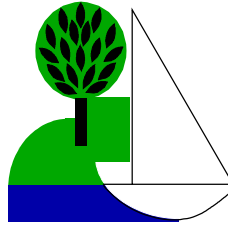


ESTERO MUNICIPAL IMPROVEMENT DISTRICT



REQUEST FOR PROPOSAL

**PROFESSIONAL DESIGN SERVICES FOR EMERGENCY GENERATOR
REPLACEMENTS FY 2021-2022 (CIP 455-705)**

PROPOSAL SUBMITTAL DEADLINE: TUESDAY, JUNE 28, 2022, at 2:00 PM

RETURN PROPOSAL TO:

Estero Municipal Improvement District
Public Works Department
Attn: Louis Sun
Public Works Director
610 Foster City Blvd.
Foster City, CA 94404

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REQUEST FOR PROPOSAL

PROFESSIONAL DESIGN SERVICES FOR EMERGENCY GENERATOR REPLACEMENTS FY2021-2022 (CIP 455-705)

SECTION I. INTRODUCTION

The Estero Municipal Improvement District (EMID) is seeking a qualified consulting firm to provide design services for Emergency Generator Replacements FY2021-2022 (CIP 455-705) project. To that end, the EMID invites qualified consulting firms to submit proposals.

Consultants shall examine all information in this Request for Proposal (RFP), including the attachments.

The deadline for submitting questions about the proposal is **Thursday, June 23, 2022, at 5:00 pm**. The EMID will consider proposals received on or before the proposal submittal deadline of **Tuesday, June 28, 2022, at 2:00 pm**.

SECTION II. GENERAL INFORMATION

Consultant shall provide a proposal for professional design services for Emergency Generator Replacements FY2021-2022 (CIP 455-705) project as described below.

EMID is searching for consultant with extensive experience in designing emergency generators. The project addresses the replacement of emergency generators and automatic transfer switches located at three of the District's wastewater lift stations which are at the end of their useful life. An emergency generator powers lift stations when power from Pacific Gas and Electric Company (PG&E) is interrupted or shut down. The automatic transfer switch senses when PG&E power is interrupted and causes the emergency generator to turn on. Without emergency generators, in the event of a power outage, lifts stations could fill with sewage and possibly overflow. This project addresses replacing the emergency generators and automatic transfer switches at Lift Stations 29 and 59 and the emergency generator only at Lift Station 22. Staff anticipates requesting approval for the award of the agreement for professional design services for CIP 455-705 from the City Council on June 6, 2022.

Consultants shall bear all costs and assume all liability associated with developing and/or submitting proposals. EMID shall bear no costs and/or assume no liability for developing and/or submitting proposals.

SECTION III. PROPOSAL REQUIREMENTS

To demonstrate the qualifications and experience necessary to perform the professional emergency generator design services for the project, as described in **Attachment A**, Draft Scope of Services, Consultant shall submit a proposal that includes the information described in this section.

If Consultants have questions regarding the request for proposal, submit questions to the Public Works Director, Mr. Louis Sun, at lsun@fostercity.org on or before **June 23, 2022, at 5:00 pm**.

The proposal shall be comprised of two (2) parts:

- Part 1 is comprised of three (3) copies of a bound and tabbed document containing sections A, B, C, D, E, F, G and H described below.
- Part 2 is one (1) copy of section I submitted in a sealed envelope.

The proposal shall be concise and address qualifications and experience. Consultant shall not include superfluous information or analytical work that would otherwise be performed during the course of work in the proposal. The body of the proposal, excluding appendices, shall not exceed 15 pages. As an appendix, provide resumes for the proposed team members. Proposals should be bound with tabs identifying each section herein specified.

PART 1

A. Cover Letter

Consultant shall provide a cover letter. The person who signs the cover letter shall be authorized to contractually bind the Consultant. The cover letter shall include the following:

- 1) A statement that all the information in the Request for Proposal was examined.
- 2) A statement that the proposal is binding for a 90-calendar day period.
- 3) The name, title, address, email, and telephone number of the individual to whom correspondence and other communications should be directed during the consultant selection process.
- 4) The name, title, address, email, and telephone number of the individual who will negotiate the consulting agreement with EMID, if selected, and is authorized to contractually bind the firm.

B. Executive Summary

Consultant shall provide an executive summary. The executive summary shall include a statement that Consultant reviewed the draft scope of services and is able to provide the required professional services. The summary shall briefly

summarize those Consultant qualifications and experience, contained in the proposal, which best highlight its ability to successfully deliver the work.

C. Project Approach

A summary presentation of the proposed approach for performing the services, describing how the firm would be organized and an approach structured to ensure:

- 1) Clearly specifying the scope of work; not to exceed amount; and schedule for the work that will be included in the contract for professional engineering services.
- 2) Monitoring and controlling the scope of work, communicating potential scope of work changes prior to performing that work, and managing the change in scope of work.
- 3) Monitoring and controlling costs of professional emergency generator design services to ensure the services are performed within the negotiated not-to-exceed amount.
- 4) Monitoring the schedule and ensuring deliverables are completed on or before schedule milestones.
- 5) Monitoring the progress of the work to ensure that each submittal is complete and has been adequately reviewed prior to submitting deliverables.
- 6) Monitoring the quality of consultant's deliverables to reduce the amount of District resources required to review the submittal.
- 7) Responsiveness to EMID Staff.
- 8) Facilitating communications.
- 9) No substituting of staff listed in the proposal and adding staff not listed in the proposal.

D. Proposal Schedule

The purpose of the proposal schedule is to ensure Consultant is capable of completing work in a timely manner and within the timeframe necessary for EMID equipment replacement and to ensure that labor projections are consistent with the proposal schedule.

Consultant shall prepare a schedule for the work described in **Attachment A**, Draft Scope of Services and shall show the key activities, their start dates, and end dates. The schedule should include a milestone for each Authorization to Proceed and each submittal identified in **Attachment A**, Draft Scope of Service. The durations required to reach milestones shown in the schedule will be incorporated into Tasks 1 and 2 of Scope of Services for the Professional Services Agreement.

The proposal schedule shall have sufficient detail to demonstrate the ability to achieve the above goals. EMID will request additional detail from the highest ranked consultant which will be incorporated into the Professional Services

Agreement.

Consultant shall use **July 2022** as the start date for the schedule.

E. Labor Projections

Consultant shall provide a schedule of hourly rates and an estimate of the number of hours by staff type to complete the work described in **Attachment A**, Draft Scope of Service that is consistent with the schedule created as part of Section D above. Provide descriptions of assumptions made in developing the labor hours.

F. Consultant Information

Consultant shall provide the following information for it and each of its sub-consultants, if any:

- 1) Legal name of firm.
- 2) Type of organization (partnership, corporation, etc.) and where incorporated, if applicable.
- 3) Firm's Officers.
- 4) Date firm was established.
- 5) Address of firm's headquarters.
- 6) Current number of people employed by the firm.
- 7) Name of consultant's parent company, if any.
- 8) Name of consultant's subsidiaries, wholly owned or fractionally owned, if any.
- 9) List of companies associated with the consultant whose work on the design or construction of the projects may potentially give rise to a conflict of interest, if any.
- 10) List of contracts terminated for convenience or default within the past three (3) years, if any. Include contract value, description of work, client's name and telephone number.

G. Consultant Experience and References

Consultant shall provide for it and each of its sub-consultants, if any, details of its experience working on similar projects over the last five (5) years.

Consultant shall provide for it and each of its sub-consultants, if any, details of not less than three (3) similar projects and the details shall include the following:

- 1) Project name.
- 2) Project Owner and contact information.
- 3) Project description including total project cost and location.
- 4) Description of the consultant's role (Prime Consultant or sub-consultant to Prime Consultant's Name).

- 5) Description of professional property interest acquisition service provided.
- 6) Cost Control for professional property interest acquisition services:
Describe the original and final contract amount and reasons for differences, if any.
- 7) Schedule Control for professional property interest acquisition services
Contract: Original start date, actual start date, original end date, actual end date, description of reasons for differences. For dates, provide month and year.
- 8) Project Manager and other key personnel involved.
- 9) Sub-consultants on the proposed team that worked on the project, if any.
- 10) Contact information for the project owner.

If Consultant has a standard resume for projects, Consultant may provide the standard resumes with supplemental project information on a separate sheet. Providing supplemental project information on a separate sheet will have no effect on the evaluation process.

EMID will contact Project Owners to discuss the Consultant's current and/or past performance. For Project Owner's contact information, provide Project Owner's name and address, the name of a contact with knowledge of Consultant's performance, as well as contact's phone number and email.

H. Project Team Experience and References

The consulting team is key to delivering a successful project.

For purposes of the proposal and the selection process, the following terms are used to identify consulting team members: Project Manager, Other Key Personnel, and Other Team Members. The Project Manager is responsible for Consultant's work and is EMID's principal contact after the professional services contract is awarded, (2) Other Key Personnel are the keys to Consultant successfully executing the work; and (3) Other Team Members who will play a significant role in successfully executing the work.

Consultant shall provide the following information regarding the consulting team and its team members:

- 1) Consultant shall provide an organization chart showing the proposed relationships and the various roles and/or disciplines required to deliver the work. Within the organization chart, Consultant shall identify the project manager, other key personnel, and other team members. If a team member works for a sub-consultant, identify the sub-consultant. Consultant shall identify at least one person for each role and/or discipline.
- 2) Provide a list of office(s) in which the proposed team members will work. Provide its address, its general phone number, and the name of the principal(s) overseeing proposed staff at the office. Identify the proposed

- team members working at the office and their roles.
- 3) **Project Manager.** Provide the qualifications and experience of the Project Manager, his/her current commitments to other projects to confirm Consultant's ability to commit resources to the work, and not less than three (3) references for the Project Manager.
 - 4) **Other Key Personnel.** Provide the qualifications and experience of the Other Key Personnel; their current commitments to other projects to confirm Consultant's ability to commit resources to the work; and not less than three (3) reference for each person who is identified as Other Key Personnel.
 - 5) **Other Team Members.** Provide the qualifications and experience of the Other Team Members.

EMID will contact project owners who have worked with the project manager and other key personnel to discuss their current and/or past performance. For each reference, list the proposed team member, project name, project owner, project owner's address, the name of contact with knowledge of performance, contact's phone number, and contact's email address. Provide references from different owners, if possible.

PART 2

I. Consultant Fee Schedule and Reimbursable Expenses

Provide one (1) copy in a sealed envelope, including the level of effort with reimbursable expenses and hourly rate schedule. The level of effort and reimbursable expenses shall be broken down with a summary table for the entire proposal. EMID and the selected Consultant will endeavor to negotiate a consulting agreement which contains a not-to-exceed amount for professional services, reimbursable expenses, additional services, supplies, materials, and equipment.

To that end, Consultant shall provide for it and its sub-consultants, if any, a Consultant Fee Schedule and list of other costs for other reimbursable items, such as supplies, materials, equipment, other services, and/or other expenses.

SECTION IV. PROPOSAL SUBMITTAL REQUIREMENTS

Consultant shall submit its proposal in accordance with the following requirements:

- A. EMID will only consider proposals received by District at or before the proposal submittal deadline of **Tuesday, June 28, 2022 at 2 pm.**
- B. Consultant shall submit proposals to the following address:

Estero Municipal Improvement District

Public Works Department
Attn: Louis Sun
Public Works Director
610 Foster City Blvd.
Foster City, CA 94404

- C. For mailed proposals, EMID encourages each Consultant to confirm that its proposal was received by EMID at or before the proposal submittal deadline. Contact the Public Works Director, Mr. Louis Sun at lsun@fostercity.org or (650) 286-3270 to confirm District's receipt of the proposal.
- D. For hand-delivered proposals, Consultant shall deliver the proposal to the information desk in the building lobby. Consultant shall ensure the proposal is time and date stamped by the attendant prior to leaving the building.

SECTION V. CONSULTANT SELECTION PROCESS

EMID will review proposals and perform reference checks to evaluate consultants.

EMID may or may not conduct consultant interviews to evaluate Consultants. If EMID chooses to hold interviews as part of the selection process, EMID will notify Consultants approximately three (3) weeks after the proposal submittal deadline.

Principle criteria used to evaluate Consultants will include the following:

- 1) Experience/Qualifications: Firm's experience on similar projects in the last five years.
 - a. Consultant's and sub-consultant's, if any, experience successfully providing professional design services on similar projects in the last five (5) years.
- 2) Personnel Assigned: Experience of key personnel assigned to the project, and experience of key team members who will be assigned to the project for its full duration.
 - a. Project Manager's experience successfully providing professional design services and/or other related work on similar projects and their availability to perform work required by his/her role.
 - b. Other Key Personnel's experience successfully providing professional design services and/or other related work on similar projects and their availability to perform the work required by his/her role.
 - c. Other Team Members' experience providing professional design services and/or other related work on similar projects.
- 3) Quality and Completeness of Proposal:
 - a. Clarity and relevance of information contained in the proposal.

- b. Consultant's understanding of work.
- c. Consultant's approach to the work.

4) References

EMID may waive irregularities in any proposal, accept or reject all or any part of any proposal, or waive any requirements of the request for proposals, as may be deemed to be in the best interest of EMID.

After final evaluation, EMID will identify the highest ranked consultant, which appears to best meet the qualification criteria. EMID will attempt to negotiate a contract with the selected consultant. If the highest ranked consultant and EMID cannot reach agreement, EMID will terminate negotiations and, at its option, negotiate with the next ranked consultant.

Consultants shall bear all costs and assume all liability associated with negotiating a consultant agreement. EMID shall bear no costs and/or assume no liability for developing and/or submitting proposals.

SECTION VI. SCOPE OF SERVICES

A. Scope of Services:

A general draft scope of services is given in **Attachment A**. A detailed Scope of Services will be developed during negotiations. The scope of services presented herein is intended to cover the design services necessary and/or other related work to design services for the Emergency Generator Replacements FY2021-2022 (CIP 455-705) project identified herein and shall be used as the basis of negotiations. In addition, Consultant shall agree to perform the management and project controls specified in the Draft Scope of Services.

Consultant is encouraged to include in the proposal any additional tasks beyond the Draft Scope of Services that the Consultant may find necessary or beneficial in order to deliver a successful project.

EMID reserves the right to enter into agreements for none, a portion, modified portions, or all of the work listed in this Request for Proposal. EMID reserves the right to issue notice(s) to proceed for some or all the work up to 90 days after the EMID Board of Directors approves the agreement.

SECTION VII. STANDARD PROFESSIONAL SERVICES AGREEMENT AND INSURANCE REQUIREMENTS

The standard professional services agreement is attached as **Attachment B**.

The insurance requirements are described in Section 12 Insurance of EMID's Standard Professional Services Agreement. All policies, endorsements, certificates, and/or binders

shall be subject to approval by EMID as to form and content. The selected consultant shall agree to provide EMID with a copy of said policies, certificates, and/or endorsements.

ATTACHMENT A

DRAFT SCOPE OF SERVICES
FOR
DESIGN SERVICES FOR EMERGENCY GENERATOR
REPLACEMENTS
FY2021-2022 (CIP 455-705)

The project addresses the replacement of emergency generators and automatic transfer switches located at three of the District's wastewater lift stations that are at the end of their useful life. An emergency generator powers lift stations when power from PG&E is interrupted or shut down. The automatic transfer switch senses when PG&E power is interrupted and causes the emergency generator to turn on. Without emergency generators, in the event of a power outage, lifts stations could fill with sewage and possibly overflow. This project addresses replacing the emergency generators and automatic transfer switches at Lift Stations 29 and 59 and the emergency generator only at Lift Station 22.

Information about each lift station including the presence of an underground storage tank (UST) is as follows:

<u>Lift Station #22</u> Make: Onan S/N: K840735803 Volts: 120/240, 3 Phase Engine: Cummins Fuel: Diesel A.T.S.: Onan Rating: 240 volts / 400 Amps	Corner, Catamaran and Beach Park Model: 155.ODFE/27540L Size: 155 kW Model: NT.855-C S/N: 50119099 Fuel Tank Capacity: 130 Gallons Model: OTNC0400-5D/1404B S/N: K840737660
<u>Lift Station #29</u> Make: Kohler S/N: 283434 Volts: 277/480, 3 Phase Spec: 703645-A Engine: Cummins Date of Manufacture: 06/91 Fuel Tank: Diesel ATS: Russelectric Inc. Rating: 480 volts / 400 amps	Corner, E. Hillsdale and Edgewater Model: 230R0Z271 Size: 230 kW Engine: 11630274 Model: NT-855-G4 Underground 1,000 gallons Model: RMTD-4003CEF S/N: 18296-1
<u>Corporation Yard-Lift Station #59</u> Make: DMT S/N: 93102-1 Volts: 277 / 480, 3 Phase Engine: Cummins Fuel: Diesel ATS: Zenith Rating: 480 volts / 1,600 amps / 3 phase	Lincoln Centre Dr. Model: DMT-1000C-2 Size: 1,000 kW Amps: 1,250 Model: KTA38-G4 S/N: 33125491 Above ground storage fuel tank Model: ZTSDH160EX-7AAC/DELL PRSTU S/N: 214587

SCOPE OF WORK

The District has developed an initial outline of the potential scope of work for the agreement. As part of the Consultant's proposal, expand on the outline demonstrating the detailed approach and list of deliverables.

Task 1: Project Management

- Project kickoff including meeting agenda and minutes;
- Monthly invoicing including summary of budget status, work completed, work remaining, and projected cost to complete;
- Project baseline schedule including monthly updates with specific tasks that the District will be responsible for such as deliverable review, coordination of bid process, and other tasks identified by the Consultant and the District; and
- Bi-weekly progress conference calls intended to be no longer than 30 minutes.

Deliverables:

1. Kickoff meeting agenda and minutes
2. Monthly invoices including status reports
3. Baseline schedule and monthly updates
4. Bi-weekly conference call agendas

Task 2: Data Collection

- Site visit to perform field measurements, photographs, and document existing conditions to allow creation of drawings of sufficient detail to document the location of existing equipment to be removed.
- Review District-provided record drawings for the existing three pump stations.
- Review District-provided records from regular UST testing to provide feedback to the District about potential removal of the existing UST or if a future project for the removal of the UST is feasible.

Deliverables

1. Field reports for each pump station with copies of all sketches, measurements, and photographs

Task 3: Prepare Construction Documents

- Develop recommendations for replacement emergency generator including integral fuel storage tanks, automatic transfer switches (ATS), and sequence of construction and present in a technical memorandum.
- Develop drawings and technical specifications for the proposed improvements including but not limited to demolition, site preparation, concrete pad, electrical single-line diagrams, ATS and conduit/wiring, and necessary details.
- Review District provided General Conditions to develop Supplementary General Conditions.

- Prepare Engineer's Opinion of Probable Construction Cost (OPC).
- Provide construction document submittals at the 50%, 90%, and 100% levels of completion.
- Prepare for and facilitate virtual workshops to present and review the submittals with the District.

Deliverables:

1. Emergency Generator and ATS Equipment Recommendations Memorandum
2. 50% Construction Documents Submittal including drawings, specifications, and OPC
3. 90% Construction Documents Submittal including drawings, specifications, and OPC
4. 100% Construction Documents Submittal including drawings, specifications, and OPC
5. Workshop agendas and minutes for the equipment memorandum, 50% construction documents submittal and 90% construction documents submittal

Task 4: Bid Support

- Attend pre-bid meeting.
- Review bidder questions and prepare responses.
- Prepare one bid addendum.

Deliverables:

1. Response to bidder questions
2. Bid addendum

Task 5: Underground Storage Tank Mitigation (Alternative 1)

- Develop workplan outlining the steps and necessary field investigations to comply with the State of California State Water Resources Control Board (State Board) Low-Threat Underground Storage Tank Closure Policy.
- Perform necessary field investigation and prepare required technical reports to facilitate site closure.
- Develop plans and specifications for the UST remove in parallel with the work described in Task 3.

Deliverables:

1. UST Removal Workplan
2. Technical Reports
3. 50% Construction Documents Submittal including drawings, specifications, and OPC
4. 90% Construction Documents Submittal including drawings, specifications, and OPC
5. 100% Construction Documents Submittal including drawings, specifications, and OPC

Attachment B
MASTER ARCHITECTURE AND ENGINEERING SERVICES AGREEMENT
FOR
[ENTER PROJECT TITLE]

This Agreement is made and entered into as of the ____ day of _____, 20____ by and between the Estero Municipal Improvement District hereinafter called "DISTRICT" and _____ hereinafter called "CONSULTANT".

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

WHEREAS, DISTRICT desires to retain CONSULTANT to provide [TYPE OF SERVICES] services and related services;

WHEREAS, It is anticipated that, as a need arises for CONSULTANT to provide services, DISTRICT will issue Task Orders to CONSULTANT (in a form substantially similar to that set forth in Exhibit "A," attached hereto and incorporated by reference which more particularly describes the scope of services to be performed);

WHEREAS, In reliance upon CONSULTANT's documentation of its qualifications, the DISTRICT finds that CONSULTANT has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

WHEREAS, That CONSULTANT is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. Services. The services to be performed by CONSULTANT under this Agreement shall include those services set forth in each Task Order and Exhibit "B," Scope of Services, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit B and each Task Order is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit B and in each Task Order.

1. Term; Termination.

(a) The term of this Agreement shall commence upon the date hereinabove written and shall expire upon completion of performance of services hereunder by CONSULTANT. CONSULTANT shall not commence Services or work until a Notice to Proceed is issued by DISTRICT.

(b) Notwithstanding the provisions of (a) above, DISTRICT may with or without cause, direct CONSULTANT to suspend, delay or interrupt Services, in whole or in part, for such periods of time as DISTRICT may determine in its sole discretion.

(c) DISTRICT may terminate performance of the Services under this Agreement in whole, or from time to time in part, for default, should CONSULTANT commit a material breach of this Agreement, or part thereof, and not cure such breach within ten (10) calendar days of the date of DISTRICT's written notice to CONSULTANT demanding such cure, in which case CONSULTANT shall be liable to DISTRICT for all loss, cost, expense, damage and liability resulting from such breach and termination.

(d) DISTRICT may terminate performance of the Services under this Agreement in whole, or from time to time in part, for convenience, whenever DISTRICT determines that such termination is in DISTRICT's best interests, in which case CONSULTANT shall be entitled to recover its costs expended up to the termination date plus reasonable profit thereon to the termination date as this Agreement would otherwise provide, but may recover no other cost, damage or expense. CONSULTANT shall continue its work throughout the course of any dispute, and CONSULTANT's failure to continue work during a dispute shall be a material breach of this Agreement.

2. Compensation; Expenses; Payment. DISTRICT shall compensate CONSULTANT for all services performed by CONSULTANT hereunder in an amount based upon CONSULTANT's hourly rates during the time of the performance of said services. A copy of CONSULTANT's hourly rates for which services hereunder shall be performed are set forth in CONSULTANT's fee schedule marked Exhibit "C" hereof, attached hereto and by this reference incorporated herein.

Notwithstanding the foregoing, the combined total of compensation and reimbursement of costs payable hereunder shall not exceed the sum (\$). Invoices for amounts in excess of (\$) shall not be paid unless the performance of services and/or reimbursement of costs

and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by DISTRICT's Manager (for contracts less than \$50,000) or DISTRICT Board (for contracts \$50,000 or more) evidenced by motion duly made and carried and a written contract amendment having been executed.

Compensation and reimbursement of costs and expenses hereunder shall be payable upon monthly billing therefor by CONSULTANT to DISTRICT, which billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of DISTRICT including, without limitation, CONSULTANT's transmittal of all deliverables to DISTRICT required by EXHIBIT B and each Task Order.

DISTRICT shall not incur any charges under this Agreement, nor shall any payments become due to CONSULTANT for any payment period on the Project, until DISTRICT receives all deliverables required under Exhibit B and each Task Order, SCOPE OF WORK AND SCHEDULE, for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where CONSULTANT has partially completed one or more deliverables due during a payment period, and if CONSULTANT demonstrates diligent progress thereon, then DISTRICT may make a partial progress payment based upon percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon DISTRICT. DISTRICT shall not be liable for, and CONSULTANT shall not be entitled to, any payment for Services performed before this Agreement's execution.

DISTRICT shall pay CONSULTANT for services rendered in an amount not to exceed the option totals set forth in this Paragraph 3, less 5% retention in accordance with Civil Code Section 3320. DISTRICT and CONSULTANT may enter into an escrow agreement in lieu of retention in accordance with the form set forth in Public Contract Code 22300. [optional]

DISTRICT will not withhold any Federal or State income taxes or Social Security tax from any payments made by DISTRICT to CONSULTANT under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONSULTANT. DISTRICT has no responsibility or liability for payment of CONSULTANT's taxes or assessments.

CONSULTANT shall pay prevailing wages to its employees on any agreement in excess of \$1,000.00. Copies of the general prevailing rates

of per diem wages for each craft, classification, or type of worker needed to execute the Agreement, as determined by the Director of the State of California Department of Industrial Relations, are on file at the County's Capital Projects Office and may be obtained from the California Department of Industrial Relations website [<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>].

CONSULTANT shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. CONSULTANT and all subconsultants shall keep and maintain accurate employee payroll records for Work performed under the Agreement. The payroll records shall be certified and submitted as required by law, including Labor Code Sections 1771.4 (if applicable) and 1776, including to the Labor Commissioner no less frequently than monthly. CONSULTANT shall comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to the Agreement. If the Agreement exceeds \$2,000 and is funded with federal funds, then CONSULTANT shall pay federal Davis Bacon wages and comply with applicable federal requirements.

4. Performance of Services. No work shall be performed under this Agreement except to the extent the CONSULTANT receives a Task Order from the DISTRICT's Authorized Representative. The DISTRICT will request proposals from the CONSULTANT for each Task Order when services are needed. CONSULTANT shall respond with a scope and cost proposal in a reasonably prompt manner, no later than fifteen (15) calendar days after DISTRICT's request. Such proposal shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefor, the time of performance thereof, and such other matters as the parties deem appropriate for the accomplishment of such services. Upon the approval of the terms of the proposal by DISTRICT's Manager (for contracts less than \$50,000) or DISTRICT Board (for contracts \$50,000 or more) by motion duly made and carried, the City's Authorized Representative shall issue a Task Order against this agreement. CONSULTANT shall commence performance, and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.
5. Records and Audit. CONSULTANT shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to services to be performed by CONSULTANT hereunder. Said records shall be available to DISTRICT for review and copying during regular business

hours at CONSULTANT's place of business or as otherwise agreed upon by the parties.

CONSULTANT shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

Any authorized representative of DISTRICT shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by CONSULTANT. Further, DISTRICT has the right at all reasonable times to audit, inspect or otherwise evaluate the services and work performed or being performed under this Agreement.

6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the DISTRICT shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

CONSULTANT represents that it has reviewed Exhibit B and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Exhibit B.

CONSULTANT represents that it possesses all necessary training, licenses, certificates and permits required by the federal, state, DISTRICT or municipal governments to perform the Services. Such licenses, certificates and permits must be valid at the time CONSULTANT enters into this Agreement and must be maintained during the term of this Agreement in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by CONSULTANT at no expense to DISTRICT.

CONSULTANT represents that its performance of the Services will conform to the standards of practice of a professional having experience and expertise in performing professional services of like nature and complexity of the Services working on similar, successfully completed projects.

The granting of any progress payment by DISTRICT, or the receipt thereof by CONSULTANT, or any inspection, review, approval or oral statement by any representative of DISTRICT or any other governmental entity, shall in no way waive or limit the obligations in this Paragraph 7 or lessen the liability of CONSULTANT for unsatisfactory Services, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to DISTRICT, become the property of DISTRICT.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the DISTRICT is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the DISTRICT.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit B; provided, that DISTRICT shall grant reasonable extensions of time for the performance of such services occasioned by governmental reviews of CONSULTANT's work product or other unavoidable delays; provided, further, that such unavoidable delay shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, CONSULTANT's officers or employees.

CONSULTANT acknowledges the importance to DISTRICT of DISTRICT's Project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule.

11. Indemnity.
 - (a) To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), CONSULTANT shall defend, indemnify, and hold harmless City of Foster City and Estero Municipal Improvement District, its officers, directors, officials, agents, employees, and volunteers (collectively, "**Indemnitees**") from and against any and all claims, suits, expenses, liability, cause of action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or

death of any person, including an employee of CONSULTANT or its Subconsultants), of every kind, nature, and description, at law or equity, (including without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively "**Liabilities**"), that arise out of, pertain to, or relate to any negligence, recklessness, or willful misconduct of CONSULTANT, any Subconsultant, anyone directly or indirectly employed or retained by them, or anyone that they control. CONSULTANT's obligations to indemnify, defend, hold harmless the Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnatee but shall apply to all other Liabilities.

(b) Intellectual Property Indemnification. CONSULTANT represents that professional services provided by CONSULTANT pursuant to this Agreement does not infringe on any other copyrighted work or intellectual property owned by others. CONSULTANT shall defend, indemnify and hold harmless DISTRICT from all Liabilities, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in arising from or relating to CONSULTANT's services provided to DISTRICT under this Agreement.

(c) DISTRICT shall include a provision in the construction contract with the general contractor on the Project requiring the general contractor to indemnify CONSULTANT for damages resulting from the negligence of the general contractor and its subcontractors. DISTRICT shall also include a provision in the construction contract with the general contractor on the Project requiring the general contractor to name CONSULTANT as an additional insured on its Comprehensive General Liability insurance coverage. If CONSULTANT has the opportunity to review the construction contract prior to bidding, DISTRICT shall have no responsibility for the inadvertent omission of such provisions.

(d) CONSULTANT shall place in its agreements with Subconsultants and cause its Subconsultants to agree to the indemnification and insurance provisions in this Agreement in favor of DISTRICT and the Indemnitees in the exact form and substance as those contained in this Agreement.

(e) DISTRICT acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the any Project site is outside of CONSULTANT's responsibilities and is not included in the scope of Services CONSULTANT is to perform nor included in

CONSULTANT's insurance. DISTRICT shall hire hazardous materials consultant if the Project requires the testing or remediation of hazardous substances. CONSULTANT shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. CONSULTANT shall, however, be responsible for the coordination of CONSULTANT's services and work with the work of DISTRICT's hazardous materials consultants.

(f) Duty to Cooperate. CONSULTANT shall notify DISTRICT immediately in writing of any claim or damage related to activities or services performed under this Agreement. CONSULTANT shall cooperate with DISTRICT in the investigation and disposition of all Liabilities arising out of the activities or services under this Agreement. Without limiting the foregoing, CONSULTANT shall take all steps necessary to assist DISTRICT in the defense of any and all Liabilities brought by a contractor hired to construct the Project regarding any errors, flaws, and/or omissions in the plans or specifications of the Project. Any additional services or work under this paragraph shall be compensated as Additional Services.

12. Insurance. Prior to execution of this Agreement, CONSULTANT shall furnish to DISTRICT Certificates of Insurance showing satisfactory proof that it maintains the insurance required by this Contract as set forth in EXHIBIT D, Insurance, which are attached and made a part of this Agreement. CONSULTANT shall maintain all required insurance throughout the term of this Agreement and as otherwise provided in EXHIBIT D. In the event CONSULTANT fails to maintain any required insurance, and notwithstanding Paragraph 3 above, DISTRICT may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due CONSULTANT under this Agreement (or CONSULTANT shall promptly reimburse DISTRICT for such expense).

CONSULTANT shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following completion of this project or service. In the event CONSULTANT fails to obtain or maintain completed operations coverage as required by this Agreement, the DISTRICT at its sole discretion may purchase the coverage required and the cost will be paid by CONSULTANT.

13. WORKERS' COMPENSATION. CONSULTANT certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and CONSULTANT certifies that he will comply with such

provisions before commencing the performance of the work of this agreement.

14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the DISTRICT setting forth the provisions of this non-discrimination clause.

15. Notice. All notices required by this Agreement shall be given to the DISTRICT and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:

DISTRICT: Estero Municipal Improvement District
610 Foster City Boulevard
Foster City, CA 94404-2299
Attention: [REDACTED]

CONSULTANT: [REDACTED]
(Fill in CONSULTANT Name, Address, Phone Number, Project Manager and Email Address for CONSULTANT)

16. Assignment. This is an agreement for the personal services of CONSULTANT. DISTRICT has relied upon the skills, knowledge, experience and training of CONSULTANT and the CONSULTANT's firm, associates and employees as an inducement to enter into this Agreement. CONSULTANT shall not assign or subcontract this Agreement without DISTRICT's express written consent. Further, CONSULTANT shall not assign any monies due or to become due under this Agreement without DISTRICT's prior written consent.
17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.

18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
19. Governing Law. This Agreement shall be deemed to have been executed in the County of San Mateo, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of Foster City or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.
22. Liability of DISTRICT. Except as provided in Exhibit B, Services to be Provided by CONSULTANT and Exhibit D, Insurance, DISTRICT's obligations under this Agreement shall be limited to the payment of the compensation provided for in Paragraphs 1, 3, and 4 of this Agreement,

Notwithstanding any other provision of this Agreement, in no event shall DISTRICT be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

DISTRICT shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by CONSULTANT, or by any of its employees, even though such equipment be furnished, rented or loaned to CONSULTANT by DISTRICT. The acceptance or use of such equipment by CONSULTANT or any of its

employees shall be construed to mean that CONSULTANT accepts full responsibility for and shall exonerate, indemnify, defend and save harmless DISTRICT from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the CONSULTANT, its employees, DISTRICT employees or third parties, or to property belonging to any of the above.

Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which DISTRICT or CONSULTANT may have under this Agreement or any applicable law. All rights and remedies of DISTRICT or CONSULTANT, whether under this Agreement or other applicable law, shall be cumulative.

23. Confidentiality. Any information, whether proprietary or not, made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement for DISTRICT, will be kept confidential and not be disclosed to any other person. CONSULTANT will immediately notify DISTRICT in writing if it is requested to disclose any information made known to or discovered by during the performance of or in connection with this Agreement.

These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services and work to DISTRICT hereunder.

24. Waiver of Default. Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.
25. Entire Agreement. This Agreement, including Exhibits A, B, C, D and E, comprises the entire Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

ESTERO MUNICIPAL IMPROVEMENT DISTRICT

Dated: _____

_____, District Manager

(for contracts less than \$50,000)
[REMOVE signature line if \$50,000 or more]

Dated: _____

_____, President

(for contracts \$50,000 or more)
[REMOVE signature line if less than \$50,000]

ATTEST:

Dated: _____

Priscilla Schaus, District Secretary

APPROVED AS TO FORM

Dated: _____

Benjamin Stock, District Legal Counsel

CONSULTANT

Dated: _____

Type Name & Title of CONSULTANT
Authorized to Sign

EXHIBIT A

SAMPLE TASK ORDER
TASK ORDER NO. [**INSERT TASK No.**]
TO MASTER ARCHITECTURE AND ENGINEERING SERVICES AGREEMENT

This Task Order No. _____ ("Task Order") is made and entered into by and between the Estero Municipal Improvement District ("District") and _____ ("Consultant").

RECITAL

A. District and Consultant entered into an agreement entitled Master Architecture and Engineering Services Agreement ("Agreement"), by which the Consultant agreed to perform _____ services in accordance with Task Orders issued by the District.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. INCORPORATION BY REFERENCE. This Task Order hereby incorporates by reference all items and conditions set forth in the Agreement.
2. SCOPE OF TASK ORDER. Consultant shall perform the services described in Exhibit "B," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
3. PAYMENT. For services performed by Consultant in accordance with this Task Order, District will compensate Consultant in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$_____ (including all hourly billings as well as reimbursable costs.
4. SIGNATURES. The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Consultant and the District.

IN WITNESS WHEREOF, the District and Consultant do hereby agree to the full performance of the terms set forth herein.

Estero Municipal Improvement District

Consultant

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____
Tax ID No.: _____

EXHIBIT B

SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS AND SCHEDULE,
[ENTER PROJECT TITLE]

[EITHER COMPLETE EXHIBIT A OR ATTACH A PROPOSAL/SCOPE OF WORK THAT CONTAINS
ALL THE INFORMATION BELOW AND DELETE THE TEXT BELOW]

SERVICES TO BE PROVIDED

This is an Exhibit attached to, and made a part of and incorporated by reference to the Agreement dated [Date of Agreement](#), by and between [Consultant Name](#), hereinafter referred to as "**CONSULTANT**" and the Estero Municipal Improvement District, hereinafter referred to as "**DISTRICT**" providing for professional services.

1. **Description of the Project:**

1.1 DESCRIPTION: [Description of Project](#)

2. **Basic Services:**

The DISTRICT has developed a general scope of work as described below.

PAYMENTS

1. The maximum payment to CONSULTANT under this Agreement for the Project shall be:
[Maximum Payment Amount](#)

2. METHODS OF PAYMENT FOR CONSULTANT'S SERVICES AND EXPENSES:
[List Methods of Payment](#)

3. TIMES OF PAYMENTS.
[List Times of Payments](#)

PROJECTS AND SCHEDULE

[List Project Schedule \(IF APPLICABLE\)](#)

END OF EXHIBIT B

EXHIBIT C
FEE SCHEDULE
[PER AGREEMENT WITH CONTRACTOR]

EXHIBIT D INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified herein on the attached form. No substitute form will be accepted.

This is an Exhibit to, and made a part of and incorporated by reference to the Agreement dated Date of Agreement, by and between Consultant Name, hereinafter referred to as "**Consultant**", and Estero Municipal Improvement District, hereinafter referred to as "**District**", providing for professional services.

1. **Consultant's Duty to Show Proof of Insurance.** Consultant, in order to protect District and its Council members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Consultant's acts, errors, or omissions in connection with the performance of Consultant's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Consultant shall not perform any work under this Agreement until Consultant has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the District's authorized insurance representative, insurance Tracking Services Inc. (ITS). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Consultant shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, Consultant shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Consultant shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Consultant or District as an additional insured.

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the District), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least five million dollars (\$5,000,000) each occurrence and five million dollars (\$5,000,000) aggregate.

*Please note, the District will require a separate additional insured endorsement for the Commercial General Liability policy, listing the "Estero Municipal Improvement District, its Council members, officials, agents, officers, volunteers and employees".

[FOR THE FOLLOWING INSURANCE REQUIREMENTS, PLEASE CONSIDER IF EACH IS APPROPRIATE FOR THE SERVICE TO BE PROVIDED AND FOR THE CONSULTANT. UNCHECK THE CHECKBOX FOR ANY INSURANCE REQUIREMENT THAT IS NOT APPLICABLE. PLEASE CONTACT THE DISTRICT MANAGER'S OFFICE WITH ANY QUESTIONS.]

☒ Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least two million dollars (\$2,000,000) each occurrence.

☒ Workers' Compensation Insurance

Consultant shall submit written proof that Consultant is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code. Consultant shall require any Subconsultants to provide workers' compensation for all of the Subconsultants' employees, unless the Subconsultants' employees are covered by the insurance afforded by Consultant. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Consultant shall provide and/or require each Subconsultant to provide adequate insurance for the coverage of employees not otherwise covered. Consultant shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

☒ Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than five million dollars (\$5,000,000) per occurrence and five million dollars (\$5,000,000) aggregate.

1.2 Self-Insured Retention

Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of insurance or other documentation provided to District and must be approved by the District Risk Manager.

1.3 Claims-Made Basis Coverage

If any of the insurance coverages required under this Agreement is written on a claims-made basis, Consultant, at Consultant's option, shall either (i) maintain said coverage for at least five (5) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than five (5) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

2. **District as Additional Insured**

On Consultant's Commercial General Liability and Automobile policies, the Estero Municipal Improvement District, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. Insurance terms and conditions:

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by Consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by Consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

3.2 All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII Any exception to these requirements must be approved by the District Risk Manager.

3.3 If Consultant is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Consultant shall provide coverage equivalent to the insurance coverages and endorsements required above. The District will not accept such coverage unless the District determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Consultant is equivalent to the above-required coverages.

3.4 For any claims related to the Agreement, the Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3.5 Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Consultant for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the District from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

3.6 Failure by Consultant to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Consultant. District, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, District may purchase such required insurance coverage, and without further notice to Consultant, District shall deduct from sums due to Consultant any premiums and associated costs advanced or paid by District for such insurance. If the balance of monies obligated to Consultant pursuant to this Agreement are insufficient to reimburse District for the premiums and any associated costs, Consultant agrees to reimburse District for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by District to take this alternative action shall not relieve Consultant of its obligation to obtain and maintain the insurance coverages required by this Agreement.

3.7 Should any of the required insurance (other than errors and omissions insurance) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defenses costs be included in such general aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limit specified above.

3.8 District may (but is under no obligation to) secure project-specific insurance, wrap-up insurance, or administer an owner controlled insurance program ("OCIP"), in which case Consultant and its subconsultants shall communicate this fact to their insurance carriers and request that the risk of this project be excluded from their practice policies. Consultant's fees under this Agreement (and the fee of its subconsultants under subconsultant agreements) shall

be reduced by the amount of insurance premiums that may be avoided by Consultant and its subconsultants by virtue of the District 's obtaining the project-specific insurance, wrap-up insurance or administering an OCIP, and the exclusion of this project from coverage of Consultant's and subconsultants policies. Construction Manager and its subconsultants shall afford District access to their books and records and cooperate with District in verifying the amount of savings realized.

ATTACHED

1. Insurance Coverage Form

EXHIBIT D

This **INSURANCE COVERAGE FORM** modifies or documents insurance provided under the following:

Named Insured: _____ Effective Work Date(s): _____

Description of Work/Locations/Vehicles: _____

ADDITIONAL INSURED: **City of Foster City/Estero Municipal Improvement District (CITY)**
610 Foster City Boulevard, Foster City, CA 94404
Attention: _____

Contract Administrator

Endorsement and Certificates of Insurance Required The Additional Insured, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (Check all that apply)		Insurer	Policy No.
<input type="checkbox"/>	General Liability: (a) activities performed by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, (c) premises owned, leased occupied or used by the Named Insured, and/or (d) permits issued for operations performed by the Named Insured. {Note: MEETS OR EXCEEDS ISO Form # CG 20 10 11 85}		
<input type="checkbox"/>	Auto Liability: the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Named Insured, regardless of whether liability is attributable to the Named Insured or a combination of the Named Insured and the Additional Insured, its elected or appointed officers, officials, employees or volunteers.		
<input type="checkbox"/>	Other:		
Certificates of Insurance Required (no endorsement needed) (Check all that apply)		Insurer	Policy No.
<input type="checkbox"/>	Workers Compensation: work performed by employees of the Named Insured while those employees are engaged in work under the simultaneous directions and control of the Named Insured and the Additional Insured.		
<input type="checkbox"/>	Professional Liability:		

PRIMARY/NON-CONTRIBUTORY: This insurance is primary and is not additional to or contributing with any other insurance carried by or for the benefit of Additional Insureds.

SEVERABILITY OF INTEREST: The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer's limit of liability.

PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS: Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Additional Insured, its elected or appointed officers, officials, employees, or volunteers.

CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice (ten (10) days if canceled due to non-payment) by regular mail return receipt requested has been given to the Additional Insured. Such notice shall be addressed as shown above.

WAIVER OF SUBROGATION: The insurer(s) named above agree to waive all rights of subrogation against the CITY, its elected or appointed officers, officials, agents, volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the CITY.

Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.

SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

I, _____ (print/type name), warrant that I have authority to bind the above-named insurance company and by my signature hereon do so bind this company.

SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required)

ORGANIZATION: _____ **TITLE:** _____

ADDRESS: _____

TELEPHONE: () _____

DATE ISSUED: _____

END OF EXHIBIT D

EXHIBIT E
COVID-19 AMENDMENT/ATTACHMENT
(Consulting Agreement Form)

This COVID-19 Amendment/Attachment amends the Agreement between _____
("District") and _____ ("Consultant") dated _____.

1. Definitions

A. The 2019 novel coronavirus and the disease it causes are collectively referred to herein as "**COVID-19**".

B. A "**COVID-19 Condition**" is something attributable to COVID-19 not caused by the Consultant (which for purposes herein includes all subconsultants) and beyond its reasonable control including but not limited to COVID-19 Proclamations and supply chain disruptions due to COVID-19, and other circumstances concerning COVID-19 not caused by the Consultant and which are beyond its reasonable control.

C. A "**COVID-19 Proclamation**" includes but is not limited to orders, directives and guidance concerning COVID-19 that have been issued, and which may be issued from time to time, by public agencies or regulatory bodies, the CDC or OSHA or Cal/OSHA, including without limitation the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards. Consultant acknowledges that those orders, directives and guidance may require the Project to shut down or otherwise increase the Consultant's cost or time of performance by calling for things such as social distancing and the use of personal protective equipment. In the event of conflicting COVID-19 Proclamations, the Consultant shall follow the most applicable, restrictive and newest COVID-19 Proclamations.

D. An "**Unknown COVID-19 Condition**" is a COVID-19 Condition the Consultant did not know about, and reasonably should not have known about, as of the date the Consultant submitted its proposal. The requirements contained in COVID-19 Proclamations issued before submission of a proposal are not Unknown COVID-19 Conditions, and the Consultant will be deemed to have knowledge of those requirements.

E. An "**Unknown COVID-19 Cost**" is a cost that: (i) is solely attributable to an Unknown COVID-19 Condition; (ii) is reasonable under the circumstances; (iii) is not the result of the Consultant's failure to comply with the contract documents or a COVID-19 Proclamation; and (iv) is not the result of a subconsultants failure to comply with a COVID-19 Proclamation in connection with the performance of the Services.

2. COVID-19 Conditions and Proposal. Consultant is expected to know and is deemed to have known about COVID-19 Conditions when it submits its proposal, and COVID-19 Conditions must be accounted for in the Consultant's price and schedule. In order to be entitled to any relief from a COVID-19 Condition, the Consultant must demonstrate that the issue, cost or delay is due to an Unknown COVID-19 Condition.

3. Compliance with COVID-19 Proclamations.

A. Consultant shall comply with COVID-19 Proclamations in the performance of the Services, irrespective of when the COVID-19 Proclamations are issued, and as they pertain to performance of the Services. The cost of such compliance is non-compensable, except as otherwise expressly stated herein.

B. Consultant is responsible to ensure that its subconsultants and suppliers comply with COVID-19 Proclamations at all times in connection with the performance of their Services.

4. Delay. The Consultant is entitled to a reasonable time extension for an Unknown COVID-19 Condition. Such time extension is non-compensable.

5. District Directed Suspension. The District may suspend Services due to COVID-19 health concerns, even though the Consultant may be allowed to proceed with the Services based on COVID-19 Proclamations. The District may suspend the Services for its convenience. The Consultant is entitled to

a time extension for a District Directed Suspension, and the contract amount will be equitably adjusted if and to the extent Consultant incurs increased costs that are Unknown COVID-19 Costs.

6. Compensation for COVID-19 Costs. District will reimburse the Consultant for costs attributable to COVID-19, and which are not included in the schedule of values, only if the cost is an Unknown COVID-19 Cost.

7. Safe Work Practices. Consultant shall implement safe work practices recommended by CDC or OSHA or Cal/OSHA, which may include, inter alia, screening all employees, subconsultants, or others ("worker(s)") at all locations where Services are performed for signs and symptoms of COVID-19; adopting staggered work schedules, e.g., providing alternating workdays or extra shifts, to reduce the total number of employees on a site at any given time and to ensure physical distancing; identifying choke points where workers are forced to stand together, such as hallways and elevators, ingress and egress points, break areas, and buses, and implement policies to maintain social distancing; coordinating deliveries in line with the employer's minimal contact and cleaning protocols; and instituting a rigorous housekeeping program to reduce dust levels at all exterior locations. Consultant remains fully responsible for following and complying with changes to recommended safe work practices from time to time.

8. Monitoring and Reporting. District may require the Consultant to actively monitor the health of its workers through temperature checks and questionnaires of major COVID-19 symptoms, including but not limited to cough, fever above 100.4 degrees Fahrenheit and shortness of breath. Consultant shall immediately report to District any outbreaks of COVID-19 among its workers. The Consultant shall not knowingly allow any worker who has tested positive with COVID-19 to enter a District building. In the event of an outbreak or an exposure to COVID-19, the District may impose appropriate mitigation strategies which may be in consultation with the public health officer.

9. Conflicts. In the event of an inconsistency between this COVID-19 Amendment and the Agreement, this Addendum shall control.

IN WITNESS WHEREOF, the District and Consultant have executed this Covid-19 Amendment as of the date set forth above.

CONSULTANT:

DISTRICT:

Signature

Signature

Print Name & Title

Print Name & Title

END OF EXHIBIT E