



**TO:** Mayor and Councilmembers

**FROM:** Peter Imhof, Planning and Environmental Review Director

**CONTACT:** Anne Wells, Advance Planning Manager

**SUBJECT:** Amendment No.1 to an Agreement for Professional Services with Robert Brown Engineers

**RECOMMENDATION:**

Authorize the City Manager to execute Amendment No. 1 to an Agreement for Professional Services with Robert Brown Engineers in the amount of \$51,500 for a total not to exceed contract amount of \$80,000 (Attachment 1).

**BACKGROUND:**

One of the functions served by the Advance Planning Division of the Planning & Environmental Services Department is case planning and related policy oversight for oil and gas projects located within the City. Examples of active cases include the State Lands Commission Beach Hazards Removal Project, PRC 421 (two wells and two piers) plugging, abandonment, and removal, the Odor Monitoring Station Project, and Ellwood Onshore Oil and Gas Processing Facility (EOF) Permit Compliance.

The services included under the contract with Robert Brown Engineers (RBE) include two years of professional engineering services in conjunction with all existing and future oil and gas facilities and pipelines within the City, including the plugging and abandonment of Platform Holly and the PRC 421 piers, as well as annual audits and periodic inspections of the EOF and review of all systems safety reports for both the EOF and Platform Holly.

Professional Services Agreement No. 2019-053 with RBE was executed on June 18, 2019 for a total of \$28,500 terminating on June 30, 2021, under the City Manager's authorization as allowed under City Municipal Code Article IV Professional Services Section 3.05.240 part E, after the City contacted three consulting firms.

For reference purposes, the EOF is a central feature in local oil and gas activities in that it receives and treats oil and gas from Platform Holly, which is located offshore in State waters, and is a critical facility in managing the activities, safety, and communications on Platform Holly. Additionally, the EOF is the access point for the PRC 421 wells and

piers, which are located along the beach just south of the Sandpiper Gold Course. In 2017, the operator of the PRC 421 wells, Platform Holly, and the EOF filed for bankruptcy and quitclaimed its interests to the California State Lands Commission (CSLC). Since that time, the CSLC has overseen the plugging, abandonment (P&A), and decommissioning of these facilities. This work will be a multi-year effort and will include staging and transport operations to and from the EOF in the City of Goleta. The City is working with the CSLC under a Memorandum of Understanding (MOU) memorializing the CSLC's assumption of regulatory authority over the Ellwood Facilities for the purposes of the Platform Holly and PRC 421 plug and abandonment work. As part of the MOU, the City coordinates with the CSLC regarding the management of the facilities. RBE provides key technical oversight on behalf of the City as authorized under the professional services agreement.

## **DISCUSSION:**

Since the execution of the Agreement, RBE has successfully provided consulting services to the City. More specifically, RBE has successfully represented the City's interests in coordinating oil and gas decommissioning work managed by the CSLC for facilities located in and/or connected to facilities located in the City. The CSLC-sponsored repair work to get both Platform Holly and the EOF back to acceptable levels of safety have generally been on a continuous, seven-days-per-week schedule, sometimes 24-hours per day, and producing a significant amount of documentation and reporting material. RBE has been instrumental in ensuring that best practices are used and adhered to for the safety of the Goleta community and the environment.

The well abandonment at the Pier 421 on Haskell's Beach began in September and was recently completed. The required safety protocol oversight and input from the City was led by RBE staff. Preparation for the removal of the piers is currently underway, including environmental review, and requires ongoing monitoring and support from the City to the CSLC staff. RBE will continue to serve as the City's technical liaison during the environmental document preparation.

As previously stated, the EOF is central to the Platform Holly decommissioning, including the storage and treatment of product produced from the platform. The engineering challenges that have been encountered during the initiation of P&A work for the remaining 30 wells at Platform Holly have extended and expanded the construction schedule. This has resulted in a longer window of systems safety oversight from the City. The extended schedule and added work require changes to the project description, including the need to truck residual oil and gas product from the EOF out of the City to an offsite disposal site. The residual product is captured and removed from the wells and transport lines as part of the P&A work. As the CSLC conducts the requisite environmental review of the proposal in the coming months, RBE will serve as the City's technical liaison in this effort as well. Any alterations to the EOF that are required to accommodate the trucking will be analyzed and monitored in order to ensure that the environmental document adequately mitigates any related impacts.

As a result of the high volume of oil and gas P&A and decommission activity at PRC 421 and Platform Holly, with staging from the EOF, the RBE funds allocated under the existing Agreement with RBE are nearly expended. For these reasons, staff requests that the City Council award an amendment to the agreement with RBE to allow for continued services.

### FISCAL IMPACTS:


The contract is amendment is for an increase of \$51,500 for a total not-to-exceed amount of \$80,000 through June 30, 2021. There are no additional costs to the General Fund for the subject services, since the City's adopted Fiscal Year 2019/20 and 2020/21 budget included \$40,000 each fiscal year for a total of \$80,000 for this work. Approximately \$53,700 is available over the next two fiscal years.

Contract 2019-053	2-Year Total	FY 2019/20		FY 2020/21	
		Budgeted	Remaining	Budgeted	Remaining
Funds Approved and Spent to Date					
GL Account 101-5-4300-500 Oil/Gas/Electrical Facility Staff Support	\$80,000	\$40,000	\$11,500	\$40,000	\$40,000
Initial Contract	\$28,500	\$28,500	\$2,200	-	-
	Amount Requested	FY 2019/20		FY 2020/21	
		Additional Funds	Remaining	Additional Funds	Remaining
Funds Requested in Amendment 1					
Amendment 2019-053.1	\$51,500	\$11,500	\$13,700	\$40,000	\$40,000


### ALTERNATIVES:

The City Council may elect not to authorize this Agreement amendment and direct staff to seek proposals from other qualified firms. Doing so could cause delays in project oversight. Additionally, if the City selected a qualified firm other than RBE, additional expense and possible loss of oversight and review of systems safety would result as the City solicited bids and interviewed potential alternate firms.

**Legal Review By:**

  
Michael Jenkins  
City Attorney

**Approved By:**

  
Michelle Greene  
City Manager

### ATTACHMENTS:

1. Amendment No. 1 to Professional Services Agreement No. 2019-053 between the City of Goleta and Robert Brown Engineers

2. Professional Services Agreement No. 2019-053 between the City of Goleta and Robert Brown Engineers (Available Online Only)

## **ATTACHMENT 1**

AMENDMENT NO. 1 TO PROFESSIONAL SERVICES  
AGREEMENT NO. 2019-053 BETWEEN THE CITY OF GOLETA  
AND ROBERT BROWN ENGINEERS



**AMENDMENT NO. 1  
TO A PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF GOLETA  
AND  
ROBERT BROWN ENGINEERS**

**This Amendment No. 1** to a to a Professional Services Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2020 between the **CITY OF GOLETA**, a municipal corporation ("City") and **ROBERT BROWN ENGINEERS**, a California corporation ("Consultant") dated June 18, 2019 ("Agreement", Agreement No. 2019-053).

**RECITALS**

**WHEREAS** this Agreement is for the professional engineering services in conjunction with oil and gas projects; and

**WHEREAS** the City Council approved the Two-Year Budget Plan for Fiscal Years 2019/20 and 2020/21 on June 18, 2019, which included \$40,000 each year in GL Account 101-5-4300-500 for Oil/Gas/Electrical Facility Staff Support; and

**WHEREAS** the original Agreement included a not-to-exceed amount of twenty-nine thousand, nine hundred, ninety-nine dollars (\$28,500); and

**WHEREAS** the parties desire to amend the Agreement so as to provide for additional compensation in the amount of eleven thousand five hundred dollars (\$11,500) for continued work on the project of assisting the City with oversight of the ongoing oil well plugging and abandonment associated with the Ellwood Onshore Facility, located in western Goleta; and

**WHEREAS** the City Council approved this Amendment on March 18, 2020.

**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 \$51,500 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 \$80,000 (herein "not to exceed amount"), and shall be earned as the work progresses.

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "A," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2021, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

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

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

**CITY OF GOLETA**

**CONSULTANT**

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

\_\_\_\_\_  
Jay Sheth, President  
Robert Brown Engineers

**ATTEST:**

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

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Winnie Cai, Assistant City Attorney



## **ATTACHMENT 2**

PROFESSIONAL SERVICES AGREEMENT NO. 2019-053  
BETWEEN THE CITY OF GOLETA AND ROBERT BROWN  
ENGINEERS (AVAILABLE ONLINE ONLY)



Project Name: Oil and Gas Building,  
Safety, and Engineering Services

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF GOLETA  
AND  
ROBERT BROWN ENGINEERS**

This AGREEMENT FOR PROFESSIONAL SERVICES (herein referred to as "AGREEMENT") is made and entered into this 18<sup>th</sup> day of June, 2019, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **ROBERT BROWN ENGINEERING** (herein referred to as "CONSULTANT").

**WHEREAS**, the CITY has a need for professional engineering services in conjunction with oil and gas projects; 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 CITY procured these services in compliance with Goleta Municipal Code Section 3.05.240.E because the CITY contacted three consultants before selecting Robert Brown Engineers; and

**WHEREAS**, the City Manager is authorized to execute this Agreement pursuant to Goleta Municipal Code section 3.05.240.E because the Agreement does not exceed \$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 Engineering Services in conjunction with all existing and future oil and gas facilities and pipelines within the CITY, including the plugging and abandonment (P&A) of Platform Holly and the PRC 421 pier wells. Additional services shall generally include supervision of oil and gas

project related building and safety activities, attendance at the Systems Safety and Reliability Review Committee (SSRRC), review of environmental documents related to proposed development associated with oil and gas projects within and impacting the City, audits and inspections of the Ellwood Onshore Oil and Gas Processing Facility (EOF), and other oil and gas building, safety, and engineering tasks as needed.

CONSULTANT shall be made available for any public workshops or hearings before the Planning Commission or City Council, as needed.

CONSULTANT shall deliver to CITY the deliverables defined below:

- Summary Reports for all SSRRC meetings;
- Summary Reports for all inspections conducted within the CITY;
- Written summaries of all expenses incurred as part of billing/invoicing to the CITY; and
- Copies of all email communications relating to all ongoing P&A activities affecting the CITY and all EOF inspections.

### **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 \$28,500 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

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, 2021, 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. The 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 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 within 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 Anne Wells, Advance Planning Manager. The 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, 2021, 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.

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

## **9. HOLD HARMLESS AND INDEMNITY**

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

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

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

## 10. INSURANCE

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

Insurance shall include the following (or broader) coverage:

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

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

- a) CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10, with an edition date prior to 2004, or its equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37, or its equivalent.
- b) General and automobile liability insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage will not be limited to CITY's vicarious liability.

- c) Professional liability insurance policies inception date, continuity date, or retroactive date must be before the effective date of this agreement. CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.
- d) Liability coverage shall be primary and non-contributing with any insurance maintained by CITY.
- e) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.
- f) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.
- g) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.
- h) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by CONSULTANT hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.
- i) CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.



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

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

#### **12. CORRECTIONS**

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

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

CITY, by notifying CONSULTANT in writing, may, upon ten calendar days prior 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. TAXPAYER IDENTIFICATION NUMBER**

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

**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: Jay Sheth, President  
Robert Brown Engineers  
4952 Warner Ave, #217  
Huntington Beach, CA 92649

### 31. COUNTERPARTS AND ELECTRONIC/FACSIMILE SIGNATURES

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

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

**CITY OF GOLETA**

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

**CONSULTANT**

\_\_\_\_\_  
Jay Sheth, President  
Robert Brown Engineers

**ATTEST**

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

**APPROVED AS TO FORM**

\_\_\_\_\_  
Winnie Cai, Assistant City Attorney

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

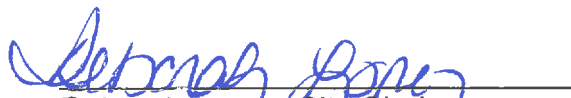
**CITY OF GOLETA**

  
Michelle Greene, City Manager

**CONSULTANT**

\_\_\_\_\_  
Jay Sheth, President  
Robert Brown Engineers

**ATTEST**

  
Deborah Lopez, City Clerk

**APPROVED AS TO FORM**

  
Winnie Cai, Assistant City Attorney

## EXHIBIT A

### Schedule of Fees

#### CONSULTANT - ROBERT BROWN ENGINEERS

<b><u>PROFESSIONAL SERVICES</u></b>	<b><u>RATE/COST</u></b>
Principal Consultant	\$169
Principal Engineer	\$135
Senior Engineer	\$126
Secretary	\$59.50
Sub-contractors	Cost Plus 10%
 <b>MISCELLANEOUS SERVICES/EXPENSES</b>	
Copies – 8 ½" x 11"	\$0.28/page
Copies – 11" x 17"	\$0.56/page
Automobile Mileage	Current IRS Rate
Additional Administrative Expenses	At Cost