shall be that of independent contractors 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 comply with the federal Americans with Disability Act, Public Law 101-336, and observe the disability discrimination prohibitions of such laws in the performance of the work required under this AGREEMENT.

**22. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), 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, including a CITY business license, 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: Attn: Michelle Greene, City Manager  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

TO CONSULTANT:

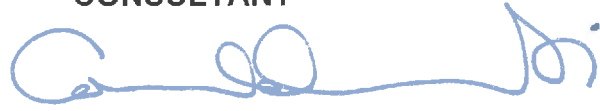
Gerald Comati, President  
COM3 Consulting, Inc.  
~~214 E. Victoria Street~~ 1943 Grand Avenue  
Santa Barbara, CA ~~93101~~ 93103

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

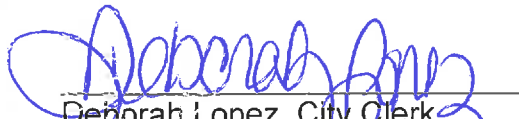
CITY OF GOLETA

  
Michelle Greene, City Manager

CONSULTANT


  
Gerald Comati, President

ATTEST:

  
Deborah Lopez, City Clerk

  
Janean Comati, Chief Financial Officer

APPROVED AS TO FORM

  
Tim W. Giles, City Attorney



## **Exhibit A Scope of Work**

### **1. Goleta Transportation Improvement Plan (GTIP):**

- a. Oversee update of existing and preparation of new cost estimates for the 2016 GTIP.
- b. Coordination with Traffic Consultant regarding development of Traffic Impact Fees.

### **2. Project Specific Project Management:**

Serve as project management lead for the following projects:

- **Ekwill/Fowler Extension Project**
- **Hollister Avenue Bridge Project**
- **San Jose Creek South Bike Path**

Services to include:

- a. Provide continuous interface with City staff regarding projects.
- b. As required, schedule and attend project team meetings and prepare meeting agendas and action items.
- c. Follow up to ensure action items are complied with.
- d. Oversee engineering consultants.
- e. Coordinate with other agencies including Caltrans, SBCAG, City of Santa Barbara, SB Bicycle Coalition, Resource Agencies, and County Flood Control.
- f. Prepare project status reports for projects as required.
- g. Prepare, review and comment on any cooperative agreements necessary for projects.
- h. Prepare project correspondence for City as required.
- i. Provide technical review and comment on consultant deliverables.
- j. Development/maintenance of project schedules.
- k. Track and monitor project costs.
- l. Track and monitor project funding.
- m. Maintain Project Finance Plans.
- n. Coordinate with Caltrans on HBP and STIP funding and prepare STIP and HBP funding documentation as required.
- o. Assist City Staff in preparation of grant funding claims as necessary.
- p. Assist City in securing additional funding for project, as necessary.
- q. Prepare RFP's for professional services, as required to continue progress of projects.
- r. Attend public hearings as required.
- s. Track right of way acquisition process.
- t. Meet with private property owners as required.

### **3. Project Management Assistance:**

Provide project management assistance for other project, as requested by the City. Possible services include, but are not limited to the following:

- a. Provide continuous interface with City staff regarding projects.
- b. Attend Project meetings and prepare meeting agendas and action items.
- c. Follow up to ensure action items are performed.
- d. Coordination with engineering consultants.
- e. Coordinate with other agencies.
- f. Provide technical review and comment on consultant deliverables.
- g. Development/maintenance of project schedules.
- h. Prepare bid-packages.
- i. Track and monitor project costs.
- j. Track and monitor all funding.
- k. Prepare grant funding claims as required.
- l. Prepare Grant Applications.
- m. Prepare RFP's for professional services, as required to continue progress of projects.

**Exhibit B**  
**Schedule of Fees**

	\$/Hr
Gerald Comati, President	\$170
Various, Administrative Support	\$45



**AMENDMENT NO. 1  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
COM3 CONSULTING, INC.**

**This Amendment No. 1** is made this 20<sup>th</sup> day of June, 2017 to a PROFESSIONAL SERVICES AGREEMENT between the **CITY OF GOLETA** ("City") and **COM3 CONSULTING, INC.** ("Consultant") dated June 21, 2016 ("Agreement" No. 2016-075).

**RECITALS**

**WHEREAS**, under the Agreement Consultant has provided the City with project management services; and

**WHEREAS**, the Agreement No. 2016-075 between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed one hundred eighty-six thousand dollars (\$186,500); and

**WHEREAS**, the parties desire to amend the Agreement No. 2016-075 so as to provide for additional compensation in the amount of one hundred seventy one thousand five hundred dollars (\$171,500) for continued professional engineering and project management services in conjunction with, but not limited to Ekwil Fowler Extension Project; Hollister Avenue Bridge Replacement; San Jose Creek Bike Path South Segment; Goleta Transportation Improvement Program (GTIP) and various other Capital Improvement Program (CIP) projects; and

**WHEREAS**, the Agreement No. 2016-075 between City and Consultant currently provides in Section 6 for termination of the agreement on June 30, 2017; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the agreement to June 30, 2018; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Exhibit B entitled "Schedule of Fees" the hour rates for Consultant; and

**WHEREAS**, the parties desire to amend Exhibit B of the Agreement to identify new hourly rates; and

**WHEREAS**, the City Council, on this 20<sup>th</sup> day of June, 2017, approved this Amendment No. 1.

## AMENDED TERMS

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

1. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$171,500 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 \$358,000 (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, 2018, 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 one year to read in its entirety:

The term of this Agreement is from the date first written above to June 30, 2018, 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 paragraph 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. The Agreement is amended to delete and replace in its entirety:

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


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

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

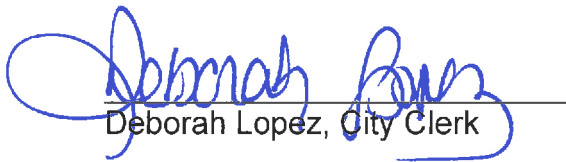
**CITY OF GOLETA**

  
Michelle Greene, City Manager

**CONSULTANT**

  
Gerald Comati, President

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Jenean Comati, Chief Financial Officer

**APPROVED AS TO FORM**

  
Winnie Cai, Deputy City Attorney

**Exhibit B-1  
Schedule of Fees**

	\$/Hr
Gerald Comati, President	\$175
Various, Administrative Support	\$45





**AMENDMENT NO. 2  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
COM3 CONSULTING, INC.**

**This Amendment No. 2** to a PROFESSIONAL SERVICES AGREEMENT is made this 20<sup>th</sup> day of February, 2018, between the **CITY OF GOLETA**, a municipal corporation ("City") and **COM3 CONSULTING, INC.**, a California Corporation ("Consultant") dated June 21, 2016 ("Agreement," Agreement No. 2016-075).

**RECITALS**

**WHEREAS**, under the Agreement Consultant has provided the City with engineering and project management services in conjunction with the Ekwill Folwer Extension Project, Hollister Avenue Bridge Replacement, San Jose Creek Bike Path South Segment, Goleta Transportation Improvement Program (GTIP), and various other Capital Improvement Projects; and

**WHEREAS**, on June 20, 2017, the Agreement was amended to provide additional compensation in the amount of \$171,500, extend the term to June 30, 2019, and replace Exhibit B; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed three hundred fifty-eight thousand dollars (\$358,000); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of fifty-five thousand five hundred dollars (\$55,500) for professional engineering and project management services; and

**WHEREAS**, the City Council approved this Amendment No. 2, pursuant to Goleta Municipal Code Section 3.05.240 on this 20<sup>th</sup> day of February, 2018

**AMENDED TERMS**

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

**1. Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$55,500 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 \$413,500 (herein "not to exceed amount"), and shall be earned as the work progresses.

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. 2 has been executed by the parties effective on the date and year first above written.

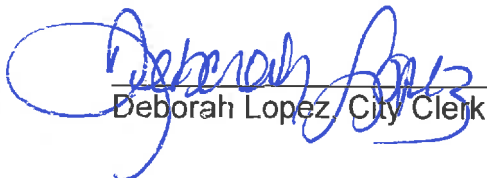
**CITY OF GOLETA**

  
F72 Michelle Greene, City Manager

**CONSULTANT**

  
Gerald Comati, President

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Jenean Comati, Chief Financial Officer

**APPROVED AS TO FORM**

  
Winnie Cai, Deputy City Attorney

### **ATTACHMENT 3**

Laura Bridley Consulting Agreement No. 2016-077 for Professional Services and  
Amendment No. 2



**AMENDMENT NO. 2  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
LAURA M. BRIDLEY, AICP**

**This Amendment No. 2** ("Amendment") is made this 19<sup>th</sup> day of June, 2018 to the PROFESSIONAL SERVICES AGREEMENT between the **CITY OF GOLETA** ("City") and **LAURA M. BRIDLEY, AICP** ("Consultant") dated June 21, 2016 ("Agreement", Agreement No. 2016-077").

**RECITALS**

**WHEREAS**, under the Agreement, Consultant has provided the City with project planning and permitting services in conjunction with Capital Improvement Program Projects; and

**WHEREAS**, on June 20, 2017, the Agreement was amended by Amendment No. 1 to provide additional compensation in the amount of \$55,120 for a not-to-exceed amount of \$119,220; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed one hundred nineteen thousand two hundred and twenty dollars (\$119,220); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of sixty-thousand three hundred forty-five dollars (\$60,345) for project planning and permitting services in conjunction with Capital Improvement Program Projects; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on June 30, 2018; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the Agreement to June 30, 2019; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Exhibit B entitled "Compensation" the hourly rates for Consultant; and

**WHEREAS**, the parties desire to amend the rates to reflect a rate increase; and

**WHEREAS**, the City Council approved this Amendment No. 2 on this 19<sup>th</sup> day of June, 2018.

**AMENDED TERMS**

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

1. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$60,345 and to read in its entirety:

**(a) (a) Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$179,565 (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 rate shall be binding upon CONSULTANT until June 30, 2019, after which any change in said rate and expenses must be approved in writing by CITY's Project Manager (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 to June 30, 2019 to read in its entirety.

The term of this Agreement is from the date first written above to June 30, 2019 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**

**CONSULTANT**

\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
Laura M. Bradley, AICP

**ATTEST:**

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

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Deputy City Attorney

**EXHIBIT B-1  
SCHEDULE OF FEES**

Laura M. Bridley, AICP CIP Services	\$135/hr
Development Review Services	\$95/hr



## **ATTACHMENT 4**

Laura Bridley Consulting Agreement No. 2016-077 for Professional Services and  
Amendment No. 1



Project Name: Development Review,  
Planning and Permitting Services

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
LAURA M. BRIDLEY, AICP**

This AGREEMENT FOR PROFESSIONAL SERVICES is made and entered into this 21st day of June, 2016, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **LAURA M. BRIDLEY, AICP**, (herein referred to as "CONSULTANT").

**WHEREAS**, CONSULTANT represents that they are sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the CITY; and

**WHEREAS**, CONSULTANT was recommended for award of this AGREEMENT by the Public Works Director through a competitive Request For Qualifications (RFQ) process based on ongoing experience and familiarity with City projects and environmental processes; and

**WHEREAS**, CONSULTANT was selected for award of this AGREEMENT by City Council; and

**WHEREAS**, the City Council, on this 21st day of June, 2016, approved this AGREEMENT and authorized the City Manager to execute this AGREEMENT per the Goleta Municipal Code 3.05.240.

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 Professional Planning services to be performed by CONSULTANT include planning and permit services and development review services as follows:

Professional Planning and Permitting Services in conjunction with several Capital Improvement Projects (CIP) in the Public Works Department.

Services shall generally include, but not limited to general planning and permitting services for the following projects assigned to the CIP Division: Hollister Complete Streets Corridor Plan, Ekwil Fowler Street Extensions Project, San Jose Creek Bike Paths South and Middle Extents, Cathedral Oaks Overcrossing Landscaping, Old Town Sidewalk Improvements, Hollister Avenue Bridge Replacement Project, Ward Drive Class II Bike Lanes, Rectangular Rapid Flashing Beacons (RRFB) at Chapel/ High Intensity Activated Crosswalk (HAWK) at Kingston, Facilities Improvements, Fairview at U.S. 101, Fairview at Stow Canyon, Rancho La Patera paving, Amtrak Station, Covington Storm Drain, Magnolia Sidewalks and general contingency funds for projects as needed, as more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein.

Development Review services in conjunction with various projects submitted by the public for different discretionary and non-discretionary permits. Services shall generally include:

1. Participate in the Development Review Committee (DRC).
2. Review project submittals, which will include plans, studies and other assorted document in support of a project development.
3. Do site visits in order to confirm accuracy of submitted information from the applicant.
4. Coordinate with other Public Works staff to provide for an all-inclusive response from all of the different sections of Public Works including but not limited to Traffic Engineering, Capital Improvement Program, Solid Waste and Storm Water.
5. Prepare response memos to the Planning Staff.
6. Prepare conditions of approval for project approval in accordance with Public Works engineering standards.

### **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 \$64,100 (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 rate shall be binding upon CONSULTANT until June 30, 2017, after which any change in said rate and expenses must be approved in writing by CITY's Project Manager (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. 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 in advance. 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 Kathy Garcia. 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, 2017, 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 paragraph 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 the contract following the notice to proceed.

#### **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. Laura M. Bridley is deemed to be specially experienced and is a key member of CONSULTANT's firm, 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. This AGREEMENT is not assignable by CONSULTANT without CITY's prior consent in writing.

## **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 level 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 0001 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$500,000 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.

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 exact 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 with an edition date prior to 2004.
- b) CONSULTANT's insurance shall apply 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) 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 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.
- f) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract 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 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.
- h) 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. RELATION OF THE PARTIES**

The relationship of the parties to this AGREEMENT shall be that of independent contractors 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 comply with the federal Americans with Disability Act, Public Law 101-336, and observe the disability discrimination prohibitions of such laws in the performance of the work required under this AGREEMENT.

**22. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), 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, including a CITY business license, 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: Attn: Michelle Greene, City Manager  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

TO CONSULTANT: Laura M. Bridley, AICP  
118 Mohawk Road  
Santa Barbara, CA 93109

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

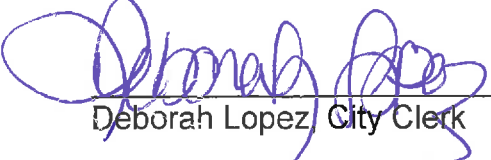
**CITY OF GOLETA**

  
Michelle Greene, City Manager

**CONSULTANT**

  
Laura M. Bridley, AICP

**ATTEST:**

  
Deborah Lopez, City Clerk

**APPROVED AS TO FORM**

  
Tim W. Giles, City Attorney

## **Exhibit A Scope of Work**

### **1. Hollister Completed Streets Corridor Plan:**

- a. Previously known as Hollister Avenue Redesign. Assist with determination of environmental documentation; coordinate with Planning and Environmental Review (PER) regarding same.

### **2. Ekwill Fowler Project:**

- a. Work on the Development Plan extension and possible revision for exclusion of Fowler, prepare and manage application to the California Coastal Commission for a Coastal Development permit (CDP) from that agency, anticipated to be filed this fiscal year. This work shall include project planning of case for City procedures and Coastal Commission process, including preparation and distribution of notices, reports and mailings for required public hearings.
- b. Weekly team meetings, phone conferences with public agency staffs as the applications proceed through City of Goleta and Coastal Commission processes.
- c. Coordination with other team members regarding documentation and permitting details for inclusion in applications to State Fish and Game and Army Corps of Engineers.

### **3. Hollister Avenue Bridge Replacement Project:**

This project includes coordination with consultants to include the Hollister Bridge Replacement Project in any permitting references for Ekwill Street extension project, including guidance on various environmental issues arising from final design and permitting.

### **4. San Jose Creek Bike Paths – South and Middle Segment**

Remain available for various team needs related to permitting by other departments and agencies, and review of planning and environmental documents associated with the project, including NEPA consistency. Attend meetings, review plans and undertake permitting for south extent portion of project, located in Coastal Zone and therefore needing a Development Plan and Coastal Development Permit.

### **5. Cathedral Oaks Overcrossing Landscaping:**

Provide follow up assistance to Public Works as project moves toward construction and serve as liaison to Coastal Commission for compliance needs with that agency.

### **6. Old Town Sidewalk Improvements:**

Assist with determination of environmental documentation, coordinate with Planning and Environmental Review (PER) regarding same.

7. Ward Drive Class II Bike Lanes:

Draft a Notice of Exemption per CEQA for this capital maintenance project that will add bike lanes to the existing cross section of Ward Drive, all within City Right-of-way. Review plans, draft document with engineer, route to Planning for signature and revise as necessary and file with County Clerk-Recorder Office.

8. RRFB @ Chapel / HAWK @ Kingston Covington Storm Drain:

Draft Notice of Exemption per CEQA for these street crossing improvements within City Right-of-way. Review project with engineer, draft document, review with Planning, revise and file with County Clerk.

9. Facilities Improvements

General assistance with permitting needs and possible environmental clearances for various City-owned facilities, including parks, buildings, recreational facilities.

10. Fairview at Calle Real / U.S. 101 Sidewalk Infill

Draft a Notice of Exemption per CEQA for this sidewalk improvement project at Fairview and U.S. 101 southbound. Review plans, draft document with engineer, review with Planning, revise as necessary and file with County Clerk-Recorder Office.

11. Fairview Avenue Sidewalk Infill at Stow Canyon

Draft a Notice of Exemption per CEQA for this project to close gap on east side of Fairview south of Stow Canyon Road. Review plans, draft document with engineer, route to Planning for signature and revise as necessary and file with County Clerk-Recorder Office.

12. Rancho La Patera

Draft a Notice of Exemption per CEQA for this project to reconstruct parking lot and remove tree roots, correct drainage issues. Review plans, draft document with engineer, route to Planning for signature and revise as necessary and file with County Clerk-Recorder Office.

13. Amtrak Depot

Assist with environmental determination for this project to provide improvements at Amtrak Depot.

#### 14. Covington Storm Drain

Continue assisting Public Works staff with interagency, permitting and environmental coordination in addressing storm drain system from Cathedral Oaks to Lake Los Carneros.

#### 15. Magnolia Sidewalk Infill

Draft a Notice of Exemption per CEQA for this project to construct sidewalk on the east side of Magnolia Avenue, south of Hollister Ave. Review plans, draft document with engineer, route to Planning for signature and revise as necessary and file with County Clerk-Recorder Office.

#### 16. Contingency included in scope to provide general planning assistance on various projects, as needs arise, including cost estimates for planning permits, interagency coordination, environmental documents such as Categorical Exemptions for minor capital and maintenance projects (e.g. methacrylate deck sealing, overlays, tennis court resurfacing etc.) other than those listed above, all of which would be billed to specific capital project accounts.

CONSULTANT shall deliver to CITY all memos and conditions of approval in accordance with the time lines set forth by the Planning staff and the Principal Civil Engineer.

**Exhibit B**  
**Schedule of Fees**

Laura M. Bridley, AICP – CIP Services	\$130/Hr
Development Review Services	\$95/Hr



**AMENDMENT NO. 1  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
LAURA M. BRIDLEY, AICP**

**This Amendment No. 1** ("Amendment") is made this 20<sup>th</sup> day of June, 2017 to the PROFESSIONAL SERVICES AGREEMENT between the **CITY OF GOLETA** ("City") and **LAURA M. BRIDLEY, AICP** ("Consultant") dated June 21, 2016 ("Agreement" No. 2016-077").

**RECITALS**

**WHEREAS**, under the agreement, Consultant has provided the City with project planning and permitting services under Agreement No. 2016-077; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed sixty-four thousand one hundred dollars (\$64,100); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of fifty-five thousand one hundred twenty dollars (\$55,120) for continued Professional Planning and Permitting Services in conjunction with several Capital Improvement Projects (CIP); and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the agreement on June 30, 2017; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the agreement to June 30, 2018; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Exhibit A entitled "Scope of Work" the complete and particular description of services as set forth for Consultant; and

**WHEREAS**, the parties desire to amend Exhibit A of the Agreement by adding additional services providing general planning assistance on various projects 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, per the Goleta on this 20<sup>th</sup> day of June, 2017.

## AMENDED TERMS

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

1. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$55,120 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 \$119,220 (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 rate shall be binding upon CONSULTANT until June 30, 2018, after which any change in said rate 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 one additional year to read in its entirety.

The term of this Agreement is from the date first written above to June 30, 2018, 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. All services shall be completed within the term of this Agreement following the notice to proceed.


3. The Agreement is amended to deleted and replace in its entirety:

**Exhibit A "Scope of Work"** with **Exhibit A-1 "Scope of Work"** 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. 1 has been executed by the parties effective on the date and year first above written.

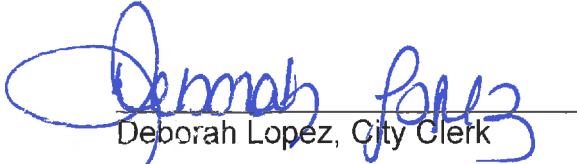
**CITY OF GOLETA**

  
Michelle Greene, City Manager

**CONSULTANT**

  
Laura M. Bridley, AICP

**ATTEST:**

  
Deborah Lopez, City Clerk

**APPROVED AS TO FORM**

  
Winnie Cai, Deputy City Attorney

**Exhibit A-1  
Scope of Services**

1. Hollister Complete Streets Corridor Plan (9001):

- a. Assist with determination of environmental document, noticing, assist with or complete notices and routing to state/fed agencies per Planning and Environmental Review (PER) Department standards. (Budget estimate: \$1,560)

2. Ekwill Fowler Project (9002):

- a. Continue processing the City's Development Plan extension, prepare and manage Coastal Development Permit Application with California Coastal Commission to get to hearing late 2017. This work will include project planning of case for City procedures and Coastal Commission process, including preparation and distribution of notices, reports and mailings for required public hearings.
- b. Weekly team meetings, permit coordination and phone conferences with public agency staffs as the applications proceed through City of Goleta and Coastal Commission processes. (Budget Estimate \$20,800)

3. San Jose Creek Bike Path – South Segment (9006)

Remain available for team needs related to permitting by other departments and agencies, and review of planning and environmental documents associated with the project, including NEPA consistency. Attend meetings, review plans and undertake permitting for south extent portion of project, located in Coastal Zone and therefore needing a Development Plan and Coastal Development Permit. (Budget Estimate: \$2,080)

4. Old Town Sidewalk Improvements (9031):

Assist and review environmental documentation, coordinate with Planning and Environmental Review (PER) regarding same, and possible noticing and DRB review. (Budget Estimate: \$2,080)

5. Hollister Avenue Bridge Replacement Project (9033):

Coordinate City CEQA compliance and permitting of the Hollister Bridge Replacement Project as it relates to Ekwill Street – Fowler Road extension project, including guidance on various environmental issues arising from final design and permitting. (Budget: \$2,080)

6. Hollister Class I Bike Lane (9039):

Assist with follow up to CDP issuance for first phase of this improvement and amendment to CDP for expansion of Bike Path, via liaison function with Coastal Commission. (Budget: \$1,040)

7. Storke Road Widening (9042):

Assist with CEQA notice of exemption, related notices or coordination with City PER Department. (Budget Estimate: \$2,080)

8. Hollister Widening (by Westar) (9044):

Assist with CEQA notice of exemption, related notices or coordination with City PER Department. (Budget Estimate: \$780)

9. Ward Drive Class II Bike Lanes (9046):

Assist with follow up to CDP issuance for first phase of this improvement and amendment to CDP for expansion of Bike Path, via liaison function with Coastal Commission for compliance needs with that agency. (Budget: \$1,040)

10. Cathedral Oaks Sink Hole / Crib Wall at Calle Real (9053)

Assist with securing Coastal Commission approval of this project as covered under prior road construction or as repair thereto; coordination with design team and project manager and filing of appropriate CEQA clearance, applications to Coastal Commission. (Budget: \$5,200)

11. RRFB @ Chapel / HAWK @ Kingston Covington Storm Drain (9058):

Draft Notice of Exemption per CEQA for these street crossing improvements within City Right-of-way. Review project with engineer, draft document, review with Planning, revise and file with County Clerk. (Budget: \$1,300)

12. Fairview Avenue Sidewalk Infill at Stow Canyon (9060)

Draft a Notice of Exemption per CEQA for this project to close gap on east side of Fairview south of Stow Canyon Road. Review plans, draft document with engineer, route to Planning for signature and revise as necessary and file with County Clerk. (Budget: \$1,300)

13. Fairview at Calle Real / U.S. 101 Sidewalk Infill (9070)

Draft a Notice of Exemption per CEQA for this sidewalk improvement project at Fairview and U.S. 101 southbound. Review plans, draft document with engineer, review with Planning, revise as necessary and file with County Clerk. (Budget: \$1,300)

14. Calle Real @ La Patera Sidewalk Infill (9091)

Draft a Notice of Exemption per CEQA for this sidewalk improvement, review plans, draft document with engineer, review with Planning, revise as necessary and file with County Clerk. (Budget: \$1,300)

15. Storke Road Widening (9062)

Draft a Notice of Exemption per CEQA for this roadway improvement to install medians south of Camino Real, review plans, draft NOE, review with engineer and Planning, revise as necessary and file with County Clerk. (Budget: \$1,560; assumes no Coastal permitting)

16. Reclaimed Water Line – Bella Vista (9065)

Draft a Notice of Exemption per CEQA. Review plans, draft document with engineer, review with Planning, revise as necessary and file with County Clerk. (Budget: \$1,300)

Draft a Notice of Exemption per CEQA for this project to reconstruct parking lot and remove tree roots, correct drainage issues. Review plans, draft document with engineer, route to Planning for signature and revise as necessary and file with County Clerk.

17. Facilities Improvements (9069)

General assistance with permitting needs and possible environmental clearances for various City-owned facilities, including parks, buildings, recreational facilities. (Budget: \$1,560)

18. Rancho La Patera (9078)

Assist advisory City review (DRB) for improvements at this City owned facility, draft Notice of Exemption if needed, file with County Clerk, general coordination with engineering staff. (Budget: \$1,560)

19. Amtrak Depot

Assist with environmental determination for this project to provide improvements at Amtrak Depot. (Budget: \$1,040)

20. Covington Storm Drain (9081)

Continue assisting Public Works staff with interagency, permitting and environmental coordination in addressing storm drain system from Cathedral Oaks to Lake Los Carneros. (Budget: \$1,040)

21. Contingency / General Fund Planning Support (No CIP # - General Fund)

This item is included in scope to provide general planning assistance on various projects, as needs arise, including cost estimates for planning permits, interagency coordination, environmental documents such as Categorical Exemptions for minor capital and maintenance projects (e.g. methacrylate deck sealing, overlays, tennis court resurfacing etc.) other than those listed above, all of which would be billed to specific capital project accounts. (Budget: \$3,120)





## **ATTACHMENT 5**

Amendment No. 1 for Hamner, Jewell and Associates Agreement No. 2017-037 for  
Professional Services

**AMENDMENT NO. 1  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
BEACON INTEGRATED PROFESSIONAL RESOURCES, INC.  
dba HAMNER, JEWELL & ASSOCIATES**

This Amendment No. 1 to the **AGREEMENT FOR PROFESSIONAL SERVICES** (herein referred to as "AGREEMENT"), by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **BEACON INTEGRATED PROFESSIONAL RESOURCES, INC. dba HAMNER, JEWELL & ASSOCIATES**, (a California Corporation) (herein referred to as "CONSULTANT") dated June 20, 2017, ("Agreement," Agreement No. 2017-037) is made and entered into this 19<sup>th</sup> day of June, 2018.

**RECITALS**

**WHEREAS**, under the Agreement, Consultant has provided the City with right of way acquisition and related real estate services in conjunction with Capital Improvement Program projects; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed sixty-five thousand dollars (\$65,000); and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on June 30, 2018, and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the Agreement to June 30, 2019; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Exhibit B entitled "Compensation" for the hourly rates for Consultant; and

**WHEREAS**, the parties desire to amend Exhibit B of the Agreement to identify a rate increase; and

**WHEREAS**, the City Council approved this Amendment No. 1, on this 19<sup>th</sup> day of June, 2018.

**AMENDED TERMS**

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

1. **Section 6. TERM, PROGRESS AND COMPLETION** of the Agreement is amended to extend the term to June 30, 2019 to read in its entirety.

The term of this Agreement is from the date first written above to June 30, 2019, 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.

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

**Exhibit B "Compensation"** with **Exhibit B-1 "Compensation"** 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**

**CONSULTANT**

\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
Lillian D. Jewell, President

**ATTEST:**

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

\_\_\_\_\_  
Lillian D. Jewell, Secretary

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Deputy City Attorney

**EXHIBIT B-1  
SCHEDULE OF FEES**

<b>Managing Senior Associate</b>	<b>\$225 an hour</b>
<b>Senior Associate II/Project Manager</b>	<b>\$165 an hour</b>
<b>Senior Right of Way Associate I</b>	<b>\$135 an hour</b>
<b>Right of Way Associates II</b>	<b>\$115 an hour</b>
<b>Right of Way Associates I</b>	<b>\$98 an hour</b>
<b>Project Coordinator/Quality Control</b>	<b>\$98 an hour</b>
<b>Transaction/Escrow Coordinators</b>	<b>\$85 an hour</b>
<b>Assistants/Clerical Staff</b>	<b>\$45 an hour</b>

**ATTACHMENT 6**

Hamner, Jewell and Associates Agreement No. 2017-037 for Professional Services



Project Name: On Call Services Acquisition and  
Real Estate Services

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
BEACON INTEGRATED PROFESSIONAL RESOURCES, INC.  
dba HAMNER, JEWELL & ASSOCIATES**

This **AGREEMENT FOR PROFESSIONAL DESIGN SERVICES** (herein referred to as "AGREEMENT") is made and entered into this 20<sup>th</sup> day of June, 2017, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **BEACON INTEGRATED PROFESSIONAL RESOURCES, INC. dba HAMNER, JEWELL & ASSOCIATES**, (herein referred to as "CONSULTANT").

**WHEREAS**, CONSULTANT represents that it is sufficiently experienced and capable of providing the services agreed to herein and is sufficiently familiar with the needs of the CITY; and

**WHEREAS**, CONSULTANT was recommended for award by the Public Works Director based on experience and knowledge of right of way (ROW) from other current Capital Improvement Program projects; and

**WHEREAS**, CONSULTANT was selected for award of this AGREEMENT after a Request for Qualifications; and

**WHEREAS**, the City Council, on this 20<sup>th</sup> day of June, 2017, approved this AGREEMENT and authorized the City Manager to execute this AGREEMENT.

CITY and CONSULTANT agree as follows:

**1. RETENTION AS CONSULTANT**

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

**2. DESCRIPTION OF SERVICES**

The services to be performed by CONSULTANT are as follows:

Professional on-call right of way acquisition and related real estate services in conjunction with Capital Improvement Program projects. Services shall generally include consultations and services associated with planning, budgeting, and implementing projects that may involve the purchase of

property rights, including but not limited to obtaining title reports and appraisals, preparing and presenting purchase offers on behalf of the City, and handling the processing of real property purchase transactions through closure and recordation.

CONSULTANT shall obtain appraisals in accordance with the Government Code and eminent domain requirements and prepare offer packages based upon the appraisal for presentation to each involved property owner. The offer packages shall include an offer letter, Appraisal Summary Statement, proposed Right of Way Agreement and Deed. These documents shall be presented to the City of Goleta Project Manager, as described in section 5 for review and pre-approval prior to presenting offers to property owners.

### **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 \$65,000 (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 "A," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2018, 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 in advance. 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 Rosemarie Gaglione. 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, 2018, 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. All services shall be completed within the term of the agreement following the notice to proceed.

**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. Lillian D. Jewell and Cathy Springford are deemed to be specially experienced and are key members of CONSULTANT's firm, and shall be directly involved in performing, supervising or assisting in the performance of this work. These key personnel 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. CONSULTANT must not subcontract any of the services described in Section 2 without CITY's prior consent in writing. This AGREEMENT is not assignable by CONSULTANT without City's prior consent in writing.

City of Goleta  
PWD agreement with Hamner, Jewell & Associates  
Page 3 of 11

## **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 indemnify, defend with counsel approved by CITY, and hold harmless CITY, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this AGREEMENT, except such loss or damage which is caused by the sole active negligence or willful misconduct of the CITY. Should conflict of interest principles preclude a single lawyer from representing both CITY and CONSULTANT, or should CITY otherwise find CONSULTANT's legal counsel unacceptable, then CONSULTANT shall reimburse the CITY its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The CONSULTANT shall promptly pay any final judgment rendered against the CITY (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the CONSULTANT's negligent, reckless or wrongful performance. 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 and will survive termination of this AGREEMENT.

**(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 in the aggregate.
- b) Insurance Services Office form number CA 0001 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 on a policy form appropriate to CONSULTANTs profession. Limits shall be no less than \$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 exact 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 with an edition date prior to 2004.
- b) CONSULTANT's insurance shall apply 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) 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 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.

- f) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract 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 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.
- h) 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. RELATION OF THE PARTIES**

The relationship of the parties to this AGREEMENT shall be that of independent contractors 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 consultant 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. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**22. 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.

**23. 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.

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

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

**25. PERMITS AND LICENSES**

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

**26. 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.

**27. 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.

**28. 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.

**29. 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.

**30. 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: City Manager  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117


TO CONSULTANT:          Attention: Lillian D. Jewell  
Hamner, Jewell & Associates  
530 Paulding, Suite A  
Arroyo Grande, CA 93420

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

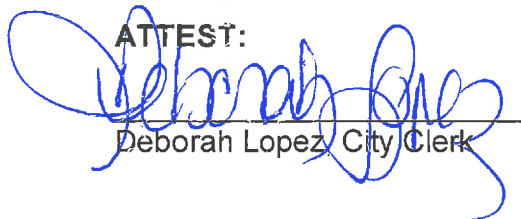
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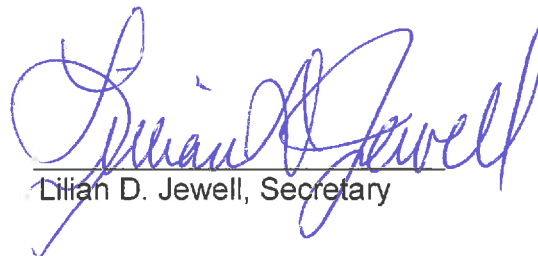
  
Michelle Greene, City Manager

**CONSULTANT**

  
Lillian D. Jewell, President

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Lillian D. Jewell, Secretary

**APPROVED AS TO FORM**

  
Winnie Cai, Deputy City Attorney



**Exhibit A**  
**Schedule of Fees**

Managing Senior Associate	\$180/ Hr.
Senior Associate II	\$160/ Hr.
Senior Associate I	\$130/ Hr.
Associates II	\$110/ Hr.
Associates I	\$ 95/ Hr.
Assistants	\$ 80/ Hr.

These rates are inclusive of secretarial support and general office expenses, overhead, and profit. Reimbursable costs that may be passed through to the client as additional expenses include travel expenses (based upon the standard IRS mileage reimbursement rate, or actual expenses for travel outside of the tri-county area of Ventura, Santa Barbara, and San Luis Obispo), special handling fees such as certified, express mail, and delivery charges, photography and third party photocopy expenses, certain project/client-specific telephone expenses, and other charges made by third parties in connection with performing the scope of services with appropriate supporting documentation for reference.

Such third-party expenses may include, but are not limited to, such costs as moving bid fees, title and escrow company charges, and appraisal fees with appropriate supporting documentation for reference.

All third-party expenses will be billed to the client at cost plus 10%, with appropriate invoices or other appropriate documentation provided for reference. Mileage and travel costs will be passed through without mark-up.



## **ATTACHMENT 7**

Amendment No. 4 for Santa Barbara Channelkeeper Agreement No. 2014-062 for  
Professional Services



**AMENDMENT NO. 4  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
SANTA BARBARA CHANNELKEEPER**

**This Amendment No. 4** to a Professional Services Agreement is made on this 5<sup>th</sup> day of June, 2018 between the **City of Goleta** ("City") and **Santa Barbara Channelkeeper**, a 501(c)(3) non-profit organization, ("Consultant") dated May 30, 2014 ("Agreement", Agreement No. 2014-062).

**RECITALS**

**WHEREAS**, the Agreement with Consultant was entered into for the purpose of providing monthly water quality testing and monitoring services, pursuant to the City's Storm Water Management Plan; and

**WHEREAS**, the Agreement was entered into on May 30, 2014 with a maximum compensation of \$16,500 and a termination date of June 30, 2015; and

**WHEREAS**, the Agreement was amended by Amendment No. 1 on June 30, 2015 to add an additional \$16,500 in compensation and extend the term to June 30, 2016; and

**WHEREAS**, the Agreement was amended by Amendment No. 2 on June 21, 2016 to add an additional \$16,500 in compensation and extend the term to June 30, 2017; and

**WHEREAS**, the Agreement was amended by Amendment No. 3 on June 20, 2017 to provide for an additional compensation of \$16,500 and extend the termination of the Agreement to June 30, 2018; and

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed sixty-six thousand dollars (\$66,000); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of sixteen thousand five hundred dollars (\$16,500) to continue to provide monthly water quality monitoring and testing in compliance with the City's Storm Water Management Plan; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for termination on June 30, 2018; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination date to June 30, 2019; and

**WHEREAS**, the City Council, on this 5<sup>th</sup> day of June, 2018, approved and authorized the City Manager to execute this Amendment No. 4.

**AMENDED TERMS**

**Now therefore** City and Consultant agree as follows that Agreement No. 2014-062 be, and hereby is, amended as follows:

1. **Section 3 Subparagraph (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$16,500 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 \$82,500 (herein "not-to-exceed amount") and shall be earned as the work progresses.

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

The term of this Agreement is from the date first written above to June 30, 2019, unless term of this Agreement is extended or the Agreement is terminated as provided for herein.

Consultant shall not commence work on the service 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. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

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

**CITY OF GOLETA**

**CONSULTANT**

\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
Kira Redmond, Executive Director

**ATTEST:**

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

\_\_\_\_\_  
Hank Mitchel, Treasurer

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Deputy City Attorney

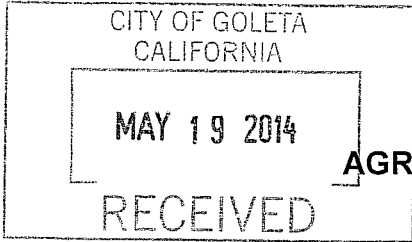




## **ATTACHMENT 8**

Santa Barbara Channelkeeper Agreement No. 2014-062 for Professional Services and  
Amendments No. 1 through 3





Project Name: Water Quality Monitoring and Testing Services

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
SANTA BARBARA CHANNELKEEPER**

This AGREEMENT FOR PROFESSIONAL SERVICES is made and entered into this 30th day of May, 2014, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **SANTA BARBARA CHANNELKEEPER**, (herein referred to as "CONSULTANT").

**WHEREAS**, CONSULTANT represents that they are sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the CITY; and

**WHEREAS**, CONSULTANT was selected based upon its response to a Request for Qualifications, and its prior work for the City, and is recommended for award of this AGREEMENT by the Director of the Public Works Department; and

**WHEREAS**, the Interim City Manager is authorized by Goleta Municipal Code Section 3.05.240 to execute this AGREEMENT because the value of the AGREEMENT is less than \$30,000.

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 water quality monitoring and testing services in conjunction with the City's Storm Water Management Plan. Services shall generally include conducting monthly water monitoring and water quality sampling and testing at specified sites, 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 \$16,500 (herein "not to exceed amount"), and shall be earned as the work progresses on a monthly basis.

(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. 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 in advance. 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 Everett King. 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, 2015, 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 paragraph 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 365 calendar days following the notice to proceed.

## **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. Ben Pitterle is deemed to be specially experienced and is a key member of CONSULTANT's firm, 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. This AGREEMENT is not assignable by CONSULTANT without CITY's prior consent in writing.

## **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 in the aggregate.
- b) Insurance Services Office form number CA 0001 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 on a policy form appropriate to CONSULTANTS profession. Limits shall be no less than \$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 exact 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 with an edition date prior to 2004.

- b) CONSULTANT's insurance shall apply 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) 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 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.
- f) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract 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 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.
- h) 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. RELATION OF THE PARTIES**

The relationship of the parties to this AGREEMENT shall be that of independent contractors 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 30 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 consultant 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. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**22. 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.

**23. 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.

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

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

**25. PERMITS AND LICENSES**

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

**26. 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.

**27. 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.

**28. 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.

**29. 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.

**30. 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: Interim City Manager  
   City of Goleta  
   130 Cremona Drive, Suite B  
   Goleta, CA 93117

TO CONSULTANT:            Attention: Kira Redmond  
   Santa Barbara Channelkeeper  
   714 Bond Avenue  
   Santa Barbara, CA 93103  
   Phone: 805-563-3377  
   Fax: 805-687-5635

(Signatures on following page)

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

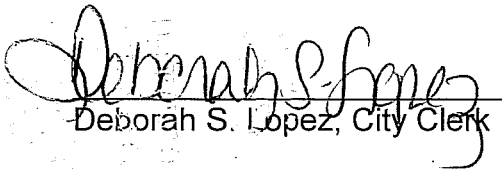
**CITY OF GOLETA**

  
Michelle Greene  
Interim City Manager


**CONSULTANT**

  
Kira Redmond  
Executive Director

**ATTEST:**

  
Deborah S. Lopez, City Clerk

**APPROVED AS TO FORM**

  
Tim W. Giles, City Attorney

**Exhibit A**

## Scope of Work

Consultant shall conduct monthly field testing at 23 established sampling sites (see Figure 1 and Table 2) on the following ten streams and three coastal wetlands:

Atascadero Creek  
Bell Creek  
Bell Lagoon  
Cieneguitas Creek  
Glen Annie Creek  
Goleta Slough  
Los Carneros Creek

Las Vegas Creek  
Maria Ygnacio Creek  
San Jose Creek  
San Pedro Creek  
Tecolote Creek  
Tecolote Lagoon

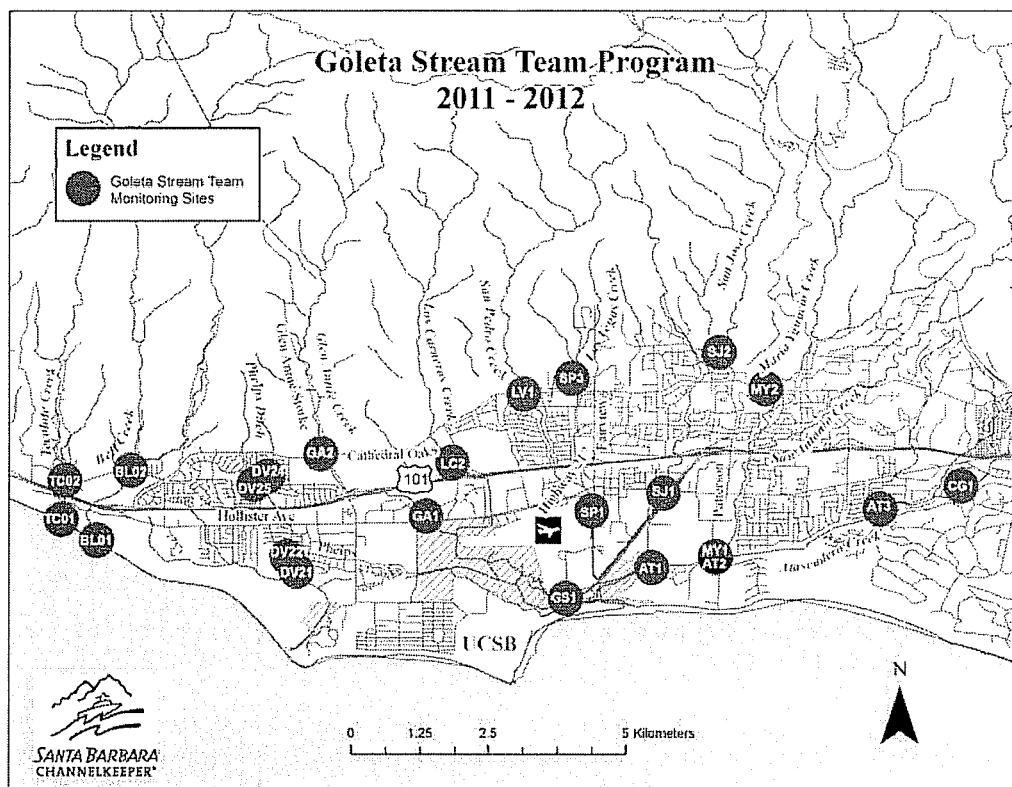
On the first Sunday of each month, Consultant shall measure physical and chemical parameters in the field using portable hand-held instruments. Data collected shall include on-site measurements of dissolved oxygen, turbidity, conductivity, pH, and temperature. Water samples collected at each site shall be processed by consultant. Consultant shall test for three Public Health bacterial indicators (total coliform, E. coli, and Enterococcus\*) using approved standard methodology and quality control protocols. Additional samples shall be analyzed for nutrients (nitrite plus nitrate, orthophosphate, total dissolved nitrogen, and total dissolved phosphorus) through cooperation with the Santa Barbara Channel Long-Term Ecological Research (SBC-LTER) Project at UCSB. Visual observations such as vegetation and aquatic life shall also be recorded monthly at each site. All sampling shall adhere to a State Water Resources Control Board-approved Quality Assurance Project Plan. Consultant shall conduct monthly volunteer training events and additional training as needed.

After each sampling event, data shall be entered into a database and reviewed for quality control purposes. Data shall be shared with volunteers, the public and regulatory agencies through several means, including periodic distributions, newsletters, and through Consultant's Stream Team website ([www.stream-team.org](http://www.stream-team.org)). Monthly data reports shall be submitted to the City highlighting exceedances of applicable State water quality objectives. Project Manager shall also report to the City any incidences of pollution located within the municipal boundary that are identified during our monitoring events.

\* Enterococcus sampling is conducted at Bell and Tecolote Lagoons only

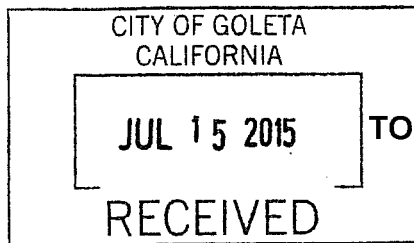
**Table 2. Goleta Stream Team Sites**

<i>Site</i>	<i>Site Name</i>	<i>Frequency</i>	<i>Description/Reason for Sample</i>
AT1	Atascadero Creek at Ward	Year Round	Atascadero creek terminus, tidal influence limit
AT2	Atascadero Creek at Paterson	Year Round	Upstream of Maria Ygnacio creek confluence
AT3	Atascadero Creek at Puente Drive	Year Round	Above golf course and agriculture, concrete channel
BL01	Bell Creek Lagoon	Year Round	Lagoon site
BL02*	Bell Creek at San Miguel Open Space	Year Round	Accessible Bell Creek location downstream of agricultural land
CG1	Cieneguitas Creek at Nogal Dr.	Year Round	Urban runoff signal from upper State St. and Foothill Rd.
DV21	Phelps Ditch above Ocean Meadows Golf	Year Round	Above golf course influence, main dry weather tributary to Devereux
DV22*	Phelps Ditch at Phelps Rd.	Year Round	Downstream terminus of concrete channel
DV24	Phelps Ditch at Padova Park	Year Round	Near upstream extent of urbanized boundary
DV25*	Glen Annie at Evergreen Frisbee	Year Round	West tributary to Phelps ditch
GA1	Glen Annie/Tecolotito Creek at Hollister Ave.	Year Round	Downstream of urbanized Goleta, upstream of Goleta Slough
GA2	Glen Annie/Tecolotito Creek at Cathedral	Seasonal	Downstream of agriculture and golf course, upstream of urbanized
GA7	Field QAQC Blank	Year Round	Distilled water
GS1	Goleta Slough at the bicycle bridge	Year Round	Upstream of San Pedro, San Jose, and Atascadero Creek mouths
LC2	Los Carneros Creek at Calle Real	Seasonal	Downstream limit of agricultural impact
LV1	Las Vegas Creek at La Goleta Rd.	Seasonal	Near upstream extent of urbanized boundary
MY1	Maria Ygnacio Creek at Patterson Ave.	Seasonal	Upstream of Atascadero Creek confluence
MY2	Maria Ygnacio at Tucker Grove Park	Seasonal	Near upstream extent of urbanized boundary
SJ1	San Jose Creek at Hollister Ave.	Seasonal	Near downstream extent of urbanized boundary
SJ2	San Jose Creek at North Patterson Ave.	Year Round	Above urban boundary, upstream agricultural runoff
SP1	San Pedro Creek near Hollister Ave.	Seasonal	Near downstream extent of urbanized boundary
SP3	San Pedro Creek at Cathedral Oaks Rd.	Seasonal	Near upstream extent of urbanized boundary
TC01	Tecolote Creek Lagoon	Year Round	Lagoon site
TC02*	Tecolote Creek at Vereda del Padre	Year Round	Accessible Tecolote Creek location downstream of agricultural land
* Nutrient analysis not conducted by UCSB LTER			









Agreement No. 2014-062.1  
City of Goleta, California

**AMENDMENT No. 1  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF GOLETA  
AND  
SANTA BARBARA CHANNELKEEPER**

**This Amendment No. 1** ("Amendment") to a Professional Services Agreement is made this 30th day of June, 2015 between the **City of Goleta** (City) and **Santa Barbara Channelkeeper** (Consultant) dated May 30, 2014 ("Agreement").

**RECITALS**

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed ten thousand dollars (\$16,500); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of sixteen thousand five hundred dollars (\$16,500) to continue to provide monthly water quality monitoring and testing in conjunction with the City's Storm Water Management Plan; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on June 30, 2015; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the Agreement to June 30, 2016; and

**WHEREAS**, the City Council, on this 30th day of June, 2015, approved this Contract Amendment and authorized the City Manager to execute this Contract Amendment per the Goleta Municipal Code Section 3.05.240.

**AMENDED TERMS**

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

1. **Section 3 Subparagraph (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$16,500 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 \$33,000 (herein "not to exceed amount") and shall be earned as the work progresses on a monthly basis.

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

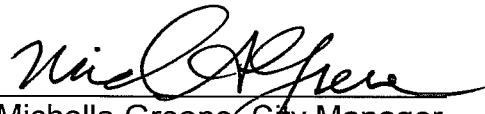
The term of this Agreement is from the date first written above to June 30, 2016, unless term of this Agreement is extended or the Agreement is terminated as provided for herein.

Consultant shall not commence work on the service to be performed until (i) Consultant furnishes proof of insurance as required by paragraph 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. 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 written above.

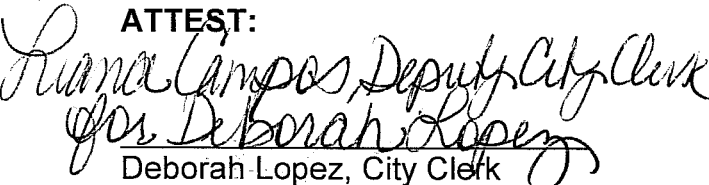
**CITY OF GOLETA**

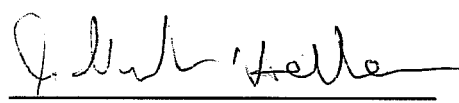
  
Michelle Greene, City Manager

**CONSULTANT**


  
Kira Redmond, Executive Director

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Andy Heller, Treasurer

**APPROVED AS TO FORM**

  
Tim W. Giles, City Attorney



Agreement No. 2014-062.2  
City of Goleta, California

**AMENDMENT No. 2  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF GOLETA  
AND  
SANTA BARBARA CHANNELKEEPER**

**This Amendment No. 2** ("Amendment") to a Professional Services Agreement is made this 21<sup>st</sup> day of June, 2016 between the **City of Goleta** (City) and **Santa Barbara Channelkeeper** (Consultant) dated May 30, 2014 ("Agreement").

**RECITALS**

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed thirty three thousand dollars (\$33,000); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of sixteen thousand five hundred dollars (\$16,500) to continue to provide monthly water quality monitoring and testing in conjunction with the City's Storm Water Management Plan; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on June 30, 2016; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the Agreement to June 30, 2017; and

**WHEREAS**, the City Council, on this 7<sup>th</sup> day of June, 2016, approved this Contract Amendment and authorized the City Manager to execute this Contract Amendment per the Goleta Municipal Code Section 3.05.240.

**AMENDED TERMS**

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

1. **Section 3 Subparagraph (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$16,500 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 \$49,500 (herein "not to exceed amount") and shall be earned as the work progresses.

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

The term of this Agreement is from the date first written above to June 30, 2017, unless term of this Agreement is extended or the Agreement is terminated as provided for herein.

Consultant shall not commence work on the service to be performed until (i) Consultant furnishes proof of insurance as required by paragraph 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. 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 written above.

**CITY OF GOLETA**



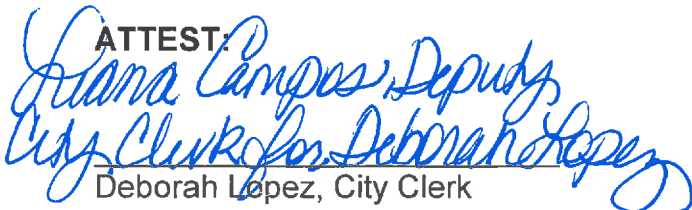
Michelle Greene, City Manager

**CONSULTANT**



Kira Redmond, Executive Director

**ATTEST:**



Deborah Lopez, City Clerk



Mike Wondolowski, Treasurer

**APPROVED AS TO FORM**



Tim W. Giles, City Attorney



Agreement No. 2014-062.3  
City of Goleta, California

**AMENDMENT No. 3  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
SANTA BARBARA CHANNELKEEPER**

**This Amendment No. 3** to a Professional Services Agreement is made this 20th day of June, 2017 between the **City of Goleta** (City) and **Santa Barbara Channelkeeper** (Consultant) dated May 30, 2014 ("Agreement") Agreement No. 2014-062).

**RECITALS**

**WHEREAS**, the City of Goleta entered into Agreement No. 2014-062 with Santa Barbara Channelkeeper for the purpose of providing monthly water quality testing and monitoring services, per the City's Storm Water Management Plan; and

**WHEREAS**, Agreement No. 2014-062 between the City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed forty nine thousand five hundred dollars (\$49,500); and

**WHEREAS**, the parties desire to amend Agreement No. 2014-062 so as to provide for additional compensation in the amount of sixteen thousand five hundred dollars (\$16,500) to continue to provide monthly water quality monitoring and testing in conjunction with the City's Storm Water Management Plan; and

**WHEREAS**, Agreement No. 2014-062 between City and Consultant currently provides in Section 6 for the termination on June 30, 2017; and

**WHEREAS**, the parties desire to amend Agreement No. 2014-062 so as to extend the termination to June 30, 2018; and

**WHEREAS**, the City Council, on this 20<sup>th</sup> day of June, 2017, approved and authorized the City Manager to execute this Contract Amendment No. 3.

**AMENDED TERMS**

**Now therefore** City and Consultant agree as follows that the Agreement No. 2014-062 be, and hereby is, amended as follows:

1. **Section 3 Subparagraph (a). COMPENSATION AND PAYMENT** of Agreement No. 2014-062 is amended to add an additional authorized amount of \$16,500 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 \$66,000 (herein "not to exceed amount") and shall be earned as the work progresses.

2. **Section 6. TERM, PROGRESS AND COMPLETION** of Agreement No. 2014-062 is amended to extend the term for an additional year to read in its entirety:

The term of this Agreement is from the date first written above to June 30, 2018, unless term of this Agreement is extended or the Agreement is terminated as provided for herein.

Consultant shall not commence work on the service to be performed until (i) Consultant furnishes proof of insurance as required by paragraph 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. Except as otherwise specifically provided herein, all other provisions of the Agreement No. 2014-062 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**



Michelle Greene, City Manager

**CONSULTANT**



Kira Redmond, Executive Director

**ATTEST:**



Deborah Lopez, City Clerk



Andy Heller, Treasurer

**APPROVED AS TO FORM**



Winnie Cai, Deputy City Attorney

## **ATTACHMENT 9**

Amendment No. 4 for Explore Ecology Agreement No. 2014-101 for Professional  
Services





**AMENDMENT NO. 4  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
EXPLORE ECOLOGY**

**This Amendment No. 4** is made this 19<sup>th</sup> day of June, 2018 to a Professional Services Agreement between the **City of Goleta** ("City") and **Explore Ecology**, a California 501(c)(3) charitable organization ("Consultant") dated September 8, 2014 ("Agreement", Agreement No. 2014-101).

**RECITALS**

**WHEREAS**, the City of Goleta entered into an Agreement with Consultant for the purpose of providing K-6 watershed and stormwater educational services, pursuant to the City's Storm Water Management Plan; and

**WHEREAS**, the Agreement was entered into on September 8, 2014 with a maximum compensation of \$10,938 and a termination date of September 30, 2015; and

**WHEREAS**, the Agreement was amended on August 31, 2015 to add an additional \$11,208 in compensation and extend the term to June 30, 2016 (Amendment No. 1); and

**WHEREAS**, the Agreement was amended on June 21, 2016 to add an additional \$11,208 in compensation and extend the term to June 30, 2017 (Amendment No. 2); and

**WHEREAS**, the Agreement was amended on June 20, 2017 to provide for an additional compensation of \$11,880 and extend the termination of the Agreement to June 30, 2018 (Amendment No. 3); and

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed forty five thousand two hundred thirty four dollars (\$45,234); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of eleven thousand eight hundred eighty dollars (\$11,880) to continue to provide K-6 stormwater educational outreach services; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination on June 30, 2018; and

**WHEREAS**, the parties desire to amend Agreement so as to extend the termination date to June 30, 2019; and

**WHEREAS**, the City Council, on this 19<sup>th</sup> day of June, 2018, approved and authorized the City Manager to execute this Amendment No. 4.

### **AMENDED TERMS**

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

1. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$11,880 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 \$57,114 (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, 2019, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (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 one year and to read in its entirety.

The term of this Agreement is from the date first written above to June 30, 2019, 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. All services shall be completed within the term of this Agreement following the notice to proceed.

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

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

**CITY OF GOLETA**

\_\_\_\_\_  
Michelle Greene, City Manager

**CONSULTANT**

\_\_\_\_\_  
Lindsay Johnson, Executive Director

**ATTEST:**

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

\_\_\_\_\_  
Scott Estby, Board Treasurer

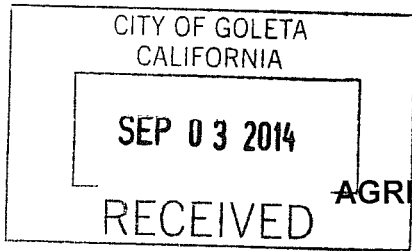
**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Deputy City Attorney



## **ATTACHMENT 10**

Explore Ecology Agreement No. 2014-101 for Professional Services and Amendments  
No. 1 through 3



Agreement No. 2014-101  
City of Goleta, California

Project Name: K-6 Stormwater Educational Outreach

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
EXPLORE ECOLOGY**

This AGREEMENT FOR PROFESSIONAL SERVICES is made and entered into this 8th day of September, 2014, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **EXPLORE ECOLOGY**, (herein referred to as "CONSULTANT").

**WHEREAS**, CONSULTANT represents that they are sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the CITY; and

**WHEREAS**, CONSULTANT was selected based upon its response to a Request for Qualifications, and its prior work for the CITY, recommended for award of this AGREEMENT by Director of Public Works; and

**WHEREAS**, the Interim City Manager is authorized by Goleta Municipal Code Section 3.05.240 to execute this AGREEMENT because the value of the AGREEMENT is less than \$30,000.

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 K-6 educational outreach services in conjunction with The City's Stormwater Management Plan. Services shall generally include developing, and presenting comprehensive and age appropriate educational programs that introduce students to subjects and concepts including "watersheds", local hydrologic conditions, the differences between storm drain and sanitary sewer systems, and the potential health and environmental impacts of pollutants contained in stormwater runoff, and to foster an understanding and appreciation of the benefits of clean and healthy waterways and beaches, 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 \$10,938 (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, 2015, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (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. 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 in advance. 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 Everett King. 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 September 30, 2015, 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 paragraph 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 contract term following the notice to proceed.

## **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. Ashley Hollister is deemed to be specially experienced and is a key member of CONSULTANT's firm, 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. This AGREEMENT is not assignable by CONSULTANT without CITY's prior consent in writing.

## **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 in the aggregate.
- b) Insurance Services Office form number CA 0001 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 on a policy form appropriate to CONSULTANTs profession. Limits shall be no less than \$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 exact 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 with an edition date prior to 2004.
- b) CONSULTANT's insurance shall apply 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) 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 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.
- f) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract 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 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.

- h) 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. RELATION OF THE PARTIES**

The relationship of the parties to this AGREEMENT shall be that of independent contractors 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 30 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 consultant 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. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**22. 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.

**23. 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.

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

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

**25. PERMITS AND LICENSES**

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

## 26. 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.

## 27. 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.

## **28. 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.

## 29. 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.

### 30. 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, Interim City Manager  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

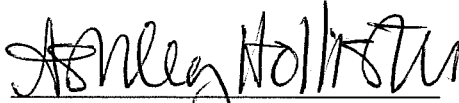
TO CONSULTANT: Explore Ecology  
Attention: Ashley W. Hollister  
302 East Cota Street  
Santa Barbara, CA 93101  
Phone: 805-884-0459  
Fax: 805-884-1879

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

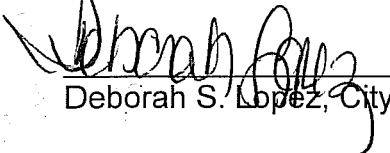
**CITY OF GOLETA**


  
Michelle Greene, Interim City Manager

**CONSULTANT**

  
Ashley W. Hollister  
Acting Executive Director

**ATTEST:**

  
Deborah S. Lopez, City Clerk

  
Scott Estby  
Board Treasurer

**APPROVED AS TO FORM**

  
Tim W. Giles, City Attorney

## **Exhibit A Scope of Work**

Consultant shall provide City of Goleta (City) water quality educational services through the South Coast Watershed Resource Center (WRC) at Arroyo Burro Beach and at school sites.

Water quality education programs shall be provided to school children attending public and private schools, summer camps, and after-school programs within the City of Goleta. All lessons shall be correlated to the State Curriculum Standards by grade level.

### **Schools**

Currently identified schools within the City:

#### **PUBLIC**

Brandon  
Ellwood  
Kellogg  
La Patera  
St. Raphael

#### **PRIVATE**

Faith Academy  
Montessori Center  
SB Montessori  
St. John of Damascus

### **TASK 1 – CREEK KIDS EDUCATION**

#### ***Creek Kids Series***

Fourth through sixth grade students in five (5) classes shall be the main target audience for this 3-part series of lessons, shall include:

- 1) In-class introductory lesson – *What is a Watershed?*
- 2) Field trip to a creek restoration site - *What is a Healthy Creek?*  
and to the Watershed Resource Center – *Solutions to Pollution*
- 3) In-class lesson and review – *Action! – How Kids Can Help Keep Creeks Clean*

AFS Educator staff time shall include the implementation of each 3-part series, including promoting the Series, recruiting groups to participate in the Series, scheduling, lesson preparation, clean-up, travel time and lesson presentations.

#### **B) Watershed Resource Center Field Trips**

The Watershed Resource Center lesson is a condensed version of the water quality concepts presented in the Creek Kids Series. The field trip is age-adjusted by grade level. Each class shall participate in a beach clean-up and the data shall be collected and charted overtime on the Arroyo Burro Litter display, giving students and the public a visual representation of the quantities and types of litter found at Arroyo Burro Beach. Fourth through sixth grade students from approximately 12 classes shall be the main focus of the WRC Field Trip, with other grades included as space permits. AFS



Educator staff time shall include implementing each field trip, including promoting the field trips, recruiting groups to participate in the WRC Field Trip, scheduling, lesson preparation, clean-up, travel time and lesson presentations.

## **PROGRAM GOALS**

Educate approximately 425 individual students

Participation by 300 students in the Water Resource Center field trip

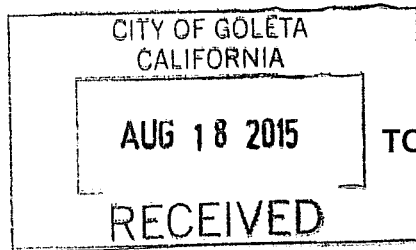
Participation by 125 students in the Creek Kids Series

## **TASK 2 – PROGRAM ADMINISTRATION**

EE's Executive Director shall be the primary contact for this contract. She shall develop the Scope of Work and Budget in conjunction with City of Goleta staff and shall oversee all aspects of this contract to ensure compliance. She shall also oversee all AFS Green Schools Education staff to ensure the quality of the educational lessons presented to students and the public education programming conducted through the WRC.

Administrative tasks shall include data entry of information regarding each educational lesson, activity, meeting or other activity to track program participation, monthly preparation of report of all program related activities conducted through this contract, preparation of invoices, and any other tasks needed to ensure the success of the program.





**AMENDMENT NO. 1  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
EXPLORE ECOLOGY**

This **Amendment No. 1** ("Amendment") to a Professional Services Agreement is made this 31<sup>st</sup> day of August, 2015 between the **City of Goleta** (City) and **Explore Ecology** (Consultant) dated September 8, 2014 ("Agreement").

**RECITALS**

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed ten thousand nine hundred thirty eight dollars (\$10,938); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of eleven thousand two hundred eight dollars (\$11,208) to continue to provide K-6 stormwater educational outreach services; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on September 30, 2015; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the Agreement to June 30, 2016; and

**WHEREAS**, the City Manager approved this contract Amendment, per the Goleta Municipal Code Section 3.05.240 on this 31<sup>st</sup> day of August, 2015.

**AMENDED TERMS**

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

1. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$11,208 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 \$22,146 (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,

2016, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (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 ten months to read in its entirety.

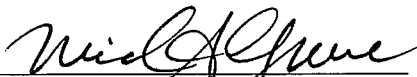
The term of this Agreement is from the date first written above to June 30, 2016, unless term of this Agreement is extended or the Agreement is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by paragraph 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. 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.

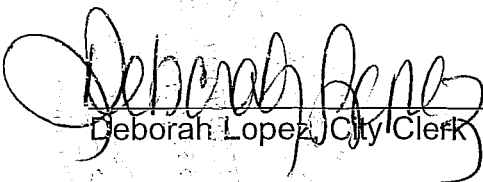
**CITY OF GOLETA**

  
Michelle Greene, City Manager

**CONSULTANT**

  
Lindsay Johnson, Executive Director

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Scott Estby, Board Treasurer

**APPROVED AS TO FORM**

  
Tim W. Giles, City Attorney

**AMENDMENT NO. 2  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
EXPLORE ECOLOGY**

**This Amendment No. 2** ("Amendment") to a Professional Services Agreement is made this 21<sup>st</sup> day of June, 2016 between the **City of Goleta** (City) and **Explore Ecology** (Consultant) dated September 8, 2014 ("Agreement").

**RECITALS**

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed twenty two thousand one hundred forty-six dollars (\$22,146); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of eleven thousand two hundred eight dollars (\$11,208) to continue to provide K-6 stormwater educational outreach services; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on June 30, 2016; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the Agreement to June 30, 2017; and

**WHEREAS**, the City Council, on this 21st day of June, 2016, approved this Contract Amendment and authorized the City Manager to execute this Contract Amendment per the Goleta Municipal Code Section 3.05.240.

**AMENDED TERMS**

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

1. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$11,208 and to read in its entirety:

(i) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$33,354 (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, 2017, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (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 ten months to read in its entirety.


The term of this Agreement is from the date first written above to June 30, 2017, 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 paragraph 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.

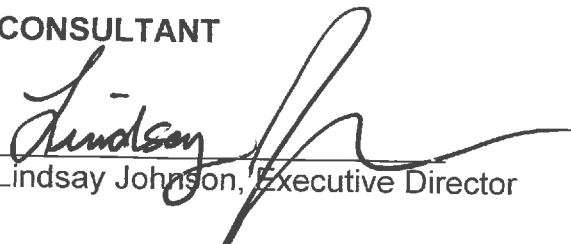
3. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

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


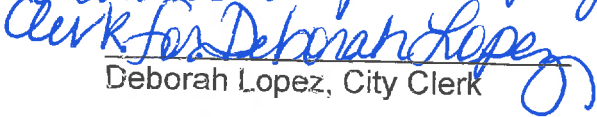
**CITY OF GOLETA**

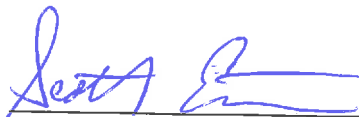
  
Michelle Greene, City Manager

**CONSULTANT**


  
Lindsay Johnson, Executive Director

**ATTEST:**

  
Rianna Campos, Deputy City Clerk for Deborah Lopez  
  
Deborah Lopez, City Clerk

  
Scott Estby, Board Treasurer

**APPROVED AS TO FORM**

  
Tim W. Giles, City Attorney

**AMENDMENT NO. 3  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
EXPLORE ECOLOGY**

**This Amendment No. 3** to a Professional Services Agreement is made this 20th day of June, 2017 between the **City of Goleta** (City) and **Explore Ecology** (Consultant) dated September 8, 2014 ("Agreement") Agreement No. 2014-101.

**RECITALS**

**WHEREAS**, the City of Goleta entered into an Agreement with Explore Ecology for the purpose of providing K-6 watershed and stormwater educational services, per the City's Storm Water Management Plan; and

**WHEREAS**, Agreement No. 2014-101 between the City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed thirty three thousand three hundred fifty four dollars (\$33,354); and

**WHEREAS**, the parties desire to amend the Agreement No. 2014-101 so as to provide for additional compensation in the amount of eleven thousand eight hundred eighty dollars (\$11,880) to continue to provide K-6 stormwater educational outreach services; and

**WHEREAS**, Agreement No. 2014-101 between City and Consultant currently provides in Section 6 for the termination on June 30, 2017; and

**WHEREAS**, the parties desire to amend Agreement No. 2014-101 so as to extend the termination to June 30, 2018; and

**WHEREAS**, the City Council, on this 20th day of June, 2017, approved and authorized the City Manager to execute this Contract Amendment No. 3.

**AMENDED TERMS**

**Now therefore** City and Consultant agree as follows that Agreement No. 2014-101 be, and hereby is, amended as follows:

**1. Section 3 Subsection (a). COMPENSATION AND PAYMENT** of Agreement No. 2014-101 is amended to add an additional authorized amount of \$11,880 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 \$45,234 (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, 2018, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (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 Agreement No. 2014-101 is amended to extend the term for an additional ten months to read in its entirety.


The term of this Agreement is from the date first written above to June 30, 2018, 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. All services shall be completed within the term of this Agreement following the notice to proceed.


3. Except as otherwise specifically provided herein, all other provisions of the Agreement No. 2014-101 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.

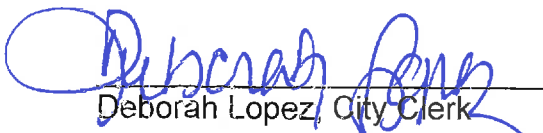
**CITY OF GOLETA**

  
Michelle Greene, City Manager

**CONSULTANT**

  
Lindsay Johnson, Executive Director

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Scott Estby, Board Treasurer

**APPROVED AS TO FORM**

  
Winnie Cai, Deputy City Attorney



## **ATTACHMENT 11**

Amendment No. 4 for ZWorld Geospatial Information Systems Agreement No. 2014-069 for Professional Services



**AMENDMENT NO. 4  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
ZACHARIAS HUNT dba ZWORLD GEOSPATIAL INFORMATION SYSTEMS**

**This Amendment No. 4** to a Professional Services Agreement is made on this 5<sup>th</sup> day of June, 2018 between the **City of Goleta**, (City) and **ZWorld Geospatial Information Systems**, a sole proprietorship, (Consultant) dated June 26, 2014 ("Agreement", Agreement No. 2014-069).

**RECITALS**

**WHEREAS**, the City of Goleta entered into an Agreement with ZWorld Geospatial Information Systems for the purpose of providing GIS data development, maintenance, mapping and application support for the City's Stormwater Management Plan; and

**WHEREAS**, the Agreement was entered into on June 26, 2014 with a maximum compensation of \$10,000 and a termination date of June 20, 2015; and

**WHEREAS**, the Agreement was amended on June 2, 2015 to add an additional \$10,000 in compensation and extend the term to June 30, 2016; and

**WHEREAS**, the Agreement was amended on June 21, 2016 so as to extend the termination of the Agreement to June 30, 2017; and

**WHEREAS**, the Agreement was amended on July 31, 2017 so as to extend the termination of the Agreement to June 30, 2018; and

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed twenty thousand dollars (\$20,000); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of twelve thousand dollars (\$12,000) to continue to provide general GIS mapping services and support for stormwater and the City's stormdrain atlas, as they relate to implementing the State Water Board's Trash Amendment; and

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 6 for the termination of the Agreement on June 30, 2018; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination to June 30, 2019; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Exhibit B entitled "Compensation" the hourly rates for Consultant; and

**WHEREAS**, the parties desire to amend Exhibit B of the Agreement to identify the currently hourly rates due to staff and rate changes since 2014; and

**WHEREAS**, the City Council approved this Amendment No. 4, on this 5<sup>th</sup> day of June, 2018.

### **AMENDED TERMS**

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

1. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$12,000 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 \$32,000 (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-4," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2019, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (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 year to read in its entirety:

The term of this Agreement is from the date first written above to June 30, 2019, 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. All services shall be completed within the term of this Agreement following the notice to proceed.

3. **Exhibit B Schedule of Fees**

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

**Exhibit B “Compensation”** with **Exhibit B-4 “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. 4 has been executed by the parties effective on the date and year first written above.

**CITY OF GOLETA**

**CONSULTANT**


\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
Zacharias Hunt, Owner

**ATTEST:**

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

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Deputy City Attorney

## Exhibit B-4

### Schedule of Fees

#### Mapping

Maps - Hardcopy.....	\$70.00/hr
Maps - Digital.....	\$80.00/hr
Maps - Web.....	\$90.00/hr

#### Training

Level I.....	\$70.00/hr
Level II.....	\$80.00/hr
Level III.....	\$90.00/hr

#### Database Design

Workshop Database.....	\$85.00/hr
Enterprise Database.....	\$95.00/hr

#### GIS Management

Program Manager.....	\$110.00/hr
Project Manager.....	\$100.00/hr

#### Office Services

Graphic Designer.....	\$120.00/hr
Publications.....	\$85.00/hr

#### Emergency Support

First 48 billable hours.....	\$65.00/hr
After first 48 billable hours.....	\$95.00/hr
ON CALL – Minimum 2 hour	
ON CALL Status per hour.....	\$10.00/hr

#### GIS Planning

Needs Assessment.....	\$95.00/hr
Strategic Plan.....	\$120.00/hr

#### GIS Data

GPS Data Collection (Field)....	\$100.00/hr
GIS Data Development.....	\$70.00/hr
GIS Data Conversion.....	\$80.00/hr
GIS Data Analysis.....	\$90.00/hr

#### Staff Supplement

GIS Technician.....	\$65.00/hr
GIS Analyst.....	\$75.00/hr
GIS Program Supervisor.....	\$85.00/hr

**Material and Outside Services** – Subcontractors, rental of special equipment, special reproductions and blueprinting, outside data processing and computer services, etc., are charged at 1.15 times the direct cost.

**Travel Expenses** – Mileage is billed at the Federal IRS rates per mile. Per diem where overnight stay is involved is charged at cost.

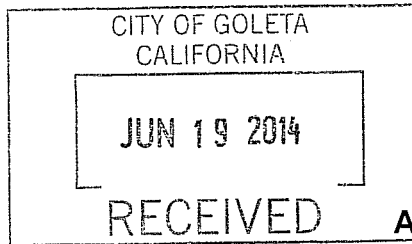
**Invoices & Late Charges** – All fees will be billed to Client monthly and shall be due and payable upon receipt. Invoices are delinquent if not paid within thirty (30) days from the date of the invoice. Client agrees to pay a monthly late charge equal to one percent (1%) per month of the outstanding balance until paid in full.

## **ATTACHMENT 12**

ZWorld Geospatial Information Systems Agreement No. 2014-069 for Professional  
Services and Amendments No. 1 through 3







**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
ZWORLD GEOSPATIAL INFORMATION SYSTEMS**

This AGREEMENT FOR PROFESSIONAL SERVICES is made and entered into this 26th day of June, 2014, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **ZWORLD GEOSPATIAL INFORMATION SYSTEMS**, (herein referred to as "CONSULTANT").

**WHEREAS**, CONSULTANT represents that they are sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the CITY; and

**WHEREAS**, CONSULTANT was selected based upon its response to a Request for Qualifications, and his prior work for the City, recommended for award of this AGREEMENT by the Interim Director of Public Works; and

**WHEREAS**, the Public Works Director and the City's Purchasing Officer are authorized by Goleta Municipal Code Section 3.05.240 to execute this AGREEMENT because the value of the AGREEMENT is between \$10,000.

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 GIS mapping services in conjunction with The City's Stormwater Management Plan. Services shall generally include working with City staff on GIS data development, maintenance, mapping and application support for the City's storm drain Atlas / Sub-drainage mapping program.

### **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 \$10,000 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2015, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (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. 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 in advance. 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 Everett King. 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 20, 2015, 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 paragraph 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 365 calendar days following the notice to proceed.

## **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. Zacharias Hunt is deemed to be specially experienced and is a key member of CONSULTANT's firm, 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. This AGREEMENT is not assignable by CONSULTANT without CITY's prior consent in writing.

## **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 in the aggregate.
- b) Insurance Services Office form number CA 0001 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 on a policy form appropriate to CONSULTANT's profession. Limits shall be no less than \$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 exact 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 with an edition date prior to 2004.
- b) CONSULTANT's insurance shall apply 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) 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 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.
- f) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract 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 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.

- h) 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. RELATION OF THE PARTIES**

The relationship of the parties to this AGREEMENT shall be that of independent contractors 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 30 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 consultant 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. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**22. 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.

**23. 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.

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

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

**25. PERMITS AND LICENSES**

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



## 26. 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.

## 27. 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.

## 28. 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.

## 29. 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.

## 30. 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: Interim Public Works Director  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

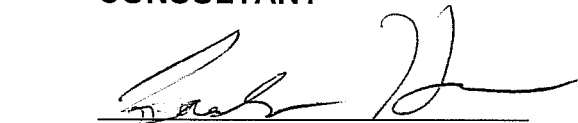
TO CONSULTANT: ZWorld Geospatial Information Systems  
Attention: Zacharias Hunt  
27 West Anapamu Street, Suite 191  
Santa Barbara, CA 93101  
Phone: 805-448-1726

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

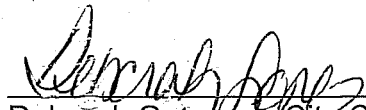
**CITY OF GOLETA**

  
\_\_\_\_\_  
Rosemarie Gaglione,  
Interim Public Works Director

**CONSULTANT**

  
\_\_\_\_\_  
Zacharias Hunt, Owner

**ATTEST:**

  
\_\_\_\_\_  
Deborah S. Lopez, City Clerk

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Tim W. Giles, City Attorney

**AMENDMENT No. 1  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
ZWORLD GEOSPATIAL INFORMATION SERVICES**

**This Amendment No. 1** ("Amendment") to a Professional Service Agreement is made this 2nd day of June, 2015 between the **City of Goleta**, (City) and **Zworld Geospatial Information Services**, (Consultant) dated June 26, 2014 ("Agreement").

**RECITALS**

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed ten thousand dollars (\$10,000); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of ten thousand dollars (\$10,000) for additional GIS mapping services in conjunction with the City's Stormwater Management Plan; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on June 20, 2015; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the Agreement to June 30, 2016; and

**WHEREAS**, the City Manager, approved this contract Amendment, per the Goleta Municipal Code Section 3.05.240 on this 2nd day of June, 2015.

**AMENDED TERMS**

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

1. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$10,000 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 \$20,000 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to Consultant for those expenses set forth in Consultant's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon Consultant

until June 30, 2016, after which any change in said rates and expenses must be approved in writing by City's Project Manager (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 year to read in its entirety:


The term of this Agreement is from the date first written above to June 30, 2016, 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 paragraph 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.

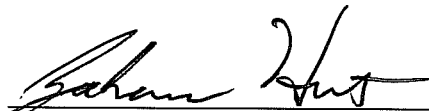
3. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect

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

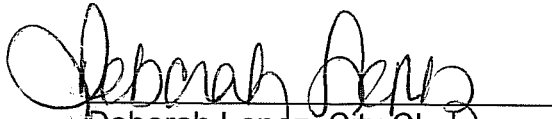
**CITY OF GOLETA**

  
Michelle Greene, City Manager


**CONSULTANT**

  
Zacharias Hunt, Owner

**ATTEST:**

  
Deborah Lopez, City Clerk

**APPROVED AS TO FORM**

  
Tim W. Giles, City Attorney



**AMENDMENT No. 2  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
ZWORLD GEOSPATIAL INFORMATION SERVICES**

**This Amendment No. 2** ("Amendment") to a Professional Service Agreement is made this 21<sup>st</sup> day of June, 2016 between the **City of Goleta**, (City) and **Zworld Geospatial Information Services**, (Consultant) dated June 26, 2014 ("Agreement").

**RECITALS**

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on June 20, 2016; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the Agreement to June 30, 2017; and

**WHEREAS**, the City Manager, approved this contract Amendment, per the Goleta Municipal Code Section 3.05.240 on this 21<sup>st</sup> day of June, 2016.

**AMENDED TERMS**

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

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

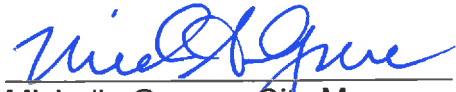
The term of this Agreement is from the date first written above to June 30, 2017, unless term of this Agreement is extended or the Agreement is terminated as provided for herein.

Consultant shall not commence work on the services to be performed until (i) Consultant furnishes proof of insurance as required by paragraph 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.

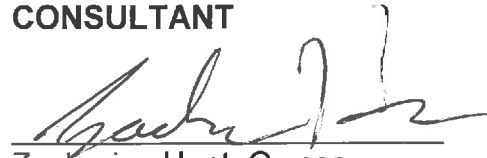
2. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect

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

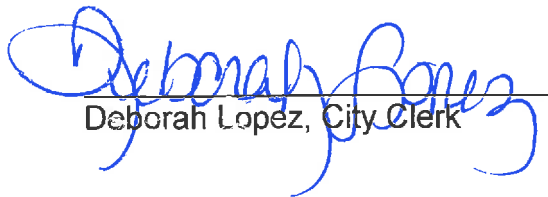
**CITY OF GOLETA**

  
Michelle Greene, City Manager


**CONSULTANT**

  
Zacharias Hunt, Owner

**ATTEST:**

  
Deborah Lopez, City Clerk

**APPROVED AS TO FORM**

  
Tim W. Giles, City Attorney



Agreement No. 2014-009.3  
City of Goleta, California

**AMENDMENT No. 3  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
ZWORLD GEOSPATIAL INFORMATION SERVICES**

**This Amendment No. 3** to a Professional Service Agreement is made this 31<sup>st</sup> day of July, 2017 between the **City of Goleta**, (City) and **Zworld Geospatial Information Services**, (Consultant) dated June 26, 2014 ("Agreement", No. 2014-069).

**RECITALS**

**WHEREAS**, the Agreement was originally entered into to provide GIS data development, maintenance, mapping and application support for the City's Stormwater Management Plan; and

**WHEREAS**, the Agreement was entered into on June 26, 2014 with a maximum compensation of \$10,000 and a termination date of June 20, 2015; and

**WHEREAS**, the Agreement was amended on June 2, 2015 to add an additional \$10,000 in compensation and extend the term to June 30, 2016; and

**WHEREAS**, the Agreement was amended on June 21, 2016 so as to extend the termination date of the Agreement to June 30, 2017; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination to June 30, 2018; and

**WHEREAS**, the City Manager, approved this Amendment No. 3, on this \_\_\_\_ day of July, 2017.

**AMENDED TERMS**

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

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

The term of this Agreement is from the date first written above to June 30, 2018, 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 paragraph 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.


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. 3 has been executed by the parties effective on the date and year first written above.

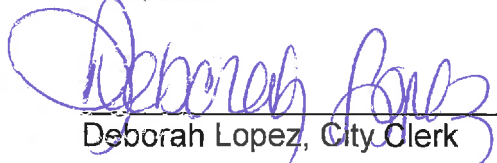
**CITY OF GOLETA**

  
Michelle Greene, City Manager

**CONSULTANT**

  
Zacharias Hunt, Owner

**ATTEST:**

  
Deborah Lopez, City Clerk

**APPROVED AS TO FORM**

  
Winnie Cai, Deputy City Attorney



## **ATTACHMENT 13**

Amendment No. 3 for MSW Consultants, Inc. Agreement No. 2016-132 for Professional  
Services



**AMENDMENT No. 3  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
MSW CONSULTANTS, INC.**

**This Amendment No. 3** to a Professional Services Agreement is made this 19<sup>th</sup> day of June, 2018 between the **City of Goleta**, a municipal corporation ("City") and **MSW Consultants, Inc.**, a California corporation ("Consultant") dated November 16, 2016 ("Agreement," Agreement No. 2016-132).

**RECITALS**

**WHEREAS**, the City entered into an Agreement with the Consultant for the purpose of providing professional solid waste and collection rate setting analytical services; and

**WHEREAS**, Amendment No. 1 to the Agreement was entered into on June 27, 2017 to add an additional \$6,000 in compensation and extend the term to September 30, 2017; and

**WHEREAS**, Amendment No. 2 to the Agreement was entered into on October 23, 2017 to modify the description of services to expand the scope of work in order to include analysis of extending the contract term for an additional period up to ten years; and

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed twenty nine thousand nine hundred dollars (\$29,900); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of five thousand dollars (\$5,000) to continue to provide professional solid waste analytical services; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on July 30, 2018; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the Agreement to June 30, 2019; and

**WHEREAS**, the City Manager, approved this Amendment No. 3, on this 19<sup>th</sup> day of June, 2018.

**AMENDED TERMS**

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

1. **Section 3 Subparagraph (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$5,000 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 \$34,900 (herein "not to exceed amount") and shall be earned as the work progresses on the following basis:

Hourly at the rate of \$175.00 per hour and with reimbursement to Consultant for those miscellaneous expenses approved in advance, in writing, by the City Project Manager. Consultant shall not bill the City for phone, mileage, copies, overnight delivery or other minor expenses.

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

The term of this Agreement is from the date first written above to June 30, 2019, 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. All services shall be completed within the term of this Agreement following the notice to proceed.

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

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

**CITY OF GOLETA**

**CONSULTANT**

\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
David L. Davis, President

**ATTEST:**

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

\_\_\_\_\_  
Chrisinda J. Davis, Vice President and  
Chief Financial Officer

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Deputy City Attorney



## **ATTACHMENT 14**

MSW Consultants, Inc., Agreement No. 2016-132 for Professional Services and  
Amendments No. 1 and 2





Project Name: Solid Waste Franchise Agreement

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

This AGREEMENT FOR PROFESSIONAL SERVICES is made and entered into this 16<sup>th</sup> day of November, 2016, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **MSW CONSULTANTS, Inc.**, a California corporation (herein referred to as "CONSULTANT").

**WHEREAS**, CONSULTANT represents that they are sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the CITY; and

**WHEREAS**, CONSULTANT was selected based upon the CONSULTANTS's prior experience in assisting the City in negotiating the current Franchise Agreement for Solid Waste Services between the City and MarBorg Industries, and is recommended for award of this AGREEMENT by the Public Works Director; and

**WHEREAS**, the City Manager is authorized by Goleta Municipal Code Section 3.05.240 to execute this AGREEMENT because the value of the AGREEMENT is less than \$30,000.

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 solid waste and collection rate setting analytical services in conjunction with the City's participation in the Tajiguas Resource Recovery Project. Services shall generally include reviewing the current solid waste Franchise Agreement, consulting with staff regarding needed changes and assisting staff in negotiating amendments to the Franchise Agreement.

### **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 \$10,000 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the rate of \$175.00 per hour and with reimbursement to CONSULTANT for those miscellaneous expenses approved in advance, in writing, by the City Project Manager. Consultant shall not bill the City for phone, mileage, copies, overnight delivery or other minor expenses.

(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. 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 in advance. 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 above. 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, unless mutually agreed upon through a written amendment to this Agreement.

### **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 Everett King. 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, 2017 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 paragraph 10 below, and (ii)

CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed prior to June 30, 2017.

## **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. David Davis is deemed to be specially experienced and is a key member of CONSULTANT's firm, 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. This AGREEMENT is not assignable by CONSULTANT without CITY's prior consent in writing.

## **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 in the aggregate.
- b) Insurance Services Office form number CA 0001 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 on a policy form appropriate to CONSULTANTs profession. Limits shall be no less than \$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 exact 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 with an edition date prior to 2004.

- b) CONSULTANT's insurance shall apply 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) 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 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.
- f) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract 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 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.
- h) 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. RELATION OF THE PARTIES**

The relationship of the parties to this AGREEMENT shall be that of independent contractors 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 consultant 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 subconsultants.

## **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. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**22. 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.

**23. 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.

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

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

**25. PERMITS AND LICENSES**

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

**26. 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.

**27. 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.

**28. 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.

**29. 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.

**30. 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: Mr. David Davis  
MSW Consultants  
27393 Ynez Road, Suite 259  
Temecula, CA 92591

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**


\_\_\_\_\_  
Michelle Greene, City Manager

**CONSULTANT**

  
\_\_\_\_\_  
David L. Davis, President

**ATTEST:**

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


  
\_\_\_\_\_  
Chrisinda J. Davis, Vice President and  
Chief Financial Officer

**APPROVED AS TO FORM**

\_\_\_\_\_  
Tim W. Giles, City Attorney

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**

  
Michelle Greene, City Manager

**CONSULTANT**


  
David L. Davis, President

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Chrisinda J. Davis, Vice President and  
Chief Financial Officer

**APPROVED AS TO FORM**

  
Tim W. Giles, City Attorney





Agreement No. 2016-132.1  
City of Goleta, California

**AMENDMENT No. 1  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
MSW CONSULTANTS, INC.**

This Amendment No. 1 is made this 27<sup>th</sup> day of June, 2017 to a Professional Service Agreement between the **City of Goleta**, ("City") and **MSW Consultants, Inc.**, ("Consultant") dated November 16, 2016 ("Agreement," Agreement No. 2016-132).

**RECITALS**

**WHEREAS**, the City of Goleta entered into the Agreement with MSW Consultants, Inc., for the purpose of providing professional solid waste and collection rate setting analytical services; and

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed ten thousand dollars (\$10,000); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of six thousand dollars (\$6,000) to continue to provide professional solid waste and collection rate setting analytical services; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for termination of the Agreement on June 30, 2017; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination date of the Agreement to September 30, 2017; and

**WHEREAS**, the City Manager, approved this Amendment No. 1, on this 27<sup>th</sup> day of June, 2017 pursuant to the Goleta Municipal Code section 3.05.240.

**AMENDED TERMS**

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

1. **Section 3 Subparagraph (a).** **COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$6,000 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 \$16,000 (herein "not to exceed amount") and shall be earned as the work progresses.

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


The term of this Agreement is from the date first written above to September 30, 2017, 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 paragraph 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. 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 written above.

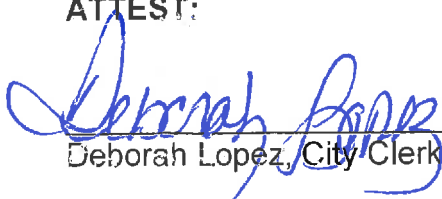
**CITY OF GOLETA**

  
Michelle Greene, City Manager

**CONSULTANT**

  
David L. Davis, President

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Chrisinda J. Davis, Vice President and  
Chief Financial Officer

**APPROVED AS TO FORM**

  
Winnie Cai, Deputy City Attorney



Agreement No. 2016-132.2  
City of Goleta, California

**AMENDMENT No. 2  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
MSW CONSULTANTS, INC.**

**This Amendment No. 2** to a Professional Service Agreement is made this 23rd day of October, 2017 between the **City of Goleta**, a municipal corporation ("City") and **MSW Consultants, Inc.**, a California corporation ("Consultant") dated November 16, 2016 ("Agreement," Agreement No. 2016-132).

**RECITALS**

**WHEREAS**, the City entered into an Agreement with the Consultant for the purpose of providing professional solid waste and collection rate setting analytical services; and

**WHEREAS**, Amendment No. 1 to the Agreement was entered into on June 27, 2017 to add an additional \$6,000 in compensation and extend the term to September 30, 2017; and

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 2 a description of the services Consultant will provide under the Agreement; and

**WHEREAS**, the parties desire to modify the description of services to expand the scope of work in order to include analysis of extending the contract term for an additional period up to ten years; and

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed sixteen thousand dollars (\$16,000); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of thirteen thousand nine hundred dollars (\$13,900) to continue to provide professional solid waste analytical services; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the Agreement on September 30, 2017; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the Agreement to July 30, 2018; and

**WHEREAS**, the City Manager, approved this Amendment No. 2, on this 23rd day of October, 2017.

**AMENDED TERMS**

Amendment No. 2 for Agreement #2016-132

Page 1 of 3

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

1. **Section 2. DESCRIPTION OF SERVICES** of the Agreement is amended to add additional tasks to read in its entirety:

The services to be performed by CONSULTANT are as follows:

Professional solid waste and collection rate setting analytical services. Services shall generally include reviewing the current solid waste Franchise Agreement, consulting with staff regarding changes to the services provided therein, reviewing the feasibility of an extension of the Agreement's term, and assisting staff in negotiating potential amendments to the Franchise Agreement.

2. **Section 3 Subparagraph (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$13,900 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 \$29,900 (herein "not to exceed amount") and shall be earned as the work progresses.

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

The term of this Agreement is from the date first written above to July 30, 2018, 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. All services shall be completed within the term of this Agreement following the notice to proceed.

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 written above.

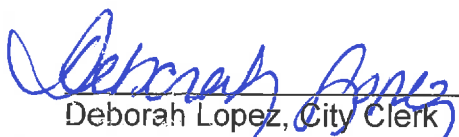
**CITY OF GOLETA**


  
Michelle Greene, City Manager

**CONSULTANT**

  
David L. Davis, President

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Chrisinda J. Davis,  
Vice President & CFO

**APPROVED AS TO FORM**

  
Winnie Cai, Deputy City Attorney



## **ATTACHMENT 15**

Amendment No. 2 for Stantec Consulting Services Inc. Agreement No. 2016-117 for  
Professional Design Services



**AMENDMENT NO. 2  
TO A PROFESSIONAL DESIGN SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
STANTEC CONSULTING SERVICES, INC.**

**This Amendment No. 2** is made on this 19<sup>th</sup> day of June, 2018 to an AGREEMENT FOR PROFESSIONAL DESIGN SERVICES between the **CITY OF GOLETA** ("City") and **STANTEC CONSULTING SERVICES, INC.**, a New York corporation, ("Consultant") dated September 19, 2016 ("Agreement," Agreement No. 2016-117).

**RECITALS**

**WHEREAS**, the City of Goleta entered into the Agreement with Consultant for the purpose of providing traffic engineering services; and

**WHEREAS**, the Agreement was entered into on September 19, 2016 with a maximum compensation of \$25,000 and a termination date of December 31, 2017; and

**WHEREAS**, the Agreement was amended on June 20, 2017 to add an additional \$75,000 in compensation and extend the term to June 30, 2018; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed the sum of one hundred thousand dollars (\$100,000); and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of seventy-five thousand dollars (\$75,000) for continued traffic engineering services so that the new not to exceed amount if \$175,000; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for termination of the Agreement on June 30, 2018; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination date of the Agreement to June 30, 2019; and

**WHEREAS**, the City Council approved this Amendment No. 2 on this 19<sup>th</sup> day of June, 2018.

**AMENDED TERMS**

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

1. **Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$75,000 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 \$175,000.00 (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, 2019, after which any change in said rates and expenses must be approved in writing by City's Project Manager (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 one year to read in its entirety.

The term of this Agreement is from the date first written above to June 30, 2019, 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 paragraph 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. 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**

**CONSULTANT**

\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
Derek Rapp, T.E. Principal

**ATTEST:**

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

\_\_\_\_\_  
Hady Izadpanah, Senior Principal

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Deputy City Attorney

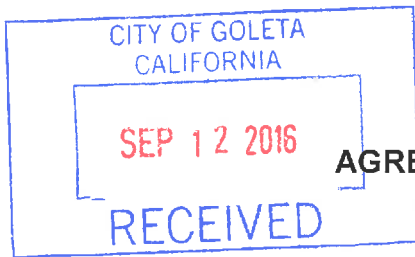




## **ATTACHMENT 16**

Stantec Consulting Services Inc. Agreement No. 2016-117 for Professional Design  
Services and Amendment No. 1





Agreement No. 2016-117  
City of Goleta, California

Project Name: On Call Traffic Engineering Services

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
STANTEC CONSULTING SERVICES INC.**

This AGREEMENT FOR PROFESSIONAL DESIGN SERVICES is made and entered into this 19th of September, 2016, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **STANTEC CONSULTING SERVICES INC.**, (herein referred to as "CONSULTANT").

**WHEREAS**, CONSULTANT represents that they are sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the CITY; and

**WHEREAS**, CONSULTANT was evaluated for award of this AGREEMENT by the Public Works Director following a competitive Request for Proposals from the City's pre-authorized qualified consultants lists for various professional engineering services ("short list"); and

**WHEREAS**, the City Manager is authorized by Goleta Municipal Code Section 3.05.240 to execute this AGREEMENT because the value of the AGREEMENT is less than \$30,000.

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 Traffic Engineering services. Services shall generally include assisting the Public Works department with various engineering requests, as more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein.

### **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 \$25,000 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until December 31, 2017, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (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. 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 in advance. 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 Rosemarie Gaglione, 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, 2017, 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 paragraph 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed by the termination date of the agreement.

**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. Derek Rapp, is deemed to be specially experienced and is a key member of CONSULTANT's firm, 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.

**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 indemnify, defend with counsel approved by CITY, and hold harmless CITY, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this AGREEMENT, except such loss or damage which is caused by the sole active negligence or willful misconduct of the CITY. Should conflict of interest principles preclude a single lawyer from representing both CITY and CONSULTANT, or should CITY otherwise find CONSULTANT's legal counsel unacceptable, then CONSULTANT shall reimburse the CITY its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The CONSULTANT shall promptly pay any final judgment rendered against the CITY (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the CONSULTANT's negligent, reckless or wrongful performance. 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 and will survive termination of this AGREEMENT.

**(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 in the aggregate.
- b) Insurance Services Office form number CA 0001 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 on a policy form appropriate to CONSULTANTs profession. Limits shall be no less than \$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 exact 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 with an edition date prior to 2004.
- b) CONSULTANT's insurance shall apply 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) 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 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.
- f) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract 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

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.

- h) 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. RELATION OF THE PARTIES**

The relationship of the parties to this AGREEMENT shall be that of independent contractors 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 30 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 consultant 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 subconsultants.

#### **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 comply with the federal Americans with Disability Act, Public Law 101-336, and observe the disability discrimination prohibitions of such laws in the performance of the work required under this AGREEMENT.

**22. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), 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, including a CITY business license, 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.


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:

**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

  
Michelle Greene, City Manager

CONSULTANT

  
Derek Rapp, T.E., Principal

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Hady Izadpanah, Senior Principal

**APPROVED TO FORM:**

  
Tim W. Giles, City Attorney

## **Exhibit A Scope of Services**

Consultant shall perform the following:

- Consultant shall conduct field review of issue location. Take photos, notes, measurements, etc. in order to document existing conditions.
- Consultant shall review applicable standards, guidance and options from a variety of sources, including CAMUTCD, Highway Design Manual, Caltrans/Greenbook Standard Plans and Specifications, AASHTO Publications, etc.
- Consultant shall prepare brief report describing observations, recommend solutions(s), if any, and justification for recommendations.
- Consultant shall assist the Public Works staff in preparing a response to the person who made the original request.

## Exhibit B Schedule of Fees

### SCHEDULE OF BILLING RATES – 2016

Billing Level	Hourly Rate	Description	
1	\$60	<b>Entry-level position</b> <input type="checkbox"/> Works under the supervision of a senior professional <input type="checkbox"/> Recent graduate from an appropriate post-secondary program or equivalent <input type="checkbox"/> Generally, less than four years' experience	
2	\$68		
3	\$75	<b>Junior Level position</b> <input type="checkbox"/> Independently carries out assignments of limited scope using standard procedures, methods and techniques <input type="checkbox"/> Assists senior staff in carrying out more advanced procedures <input type="checkbox"/> Completed work is reviewed for feasibility and soundness of judgment <input type="checkbox"/> Graduate from an appropriate post-secondary program or equivalent <input type="checkbox"/> Generally, one to three years' experience	
4	\$84		
5	\$92		
6	\$101	<b>Fully Qualified Professional Position</b> <input type="checkbox"/> Carries out assignments requiring general familiarity within a broad field of the respective profession <input type="checkbox"/> Makes decisions by using a combination of standard methods and techniques <input type="checkbox"/> Actively participates in planning to ensure the achievement of objectives <input type="checkbox"/> Works independently to interpret information and resolve difficulties <input type="checkbox"/> Graduate from an appropriate post-secondary program, with credentials or equivalent <input type="checkbox"/> Generally, three to six years' experience	
7	\$109		
8	\$118		
9	\$127	<b>First Level Supervisor or first complete Level of Specialization</b> <input type="checkbox"/> Provides applied professional knowledge and initiative in planning and coordinating work programs <input type="checkbox"/> Adapts established guidelines as necessary to address unusual issues <input type="checkbox"/> Decisions accepted as technically accurate, however may on occasion be reviewed for soundness of judgment <input type="checkbox"/> Graduate from an appropriate postsecondary program, with credentials or equivalent <input type="checkbox"/> Generally, five to nine years' experience	
10	\$137		
11	\$146		
		<b>Highly Specialized Technical Professional or Supervisor of groups of professionals</b> <input type="checkbox"/> Provides multi-discipline knowledge to deliver innovative solutions in related field of expertise <input type="checkbox"/> Participates in short and long range planning to ensure the achievement of objectives <input type="checkbox"/> Makes responsible decisions on all matters, including policy recommendations, work methods and financial controls associated with large expenditures <input type="checkbox"/> Reviews and evaluates technical work <input type="checkbox"/> Graduate from an appropriate post-secondary program, with credentials or equivalent <input type="checkbox"/> Generally, ten to fifteen years' experience with extensive, broad experience	
12	\$161		
13	\$173		
14	\$186		
		<b>Senior Level Consultant or Management</b> <input type="checkbox"/> Recognized as an authority in a specific field with qualifications of significant value <input type="checkbox"/> Provides multi-discipline knowledge to deliver innovative solutions in related field of expertise <input type="checkbox"/> Independently conceives programs and problems for investigation <input type="checkbox"/> Participates in discussions to ensure the achievement of program and/or project objectives <input type="checkbox"/> Makes responsible decisions on expenditures, including large sums or implementation of major programs and/or projects <input type="checkbox"/> Graduate from an appropriate postsecondary program, with credentials or equivalent <input type="checkbox"/> Generally, more than twelve years' experience with extensive experience	
15	\$176		
16	\$216		
17	\$252		
		<b>Senior Level Management under review by Vice President or higher</b> <input type="checkbox"/> Recognized as an authority in a specific field with qualifications of significant value <input type="checkbox"/> Responsible for long range planning within a specific area of practice or region <input type="checkbox"/> Makes decisions which are far reaching and limited only by objectives and policies of the organization <input type="checkbox"/> Plans/approves projects requiring significant human resources or capital investment <input type="checkbox"/> Graduate from an appropriate postsecondary program, with credentials or equivalent <input type="checkbox"/> Generally, fifteen years' experience with extensive professional and management experience	
18	\$294		
19	\$316		
20	\$355		
21	\$391		
Survey Crews	Crew Size	Regular Rate	Overtime Rate
	1-Person	\$210	\$250
	2-Person	\$265	\$370
	3-Person	\$395	\$520

1/3/2016 B/C2014

**AMENDMENT NO. 1  
TO A PROFESSIONAL DESIGN SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
STANTEC CONSULTING SERVICES INC.**

**This Amendment No. 1** is made on this 20<sup>th</sup> day of June, 2017 to an AGREEMENT FOR PROFESSIONAL DESIGN SERVICES between the **CITY OF GOLETA** ("City") and **STANTEC CONSULTING SERVICES, INC.** ("Consultant") dated September 19, 2016. ("Agreement," Agreement No. 2016-117)

**RECITALS**

**WHEREAS**, under the Agreement, Consultant has provided the City with traffic engineering services; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed the sum of twenty-five thousand (\$25,000) dollars; and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of seventy-five thousand (\$75,000) dollars for continued services; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for termination of the Agreement on December 31, 2017; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination date of the Agreement to June 30, 2018; and

**WHEREAS**, the City Council approved this Amendment No. 1 on this 20<sup>th</sup> day of June, 2017.

**AMENDED TERMS**

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

**1. Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$75,000 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 \$100,000.00 (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, 2018, after which any change in said rates and expenses must be approved in writing by City's Project Manager (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 six (6) months to read in its entirety.

The term of this Agreement is from the date first written above to June 30, 2018, 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 paragraph 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. 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**

  
Michelle Greene, City Manager

**CONSULTANT**

  
Derek Rapp, T.E. Principal

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Hady Izadpanah, Senior Principal

**APPROVED AS TO FORM**

  
Winnie Cai, Deputy City Attorney



## **ATTACHMENT 17**

Amendment No. 3 for Flowers & Associates Agreement No. 2015-068 for Professional  
Services



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

**This Amendment No. 3** ("Amendment") is made on this 19<sup>th</sup> day of June 2018, to an AGREEMENT FOR PROFESSIONAL DESIGN SERVICES between the **CITY OF GOLETA** ("City") and **FLOWERS & ASSOCIATES, INC.**, a California corporation, ("Consultant") dated August 31, 2015. ("Agreement," Agreement No. 2015-068).

**RECITALS**

**WHEREAS**, the City of Goleta entered into the Agreement with Flowers & Associates, Inc. for the purpose of providing on-call inspection support services; and

**WHEREAS**, the Agreement was entered into on August 31, 2015 with a maximum compensation of \$29,900 and a termination date of June 30, 2016; and

**WHEREAS**, the Agreement was amended on April 5, 2016 to add an additional \$125,000 in compensation and extend the term to June 30, 2017 (Amendment No. 1); and

**WHEREAS**, the Agreement was amended on June 20, 2017 to add an additional \$75,000 in compensation and extend the term to June 30, 2018 (Amendment No. 2); and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed \$229,900; and

**WHEREAS**, the parties desire to amend the Agreement so as to provide additional compensation in the amount of \$75,000 dollars for continued inspection services so that the new not to exceed amount will be \$304,900; and

**WHEREAS**, the Agreement between the City and Consultant currently provides in Section 6 for termination on June 30, 2018; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination date of the Agreement to June 30, 2019; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) a Schedule of Fees, marked as Exhibit "B"; and

**WHEREAS**, the Consultant's rates have increased, and adopted a new Schedule of Fees, marked as Exhibit "B-3"; and

**WHEREAS**, the City Council approved and authorized the City Manager to execute this Amendment No. 3 on this 19<sup>th</sup> day of June 2018.

### **AMENDED TERMS**

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

**1. Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$75,000 and revise the Schedule of Fees 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 \$304,900 (herein "not to exceed amount"), and shall be earned as the work progresses.

Hourly at the hourly rates and with the reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked as Exhibit "B-3" shall be binding upon CONSULTANT until June 30, 2019, after which any change in said rates and expenses must be approved in writing by City's Project Manager (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 one year to read in its entirety.

The term of this Agreement is from the date first written above to June 30, 2019, 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, 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.** Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

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

**CITY OF GOLETA**

**CONSULTANT**

\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
Alan Chierici, Secretary

**ATTEST:**

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

\_\_\_\_\_  
Robert Schmidt, Vice President

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Deputy City Attorney

EXHIBIT B-3  
Schedule of Fees

ENGINEERING SERVICES HOURLY RATE

Principal Engineer .....	\$197.00
Associate Engineer .....	\$182.00
Senior Engineer .....	\$162.00
Drainage Engineer .....	\$162.00
Water Resources Specialist .....	\$152.00
Project Manager .....	\$152.00
Design Engineer .....	\$142.00
CAD Designer .....	\$127.00
CAD Technician .....	\$115.00
Clerical .....	\$102.00

PLANNING SERVICES

Principal Planner .....	\$158.00
Associate Planner .....	\$137.00
Public Agency Coordinator .....	\$121.00

CONSTRUCTION CONTRACT ADMINISTRATION

Principal Construction Engineer .....	\$197.00
Associate Construction Engineer .....	\$182.00
Resident Engineer .....	\$162.00
Prevailing Wage Construction Monitor .....	\$142.00
Construction Monitor .....	\$126.00

EXPERT TESTIMONY

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

REIMBURSABLE EXPENSE

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

CONSULTANTS

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

## **ATTACHMENT 18**

Flowers & Associates Agreement No. 2015-068 for Professional Services and  
Amendments No. 1 and 2





AUG 03 2015

RECEIVED

Project Name: On-Call Inspection Services

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
FLOWERS AND ASSOCIATES**

This AGREEMENT FOR PROFESSIONAL DESIGN SERVICES is made and entered into this 31<sup>st</sup> day of August 2015, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **FLOWERS & ASSOCIATES, Inc.**, a California corporation, (herein referred to as "CONSULTANT").

**WHEREAS**, CONSULTANT represents that they are sufficiently experienced and capable of providing the services agreed to herein and are sufficiently familiar with the needs of the CITY; and

**WHEREAS**, CONSULTANT was approved by Council for on-call inspection services after review of a competitive request for qualifications process; and

**WHEREAS**, CONSULTANT was selected for award of this AGREEMENT by the Public Works Director because CONSULTANT has capacity to provide the necessary services in the requested time frame; and

**WHEREAS**, the City Manager is authorized by Goleta Municipal Code Section 3.05.240 to execute this AGREEMENT because the value of the AGREEMENT is less than \$30,000.

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 on-call inspection services in conjunction with City issued encroachment permits for private construction within the public right of way. Services are for work scheduled outside normal City business hours. Services shall generally include on-call oversight and inspection of encroachment permits for adherence to local and state laws, and

conformance to City standard details for construction, 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," and incorporated herein.

### **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 \$29,900 (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 Exhibit "B" shall be binding upon CONSULTANT until June 30, 2016, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager (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. 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 in advance. 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 Marti Milan,

Principal Civil Engineer. 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.

CITY shall perform the services defined as follows:

1. City Staff will provide for encroachment permits with all information on activities to be inspected.
2. City Staff will provide dates, times and locations for the inspections.

## **6. TERM, PROGRESS AND COMPLETION**

The term of this AGREEMENT is from the date first written above to June 30, 2016, 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 paragraph 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed June 30, 2016 and incorporated here in as "on-call inspection services."

## **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. Alan Chierici is deemed to be specially experienced and is a key member of CONSULTANT's firm, 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. This AGREEMENT is not assignable by CONSULTANT without CITY's prior consent in writing.

## 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 indemnify, defend with counsel approved by CITY, and hold harmless CITY, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this AGREEMENT, except such loss or damage which is caused by the sole active negligence or willful misconduct of the CITY. Should conflict of interest principles preclude a single lawyer from representing both CITY and CONSULTANT, or should CITY otherwise find CONSULTANT's legal counsel unacceptable, then CONSULTANT shall reimburse the CITY its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The CONSULTANT shall promptly pay any final judgment rendered against the CITY (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the CONSULTANT's negligent, reckless or wrongful performance. 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 and will survive termination of this AGREEMENT.

(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 in the aggregate.
- b) Insurance Services Office form number CA 0001 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 on a policy form appropriate to CONSULTANTS profession. Limits shall be no less than \$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 exact 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 with an edition date prior to 2004.
- b) CONSULTANT's insurance shall apply 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) 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 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.
- f) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract 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 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.
- h) 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. RELATION OF THE PARTIES**

The relationship of the parties to this AGREEMENT shall be that of independent contractors 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**

Either party may terminate this AGREEMENT without cause upon thirty (30) days' notice in writing. If either party breaches this AGREEMENT, the non-defaulting party may terminate this AGREEMENT after giving seven (7) days' notice to remedy the breach. On termination of this AGREEMENT, CITY shall forthwith pay CONSULTANT for the services performed to the date of termination.

**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 consultant 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. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**22. 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. CITY shall provide notice to CONSULTANT in the event CITY fails to appropriate funds, and in such event CONSULTANT'S obligations under the AGREEMENT shall immediately cease, except for completion of any services paid in advance, if any.



**23. 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.

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

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

**25. PERMITS AND LICENSES**

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

**26. 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.

**27. 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.

**28. 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.

**29. 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.

### 30. 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:**

Attn: Michelle Greene, City Manager  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

**TO CONSULTANT:**

Attn: Alan Chierici  
Flowers & Associates  
201 N. Calle Cesar Chaves, Suite 100  
Santa Barbara, CA 93103

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

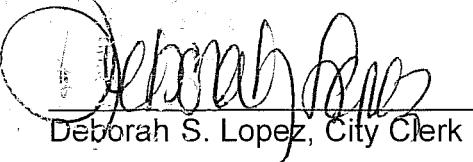
**CITY OF GOLETA**

  
Michelle Greene, City Manager

**CONSULTANT**

  
Robert T. Flowers, President

**ATTEST:**

  
Deborah S. Lopez, City Clerk

  
Stephen G. Flowers, CFO

**APPROVED AS TO FORM**

  
Tim W. Giles, City Attorney

## **Exhibit A**

### **Scope of Work**

#### **CONSULTANT SHALL PROVIDE THE FOLLOWING ON-CALL INSPECTION SERVICES**

1. Provide construction inspection that includes observation, inspection and notice of correction required for construction activities to verify that the activities comply with the encroachment permit, plans, specifications, City standards and public safety.
2. Provide pre-work condition documentation (photo and/or video graphic).
3. Notify City staff of any identified areas of special importance for further normal business hours of inspection.
4. Coordinate and disseminate information to City staff, nearby affected properties and utility providers of possible construction activity impacts.

#### **DELIVERABLES**

5. Create and maintain daily inspection reports and photo-documentation of construction activities for permits under inspection.
6. Provide sign off at completion of the work associated with any encroachment permit under inspector's pervue.

## **EXHIBIT B**

### **Compensation**

#### **ENGINEERING SERVICES HOURLY RATE**

Principal Engineer .....	\$185.00
Associate Engineer .....	\$170.00
Senior Engineer .....	\$152.00
Drainage Engineer .....	\$152.00
Resident Engineer .....	\$152.00
Water Resources Specialist .....	\$141.00
Project Manager .....	\$141.00
Design Engineer .....	\$131.00
Senior Inspector .....	\$131.00
CAD Designer .....	\$115.00
CAD Technician .....	\$105.00
Word Processor .....	\$ 95.00

#### **REIMBURSABLE EXPENSE**

Prints, plots, and other expenses connected with the  
work will be charged at cost.

#### **CONSULTANTS**

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

APR 12 2016

RECEIVED

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

**This Amendment No. 1** ("Amendment") is made this 5th day of April, 2016 to a PROFESSIONAL DESIGN SERVICES AGREEMENT between the **CITY OF GOLETA** (City) and **FLOWERS & ASSOCIATES** (Consultant) dated August 31, 2015 ("Agreement").

**RECITALS**

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed \$29,900; and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of \$125,000 for continued inspection services; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for the termination of the AGREEMENT on June 30, 2016; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination of the AGREEMENT to June 30, 2017; and

**WHEREAS**, the City Council on this 5<sup>th</sup> day of April, 2016, approved the contract Amendment No. 1 and authorized the City Manager to execute per Goleta Municipal Code 3.05.240.

**AMENDED TERMS**

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

**1. Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$35,000 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 \$154,900 (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 as Exhibit "B" shall be binding upon CONSULTANT until June 30, 2017, after which

any change in said rates and expenses must be approved in writing by City's Project Manager (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 one year and to read in its entirety.

The term of this Agreement is from the date first written above to June 30, 2017, 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 paragraph 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. 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.

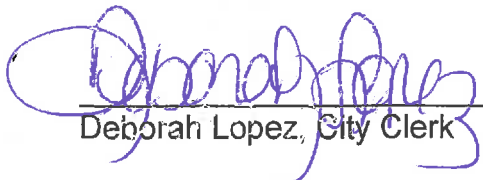
**CITY OF GOLETA**

**CONSULTANT**

  
Michelle Greene, City Manager


  
Robert T. Flowers, President

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Stephen G. Flowers, CFO

**APPROVED AS TO FORM**

  
Tim W. Giles, City Attorney



Agreement No. 2015-068.2  
City of Goleta, California

**AMENDMENT NO. 2  
TO A PROFESSIONAL DESIGN SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
FLOWERS & ASSOCIATES**

**This Amendment No. 2** ("Amendment") is made this 20<sup>th</sup> day of June 2017, to an AGREEMENT FOR PROFESSIONAL DESIGN SERVICES between the **CITY OF GOLETA** ("City") and **FLOWERS & ASSOCIATES** ("Consultant") dated August 31, 2017. ("Agreement," Agreement No. 2015-068)

**RECITALS**

**WHEREAS**, under the Agreement, Consultant provides the City with on-call inspection support services; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed \$154,900; and

**WHEREAS**, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of \$75,000 dollars for continued inspection services; and

**WHEREAS**, the Agreement between City and Consultant currently provides in Section 6 for termination on June 30, 2017; and

**WHEREAS**, the parties desire to amend the Agreement so as to extend the termination date of the Agreement to June 30, 2018; and

**WHEREAS**, the City Council approved and authorized the City Manager to execute this Amendment No. 2 on this 20<sup>th</sup> day of June, 2017.

**AMENDED TERMS**

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

**1. Section 3 Subsection (a). COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$75,000 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 \$229,900 (herein "not to exceed amount"), and shall be earned as the work progresses.

Hourly at the hourly rates and with the reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked as Exhibit "B" shall be binding upon CONSULTANT until June 30, 2018, after which any

City of Goleta  
Amendment No. 2 to Agreement No. 2015-068  
Page 1 of 2

change in said rates and expenses must be approved in writing by City's Project Manager (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 one year to read in its entirety.

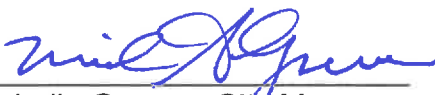
The term of this Agreement is from the date first written above to June 30, 2018, unless term of this Agreement is extended or the Agreement is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by paragraph 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. 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.

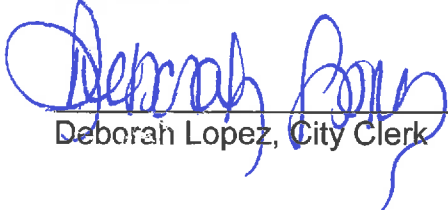
**CITY OF GOLETA**

  
Michelle Greene, City Manager

**CONSULTANT**

  
Alan Chierici, Secretary

**ATTEST:**

  
Deborah Lopez, City Clerk

  
Robert Schmidt, Vice President

**APPROVED AS TO FORM**

  
Winnie Cai, Deputy City Attorney



## **ATTACHMENT 19**

Professional Services Agreement with Solid Waste Solutions, Inc. (SWS), for  
Engineering Support Services



**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
SOLID WASTE SOLUTIONS, INC.**

This AGREEMENT FOR PROFESSIONAL SERVICES (herein referred to as "AGREEMENT") is made and entered into this 19<sup>th</sup> day of June, 2018, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **SOLID WASTE SOLUTIONS, INC.**, a California corporation (herein referred to as "CONSULTANT").

**WHEREAS**, the CITY has a need for professional engineering support services for the Engineering Division; 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**, the CONSULTANT was approved by Council on December 20, 2016 and placed on a short list of pre-approved consultants for project management services after a review of a Request for Qualifications; and

**WHEREAS**, the CONSULTANT was selected based on their specialized experience in solid waste services, storm water management, film permitting, engineering support and repertoire relationship with involved agencies recommended for award of this AGREEMENT by the Public Works Director; and

**WHEREAS**, the City Council, on this 19<sup>th</sup> day of June 2018 approved this AGREEMENT and authorized the City Manager to execute the AGREEMENT.

CITY and CONSULTANT agree as follows:

**1. RETENTION AS CONSULTANT**

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

**2. DESCRIPTION OF SERVICES**

The services to be performed by CONSULTANT are as follows:

Professional engineering support services to support the employees of the Public Works Department. Under the direction and oversight of the Public Works Director, the services shall generally include project management services including but not limited to coordination with design firms, utilities, construction contractors and other government agencies; and coordination with Planning and Engineering staff and consultants. Work may include encroachment, film and special event permits. Work may also include project site visits to evaluate conditions and prepare specifications; assistance in writing grant applications and reports and studies, review of portions of private development plans, plan check, traffic control plan check, solid waste services, storm water management and any other support functions that will assist City Staff in moving capital projects forward.

### **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 \$90,000 (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 "A," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2019, 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 Marti Milan, Principal Civil Engineer. 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, 2019, 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. Kimberly Nilsson 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 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.
- 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 and in the aggregate.

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 10 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. TAXPAYER IDENTIFICATION NUMBER**

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**22. 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.

**23. 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.

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

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

**25. 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.

**26. 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.

**27. 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.

**28. 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.

**29. 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.

**30. 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: Kimberly Nilsson  
Solid Waste Solutions, Inc  
25 W. Rolling Oaks Dr., Suite 201  
Thousand Oaks, CA 91361

**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**

**CONSULTANT**

\_\_\_\_\_  
Michelle Greene, City Manager

\_\_\_\_\_  
Kimberly Nilsson, Vice – President

**ATTEST**

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

\_\_\_\_\_  
Lars Nilsson, Treasurer

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Deputy City Attorney

**Exhibit A**  
**Schedule of Fees**

<b>Professional Staff</b>	<b>Hourly Rate</b>
Intern:	\$26.00/hour
Clerical / Office Assistant	\$55.00/hour
Recycling Coordinator & Permit Processor:	\$73.00/hour
Project Coordinator:	\$90.00/hour
Project Management:	\$114.00/hour
Computer Programming/ Database Management:	\$148.00/hour
Principal:	\$170.00/hour
Travel:	Actual Costs