



CITY OF HALF MOON BAY
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made by and between the City of Half Moon Bay, a California municipal corporation (“City”) and _____ (“Consultant”).

Section 1. SERVICES. This is an agreement for _____. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached hereto as Exhibit A and incorporated herein by reference. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

- 1.1. **Agreement Term.** The term of this Agreement shall begin on the date on which the last signature is affixed and shall run until all work is approved by the City or until terminated by either party pursuant to Section 8.
- 1.2. **Time of Performance.** Consultant is not authorized to perform any services or incur any costs whatsoever under this Agreement until receipt of a notice to proceed from the Contract Administrator. All services within the Scope of Work shall be completed prior to _____. The City Manager may extend this completion date by up to six months through a written amendment to this Agreement, provided such extension does not include additional contract funds.
- 1.3. **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged. All work product which Consultant delivers to City shall be prepared in a first-class and workmanlike manner and comply with the requirements of this Agreement to the City’s satisfaction.
- 1.4. **Changes to Scope.** From time to time, the City may request, in writing, changes in the Scope of Work. Any such changes mutually agreed upon by the parties, and any corresponding change in compensation and time of performance, shall be made by written amendment to this Agreement.
- 1.5. **Project Administrator.** _____ shall be Consultant’s project administrator and shall have direct responsibility for management of Consultant’s performance under this Agreement.
- 1.6. **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Consultant shall immediately reassign any personnel upon City’s request for good cause, as determined by the City in its sole discretion.

- 1.7. **Facilities, Equipment, and Supplies.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities, equipment, and supplies that may be necessary to perform the services required by this Agreement. City shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment, facilities, or supplies used by Consultant, or by any of its employees, even though such equipment, facilities, or supplies were provided, rented, or loaned to Consultant by City.

Section 2. COMPENSATION. Exhibit B to this contract contains the Fee Schedule. The City shall pay Consultant for services rendered pursuant to the Fee Schedule at the time and in the manner set forth herein, in an amount not to exceed the total sum of \$ _____.

Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant and City acknowledge and agree that compensation paid by City to Consultant under the Fee Schedule of this Agreement is based upon Consultant's estimation of all costs of providing the services required hereunder. All costs and expenses shall be included in the fees, except for those costs or expenses specifically negotiated to be reimbursable as separate line items and identified as such in the Fee Schedule.

- 2.1. **Invoices.** Consultant shall submit invoices once a month during the term of this Agreement, based on the cost for services performed prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing for each task a brief description of the work completed during the billing period, the amount of prior billings, the total due in the current period, the amount of the total contract sum remaining, and the percentage of completion of the work;
- A copy of the applicable time entries or time sheets showing the name of the person doing the work, the hours spent by each person, and a brief description of the work;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours;
- The Consultant's signature.

- 2.2. **Monthly Payment.** City shall make monthly payments, based on complete and accurate invoices received, for services satisfactorily performed in accordance with the Scope of Work. City shall notify Consultant in writing within 15 days after receipt of an invoice of any billing item that does not satisfy the requirements herein. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant undisputed amounts.

- 2.3. **Payment for Additional Scope.** Payments for any additional services not included in the original Scope of Work and agreed to by the parties under Section 1.4 of this Agreement shall be made on a time-and-materials basis using the Fee Schedule in Exhibit B.
- 2.4. **Payment of Benefits and Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Consultant and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Consultant's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Consultant. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development Division, determine that Consultant, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Consultant agrees to a reduction in amounts payable under this Agreement, or to promptly remit to City any payments due by the City as a result of such determination, so that the City's total expenses under this Agreement are not greater than they would have been had the determination not been made.
- 2.5. **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred during the term of the Agreement.

Section 3. INSURANCE REQUIREMENTS.

- 3.1. **Required Coverage.** During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with performance of this Agreement by Consultant and/or its agents, representatives, employees, or subcontractors. Such insurance shall be at least as broad as set forth below. The insurance requirements listed below that have an "X" indicated in the space before the requirement apply to this agreement, together with the general requirements.
- Commercial General Liability Insurance** covering commercial general liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, personal injury, and advertising injury with coverage limits of not less than

___ Two Million Dollars (\$2,000,000).

___ Five Million Dollars (\$5,000,000).

If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability Insurance covering any auto, or if Consultant has no owned autos, both hired and non-owned autos, with minimum limits of

___ One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident for bodily injury and property damage.

___ Two Million Dollars (\$2,000,000) per claimant and Two Million dollars (\$2,000,000) per incident for bodily injury and property damage.

Workers' Compensation Insurance as required by the laws of the State of California, with statutory limits, and Employer's Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Consultant shall submit to City a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers for Consultant's workers compensation policy.

___ **Professional Liability (Errors and Omissions) Insurance** appropriate to Consultant's profession, with coverage limits of not less than

___ Two Million Dollars (\$2,000,000) per occurrence or claim, Two Million Dollars (\$2,000,000) aggregate.

___ Five Million Dollars (\$5,000,000) per occurrence or claim, Five Million Dollars (\$5,000,000) aggregate.

The insurance obligations under this agreement shall be (1) the minimum coverage and limits specified above; or (2) all the Insurance coverage and/or limits carried by or available to Consultant, whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Consultant under this Agreement.

- 3.2. **Acceptability of Insurer.** The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 3.3. **Additional Insureds.** The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement or policy language naming City and its officers, officials, employees, agents, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work or operations.
- 3.4. **Primary Coverage.** The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement or policy language providing that, for any claims related to this Agreement, those policies shall be primary to any coverage available to City. And any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 3.5. **Notice of Cancellation.** Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the City.
- 3.6. **Enforcement.** Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) require Consultant to obtain the insurance, (ii) immediately terminate this Agreement; or (iii) take out the necessary insurance and pay, at Consultant's expense, the premium thereon.
- 3.7. **Evidence of Insurance.** At all times during the term of this Agreement, Consultant shall maintain on file with the City a certificate or certificates of insurance and amendatory endorsements or copies of the applicable policy language evidencing current coverage meeting the requirements of this Agreement. Such evidence of insurance shall be attached hereto as Exhibit C and is to be approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- 3.8. **Policy Renewals.** Consultant shall provide proof that policies of insurance required herein expiring, or cancelled, during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages, or immediately for any policy being cancelled.
- 3.9. **Subcontractors.** The Consultant shall require all subcontractors to provide a valid certificate of insurance and the required endorsements or policy language demonstrating compliance with the insurance requirements herein prior to commencement of any work by the subcontractor and shall provide proof of compliance to the City.
- 3.10. **Maintaining Insurance/Notice.** Consultant shall not cancel, assign, or change any policy of insurance required by this Agreement or engage in any act or

omission that will cause its insurer to cancel any insurance policy required by this Agreement except after providing 30 days prior written notice to the City. If an insurance policy required by this agreement is unilaterally cancelled or changed by the insurer, the Consultant shall immediately provide written notice to the City and obtain substitute insurance meeting the requirements of this Agreement. Nothing in this subsection relieves Consultant of its obligation to at all times maintain all insurance required by this Agreement.

- 3.11. Waiver of Subrogation.** All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant’s employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer (unless the waiver would void the coverage).
- 3.12. Deductibles.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.
- 3.13. Liability.** Procurement of insurance by Consultant shall not be construed as a limitation of Consultant’s liability or as full performance of Consultant’s duties to indemnify, hold harmless, and defend under this Agreement.
- 3.14. Claims Made Policies.** No insurance policy required herein shall be written as claims-made coverage. Insurance must be written on an occurrence basis. Nonetheless, if it is not possible for a required professional liability policy to be written on an occurrence basis, the professional liability coverage shall be maintained, and Consultant shall provide evidence of coverage to City for the period of time marked with an X below:

___ three years after expiration or termination of this Agreement.

___ five years after expiration or termination of this Agreement.

Consultant may satisfy this requirement by renewal of existing coverage or purchase of either prior acts or tail “extended reporting” coverage applicable to said five-year period.

- 3.15. Survival.** The provisions of this Section 4 survive expiration or termination of this Agreement.

Section 4. INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES.

- 4.1. Indemnity for Design Professional Liability:** With respect to the performance of design professional services by a design professional as defined in California Civil Code Section 2782.8, to the fullest extent permitted by law, Consultant

shall indemnify and hold harmless City, its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liabilities, claims, damages, losses, costs, or expenses (including, without limitation, costs, attorneys' fees, and expert fees of litigation and alternative dispute resolution) of every nature to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant or any of its officers, employees, servants, agents, or subcontractors (collectively and/or individually "Consultant"), in the performance of this Agreement or failure to comply with any obligations of the Agreement. If it is finally determined (through a non-appealable judgment or an agreement between City and Consultant) that liability is caused by the comparative negligence or willful misconduct of City, then Consultant's indemnification and hold harmless obligation shall not exceed Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.

Irrespective of any language to the contrary in this Agreement, the Consultant has no duty to provide or to immediately pay for an up-front defense of City against unproven claims or allegations, but shall reimburse those litigation costs and expenses (including, without limitation, attorneys' fees, and expert fees) incurred by the City to the extent caused by the negligence, recklessness, or willful misconduct of Consultant. In no event shall the cost to defend charged to Consultant exceed Consultant's proportional percentage of fault, except as described in Section 2782.8(a) and (e) of the California Civil Code.

- 4.2. Indemnity for Other Than Design Professional Liability:** Except as provided in subsection 4.1, to the fullest extent permitted by law, Consultant shall hold harmless, defend (with counsel agreed to by City), and indemnify City and its officers, officials, agents, employees, and volunteers (collectively and/or individually "City") from and against any and all liability, claim, loss, damage, expense, costs (including, without limitation, costs, attorneys' fees, and expert fees of litigation) of every nature arising out of, related to, or in connection with the performance of work hereunder by Consultant or any of its officers, employees, servants, agents, or subcontractors, or the failure of the same to comply with any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of the City.

Consultant's duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the claim does not relieve Contractor from its separate and distinct obligation to defend as stated herein.

- 4.3. No Limitations.** Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. The obligations of Consultant under this Section 4 will not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, officials,

agents, employees, and volunteers. For purposes of Section 2782 of the California Civil Code, the parties hereto recognize and expressly agree that either (1) this Agreement is not a construction contract; (2) this Agreement is a construction contract and it conforms to Section 2782; or (3) they have negotiated and expressly agreed to the allocation of liability between them.

- 4.4. **Subcontractors.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 4 from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.
- 4.5. **Cooperation.** In the event any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in responding to or defending against such claim or action.
- 4.6. **Offset.** City shall have the right to offset against the amount of any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification due under this Section 4 as finally determined by a court of competent jurisdiction or mutually agreed to by the parties.
- 4.7. **Survival.** Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth in this Section 4. This obligation to indemnify and protect City as set forth in this Section 4 is binding on the successors, assigns, or heirs of Consultant and shall survive the expiration or termination of this Agreement.

Section 5. STATUS OF CONSULTANT.

- 5.1. **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. No relationship of employer and employee is created by this agreement between the City and Consultant or any subcontractor or employee of Consultant. City shall have the right to control Consultant only insofar as specifying the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. City shall not have the right to control or direct the means by which Consultant accomplishes services rendered pursuant to this Agreement. Consultant shall direct and control its personnel and shall pay all wages, salaries, and other amounts due its personnel in connection with this Agreement as required by law.
- 5.2. **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 6. LEGAL REQUIREMENTS.

- 6.1. Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 6.2. Funding Agency Requirements.** If this Agreement is funded, in whole or part, by fiscal assistance from another governmental or non-governmental entity (“Funding Agency”), Consultant and any subcontractors shall comply with all applicable rules, requirements, and regulations to which City is bound by the terms of such fiscal assistance as provided for and stated in the funding agreement, and shall also complete all related worksheets and forms. If applicable, the funding agreement and related worksheets and forms are attached hereto as Exhibit B and incorporated herein by reference.

Anything to the contrary herein notwithstanding, all applicable fiscal assistance program and/or agreement rules, requirements, and regulations shall be deemed to control in the event of an irreconcilable conflict with other provisions contained in this Agreement.

If Consultant claims or receives payment from City for a service, reimbursement for which is later disallowed by the Funding Agency as a result of an act or omission of Consultant, or any of its employees, agents, or subcontractors, Consultant shall promptly refund the disallowed amount to City upon City’s request. At its option, City may offset the amount disallowed from any payment due to Consultant under this Agreement or any other Agreement.

- 6.3. Licenses, Permits, and Approvals.** Consultant shall obtain and keep in effect at all times during the term of this Agreement, at its sole cost and expense, any and all licenses, permits, and regulatory approvals necessary in the performance of this Agreement. This includes, but is not limited to, a valid business license from the City. Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.
- 6.4. Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person’s race, religion, creed, color, national origin, ancestry, age, physical or mental handicap or disability, medical condition, marital status, sex, sexual orientation, gender, gender identity, gender expression, genetic information, or military or veteran status, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement, as provided in Government Code section 12940. Consultant shall comply with all other applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

- 6.5. Conflict of Interest.** Consultant shall comply with the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*). Consultant understands that in carrying out this Agreement, its professional responsibility is solely to the City. Consultant represents and warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Consultant shall not employ or subcontract with a person having such a conflict of interest. Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 6.6. Form 700.** Consultant, and its officers, agents, or employees working under this Agreement, shall submit statements of economic interest (Form 700s) under the Political Reform Act (Government Code section 81000 *et seq.*) if requested to do so by the City Manager.

Section 7. TERMINATION AND MODIFICATION.

- 7.1. Termination.** City may cancel this Agreement at any time and without cause upon 15 day's written notice to Consultant.

Consultant may cancel this Agreement at any time and without cause upon 15 days' written notice to City.

In the event of termination, Consultant shall be entitled to compensation for satisfactory services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. In the event Consultant is not provided notice of any outstanding materials to be delivered to City, Consultant shall be entitled to payment within 30 days or receipt of the notice.

- 7.2. Suspension.** City may, at any time, temporarily suspend Consultant's performance, in whole or part, by giving a written notice of suspension to Consultant. If City gives such notice, Consultant shall immediately suspend its activities under this Agreement as specified.
- 7.3. Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 7.4. Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 7.5. **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's personal competence, experience, and specialized knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 7.6. **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the expiration or termination of this Agreement.
- 7.7. **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- i. Immediately terminate the Agreement;
 - ii. Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - iii. Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; and/or
 - iv. Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 8. KEEPING AND STATUS OF RECORDS.

- 8.1. **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall become the property of the City upon completion of the work to be performed hereunder or upon termination of this agreement to the extent requested by City. Consultant hereby agrees to deliver those documents to the City upon expiration or termination of the Agreement. Without limiting the generality of the foregoing, if, in connection with services performed under this agreement, the Consultant or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in

such works are the property of City. If it is ever determined that any works created by the Consultant or its subcontractors under this agreement are not works for hire under U.S. law, the Consultant hereby assigns all copyrights to such works to City, grants City a royalty-free, exclusive, and irrevocable license to reproduce, publish, use, and to authorize others to do so, all such works, and agrees to provide any material and execute any documents necessary to effectuate such assignment and license. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. To the extent allowed by law, Consultant agrees that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of the City.

- 8.2. **Intellectual Property.** Consultant represents and warrants that it has the legal right to utilize all intellectual property it will utilize in the performance of this Agreement. Consultant further represents that it shall ensure City has the legal right to utilize all intellectual property involved in and/or resulting from Consultant's performance of this Agreement.
- 8.3. **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. This Section shall survive expiration or termination of this Agreement.
- 8.4. **Inspection and Audit of Records.** Any records or documents that Section 9.3 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement. This Section shall survive expiration or termination of this Agreement.

Section 9. MISCELLANEOUS PROVISIONS.

- 9.1. **Dispute Resolution.** The parties shall make a good faith effort to meet and to settle any dispute or claim arising under this Agreement prior to pursuing litigation. If any litigation is commenced between parties to this Agreement concerning any provision hereof or the rights and duties of any person in relation thereto, each party shall bear its own attorneys' fees and costs.
- 9.2. **Governing Law.** The laws of the State of California shall govern this Agreement.

- 9.3. **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Mateo or in the United States District Court for the Northern District of California.
- 9.4. **Severability.** If a court of competent jurisdiction finds or rules that any provision, including but not limited to any clause, term, section, or subsection, of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. 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.
- 9.5. **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a continuing waiver or a waiver of any other breach of that term or any other term of this Agreement. No waiver or modification is valid unless made in writing.
- 9.6. **Successors and Assigns.** The provisions of this Agreement and all surviving covenants shall inure to the benefit of and shall apply to and bind the successors, heirs, and assigns of the parties.
- 9.7. **Notice of Non-Renewal.** Consultant understands and agrees that there is no representation, implication, or understanding that the City will request that services provided by Consultant under this Agreement be supplemented or continued by Consultant under a new agreement following expiration or termination of this Agreement. Consultant waives all rights or claims to notice or hearing respecting any failure by City to continue to request or retain all or any portion of the services from Consultant following the expiration or termination of this Agreement.
- 9.8. **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 9.9. **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 9.10. **Contract Administration.** This Agreement shall be administered by the City Manager or his or her designee (“Contract Administrator”). All correspondence shall be directed to or through the Contract Administrator.
- 9.11. **Notices.** The parties will make good faith efforts to provide advance courtesy notice via e-mail of any notices under this Agreement. In addition to such courtesy notice, official notice shall be delivered by hand, facsimile, overnight courier, or U.S. mail. Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant’s and City’s regular business hours, or the following day if delivered after business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other

addresses as the parties may, from time to time, designate in writing). Under no circumstances shall courtesy e-mail notice satisfy the notice requirements set forth above; nor shall lack of such courtesy notice affect the validity of service pursuant to the notice requirement set forth above.

Any written notice to Consultant shall be sent to:

Address: _____
Attn. To: _____
Phone: _____
Fax: _____
Email: _____

Any written notice to City shall be sent to:

City of Half Moon Bay
501 Main Street
Half Moon Bay, CA 94019
Attn: City Manager
Phone: (650) 726-8270
Fax: (650) 726-9389
Email: clerk@hmbcity.com

With a copy to:

Phone: _____
Email: _____
Fax: (650) 726-9389
City of Half Moon Bay
501 Main Street
Half Moon Bay, CA 94019

- 9.12. Integration.** This Agreement, including attached Exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 9.13. Authority to Sign Agreement.** Each individual executing this Agreement represents and warrants that he or she is duly authorized to sign on behalf of the party indicated and to bind that party to the Agreement.

IN WITNESS WHEREOF, the City and the Consultant have executed this Agreement effective as of the date first written above.

“CITY”
CITY OF HALF MOON BAY

Date: _____

By: _____
City Manager

Attest:

Approved as to form:

By: _____
City Clerk

City Attorney

Date: _____

“CONSULTANT”

Date: _____

By: _____
Signature

Printed Name

Its: _____
Print Title

Attachments:

Exhibit A. Scope of Work

Exhibit B. Fee Schedule

Exhibit C. Evidence of Insurance

Exhibit D. Prevailing Wage Provisions (box checked if applicable to this Agreement)

Exhibit E. Funding Agency Agreement (box checked if applicable to this Agreement)

Exhibit A
Scope of Work

Consultant shall complete the following scope of work: Insert scope of work or reference one or more attachments. Attachments should be labeled “Exhibit A-1, Exhibit A-2 etc.

Exhibit B
Fee Schedule

Insert Hourly Rates and Payment Schedule. Include rates for any authorized subcontractors and specify any authorized reimbursable expenses.

Exhibit C
Evidence of Insurance
(pages attached)

Exhibit D
Prevailing Wage

1. If this box is checked, the following prevailing wage provisions apply to this Agreement.

- 1.1 In General.** For purposes of California labor law, this is a public works contract subject to the provisions of Part 7 of Division 2 of the California Labor Code (Sections 1720 et seq.). In accordance with Labor Code Section 1771, Consultant and all subcontractors shall pay not less than current prevailing wage rates as determined by the California Department of Industrial Relations (“DIR”) to all workers employed on this project. In accordance with Labor Code Section 1815, Consultant and all subcontractors shall pay all workers employed on this project 1 ½ the basic rate of pay for work performed in excess specified hour limitations. The work performed pursuant to this Agreement is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 1.2 Registration.** Consultant and all subcontractors are not qualified to bid on or be listed in a bid proposal, subject to the requirements of section 4104 of the California Public Contract Code, and shall not engage in the performance of any work under this Agreement, unless currently registered and qualified to perform public work pursuant to section 1725.5 of the California Labor Code. Consultant represents and warrants that it is registered and qualified to perform public work pursuant to section 1725.5 of the Labor Code and will provide its DIR registration number, along with the registration numbers of any subconsultants as required, to the City.
- 1.3 Posting.** Consultant shall post at the job site the determination of the DIR director of the prevailing rate of per diem wages together with all job notices that are required by regulations of the DIR.
- 1.4 Reporting.** Consultant and any subcontractors shall keep accurate payroll records in accordance with Section 1776 of the Labor Code and shall furnish the payroll records directly to the Labor Commissioner in accordance with the law.
- 1.5 Report on Prevailing Rate of Wages.** The City has obtained the general prevailing rate of per diem wages in the vicinity of the project for each type of worker needed, a copy of which is on file at the City of Half Moon Bay City Hall, and shall be made available to any interested party upon request.
- 1.6 Employment of Apprentices.** Consultant’s attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Consultant or any subcontractor. It shall be the responsibility of the Consultant to effectuate compliance on the part of itself and any subcontractors with the requirements of said sections in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San

Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

- 1.7 Penalties.** Consultant's attention is directed to provisions in Labor Code Sections 1775 and 1813. In accordance with Labor Code Section 1775, Consultant and subcontractors may be subject to penalties for Consultant's and subcontractors' failure to pay prevailing wage rates. In accordance with Labor Code Section 1813, Consultant or subcontractors may be subject to penalties for Consultant's or subcontractors' failure to pay overtime pay rates for hours worked by workers employed on this project in excess specified hour limitations.

Exhibit E

Funding Agency Requirements

(Funding agency agreement and other worksheets attached, if applicable)