

Exhibit A
SAMPLE AGREEMENT FOR PROFESSIONAL SERVICES

CITY OF HOLLISTER
ENVIRONMENTAL SERVICES AGREEMENT

This services agreement (“Agreement”) is made and entered into effective _____, 20____ (the “Effective Date”), by and between the City of Hollister (“City”) and _____ (“Contractor” and together with City, the “Parties”).

1. **Contractor Services.** Contractor agrees to provide the following services to City (collectively, the “Basic Services”): For the _____ project (“Project”), _____ (as further described in *Exhibit A* to this Agreement). Contractor shall provide services related to the Project other than Basic Services (i.e., “Additional Services”) if directed in writing by City to perform specific Additional Services and if sufficient contract funds for Additional Services remain to pay for the directed Additional Services (see Section 5, below). “Services” shall mean Basic and Additional Services. Contractor agrees to perform such Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Services and the Project. All services performed by the Contractor under this Agreement shall be conducted in a manner consistent with the level of care and skill ordinarily exercised by _____ professionals specially qualified to provide the services required by the City.

2. **Contractor Qualifications.** Contractor represents and warrants to City that Contractor, and all of Contractor’s employees, agents or volunteers (the “Contractor Parties”), have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. Contractor and any Contractor Parties performing Services shall be competent to perform those Services.

3. **Term.** The term for performance of the Services shall be the duration of the Project (“Term”), except as otherwise stated in Section 4 below, and Contractor shall complete the Services within the Term. There shall be no extension of the Term without an amendment signed by all Parties and approved by the City’s governing board. Written notice by the City Manager or designee shall be sufficient to stop further performance of the Services by Contractor or the Contractor Parties. In the event of early termination, Contractor shall be paid for satisfactory Services performed to the date of termination. Upon payment by City, City shall be under no further obligation to Contractor, monetarily or otherwise, and City may proceed with the work in any manner City deems proper. The term for performance of the Services shall begin on _____, 20__, and shall end on _____, 20__ (“Term”), except as otherwise stated in Section 4 below, and Contractor shall complete the Services within the Term. There shall be no extension of the Term without an amendment signed by all Parties and approved by the City’s governing board. Written notice by the City Manager or designee shall be sufficient to stop

further performance of the Services by Contractor or the Contractor Parties. In the event of early termination, Contractor shall be paid for satisfactory Services performed to the date of termination. Upon payment by City, City shall be under no further obligation to Contractor, monetarily or otherwise, and City may proceed with the work in any manner City deems proper.

4. **Termination.** Either Party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other Party. Notwithstanding the foregoing, City may terminate this Agreement at any time by giving written notice to Contractor if (1) Contractor materially breaches any of the terms of this Agreement; (2) any act or omission of Contractor or the Contractor Parties exposes City to potential liability or may cause an increase in City's insurance premiums; (3) Contractor is adjudged a bankrupt; (4) Contractor makes a general assignment for the benefit of creditors; or (5) a receiver is appointed because of Contractor's insolvency. Such termination shall be effective immediately upon Contractor's receipt of the notice.

5. **Payment of Fees for Services.** City agrees to pay Contractor based on a lump sum price for Basic Services satisfactorily performed, and based on the hourly rates listed in *Exhibit B* for any Additional Services satisfactorily performed. Contractor shall not increase these hourly rates over the course of this Agreement. Total fees paid by City to Contractor for Services under the Agreement shall not exceed _____ Dollars (\$ _____), which consists of a lump sum of _____ Dollars (\$ _____) for performance of the Basic Services, and a not-to-exceed amount of _____ Dollars (\$ _____) for performance of any Additional Services. City agrees to make payment for Basic Services within sixty (60) days of receipt of a detailed invoice from Contractor based on percentage of work completed, including any additional supporting documentation that City reasonably requests. City agrees to make payment for Additional Services within sixty (60) days of receipt of a detailed invoice from Contractor based on hours worked and hourly rates, including any additional supporting documentation that City reasonably requests. Contractor shall not submit its invoices to City more frequently than monthly.

5.1 **Reimbursement for Certain Expenses.** Contractor shall not be reimbursed directly for any of its expenses, as the fees to be paid under this Agreement include compensation for any and all of Contractor's expenses.

6. **Indemnity.** Contractor shall defend, indemnify, and hold harmless City and its agents, representatives, officers, consultants, employees, and City Council (collectively, the "City Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Contractor, the Contractor Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees in the performance of or failure to perform Contractor's obligations under this Agreement, including, but not limited to Contractor's or the Contractor Parties' use of the site, Contractor's or the Contractor Parties' performance of the Services, Contractor's or the Contractor Parties' breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or

damage to property or delay or damage to the City or the City Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The indemnification provided for in this Section 6 includes, without limitation to the foregoing, claims that may be made against City by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against City alleging civil rights violations by Contractor or Contractor Parties under the California Fair Employment and Housing Act (“FEHA”).

7. **Equipment and Materials.** Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively, “Equipment”) which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, City shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any Equipment used by Contractor or the Contractor Parties, even if such Equipment is furnished, rented or loaned to Contractor or the Contractor Parties by City. Furthermore, City may reject any Equipment or workmanship that does not conform to the requirements of this Agreement and Contractor must then promptly remedy or replace it at no additional cost to City and subject to City’s reasonable satisfaction.

8. **Insurance.** Without in any way limiting Contractor’s liability, or indemnification obligations set forth in Section 6 above, Contractor shall secure and maintain throughout the Term of this Agreement the following insurance: (i) comprehensive general liability insurance with limits of not less than \$_____ each occurrence and \$_____ in the aggregate; (ii) commercial automobile liability insurance with limits not less than \$_____ each occurrence and \$_____ in the aggregate; (iii) worker’s compensation insurance as required by Labor Code section 3200, *et seq.*; and (iv) professional liability insurance covering errors and omissions. Neither Contractor nor any of the Contractor Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by City. All insurance policies shall include an endorsement stating that City and City Parties are named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days’ prior written notice has been given to City. If such a notice is not given or even if City receives a notice, City may, at its sole option, terminate this Agreement. All insurance policies shall include an endorsement stating that it is primary to any insurance or self-insurance maintained by City and shall waive all rights of subrogation against City and/or the City Parties. A copy of the declarations page of Contractor’s insurance policies shall be attached to this Agreement as proof of insurance.

9. **Independent Contractor Status.** The Parties agree that Contractor is free from the control and direction of City in connection with Contractor’s performance of the Services. Contractor is hereby retained to provide the specified Services for City, which are outside the usual course of City’s business. Contractor certifies that it is customarily engaged in an independently established trade, occupation, or business to provide the Services required by this Agreement.

Contractor understands and agrees that Contractor and the Contractor Parties shall not be considered officers, employees, agents, partners, or joint venturers of City, and are not entitled to benefits of any kind or nature normally provided to employees of City and/or to which City's employees are normally entitled.

10. **Taxes.** All payments made by City to Contractor pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. City will not withhold any money from fees payable to Contractor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor and the Contractor Parties and otherwise in connection with this Agreement.

11. **Confidential Information.** All City information disclosed to Contractor during the course of performance of services under this Agreement shall be treated as confidential and shall not be disclosed to any other persons or parties excepts as authorized by City, or required by law.

12. **Designation of Key Personnel.** The individuals specified in the attached *Exhibit C* shall provide the services set forth herein, and shall be the persons primarily in charge of such work. No other individuals may provide services for Contractor on this project without first obtaining the written approval of the City Manager.

13. **Assignment/Successors and Assigns.** Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of City. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective Parties.

14. **Conflict of Interest.** Contractor warrants that neither Contractor, nor any of its employees, agents or subcontractors, has an actual or potential conflict of interest with the City in respect to the Services to be performed under this Agreement for the District. None of such individuals shall, during this term of this Agreement, acquire any interest which conflicts, or could potentially conflict, in any manner with the interests of the District.

15. **Notice to Proceed; Progress; Completion.** Upon execution of this Agreement by the parties and approval of it by the City Council, City shall give Contractor written notice to proceed with the Services. Such notice may authorize Contractor to render all of the Services contemplated herein, or such portions or phases as may be directed by the City. In the latter event, City shall, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the Services. Upon receipt of such notices, Contractor shall diligently proceed with the Services authorized and complete it within the agreed time period.

16. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

17. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both Parties and approved by the City Council.

18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of San Benito subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the City.

19. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.

20. **Compliance with Law.** Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Contractor shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances. Contractor agrees that it shall comply with all legal requirements for the performance of duties under this Agreement and that failure to do so shall constitute material breach.

21. **Non-Discrimination.** There shall be no unlawful discrimination in the contracting of persons under this Agreement because of race, color, national origin, age, ancestry, religion, sex, or sexual orientation of such persons.

22. **Attorneys' Fees.** If a party to this Agreement commences a legal action against the other party to enforce a provision of this Agreement or seek damages related to the services provided under this Agreement, the prevailing party in the legal action will be entitled to recover from the other party all of its reasonable litigation expense, costs, and fees actually incurred, including reasonable attorneys' and experts' fees.

23. **Liability of City.** Notwithstanding anything stated herein to the contrary, City shall not be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits in connection with this Agreement.

24. **Time.** Time is of the essence for performance of the Services under this Agreement.

25. **Waiver.** No delay or omission by either Party in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude either Party from any or further exercise of any right or remedy.

26. **Reports.** Contractor shall maintain complete and accurate records with respect to the Services rendered and the costs incurred under this Agreement, including records with respect to

any payments to employees and subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures. Upon request, Contractor shall make such records available to City for the purpose of auditing and copying such records for a period of five years from the date of final payment under this Agreement.

27. Ownership of Documents. All plans, studies, drawings, calculations, reports, specifications, estimates, and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Contractor under this Agreement (“Documents”) shall be and shall remain the property of the City for all purposes, not only as they relate or may relate to the Services but as they relate or may relate to any other project. Contractor will provide the City with a complete set of Documents, and will retain, on the City's behalf, the originals or reproducible copies of all Documents, however stored, in the Contractor’s files for a period of no less than fifteen (15) years. Contractor shall promptly make available to City any original documents it has retained under this Agreement upon request by the City.

28. Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for the City to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in the Documents (“Intellectual Property”) not only as they relate or may relate to the Services but as they relate or may relate to other projects. The Contractor shall require any and all subcontractors and subconsultants to agree in writing that the City is granted a similar non-exclusive and perpetual license for the Intellectual Property of such subcontractors or consultants that they provided to Contractor as part of the Services. The compensation for the Services includes compensation not only for any such use of the Intellectual Property in connection with the Services, but also for any re-use of the Intellectual Property by the City in relation to other projects. Contractor represents and warrants that Contractor has the legal right to license the Intellectual Property that Contractor, its subcontractors, or its subconsultants prepare or cause to be prepared under this Agreement.

29. Entire Agreement. This Agreement is intended by the Parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

30 Ambiguity. The Parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all Parties shall be treated as equally responsible for such ambiguity.

31. Execution of Other Documents. The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

32. **Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

33. **Warranty of Authority.** The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective parties, and by their signatures to bind the respective parties to this Agreement.

34. **Mediation.** A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute. The parties shall endeavor to include any third-party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator’s fees. Each party shall bear its own attorney’s fees related to the mediation.

35. **Forms.** Prior to performing any Services, Contractor shall prepare, execute, and submit all forms that may be required by law for this Agreement, including but not limited to an Iran Contract Act certification (Public Contract Code §2204). If a form is necessary, Contractor shall use the City’s versions of these forms, which the City shall make available upon request.

36. **Sanctions in Response to Russian Aggression.** The City requires Contractor to comply with the Governor’s March 4, 2022, Executive Order N-6-22 (“Order”) relating to any existing sanctions imposed by the United States government and the State of California in response to Russia’s actions in Ukraine, including additional requirements for contracts of \$5 million or more. Failure to comply may result in the termination of the Contract.

* * * * *

CITY OF HOLLISTER

CONTRACTOR:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address for City Notices:

Address for Contractor Notices:

EXHIBIT A

Scope of Services

EXHIBIT B

Hourly Rates

EXHIBIT C

PROJECT STAFF

NAME

TITLE

HOURLY RATE