CITY OF HEALDSBURG
PROFESSIONAL SERVICES AGREEMENT

AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2020, by and between the City of Healdsburg, a California Municipal Corporation, 401 Grove Street, Healdsburg, California, 95448, hereinafter referred to as "City," and _____, hereinafter referred to as "Consultant."

RECITALS

WHEREAS, the City has determined that it requires the following professional services from Consultant:_____
_____; and

WHEREAS, Consultant represents and warrants that it is fully qualified to perform such professional services by virtue of specialized experience and training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the legislative body of the City on _____ by Resolution No. _____ authorized execution of this Agreement on behalf of the City in accordance with the City Municipal Code and/or other applicable law. [Delete section if not applicable]

NOW, THEREFORE**,** City and Consultant, for the consideration hereinafter described, mutually agree as follows:

1. DESCRIPTION OF SERVICES OR SCOPE OF WORK

The services to be performed under this Agreement (the "Services") are as follows:_____
_____.
The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit A.

2. TERM

The Agreement term will commence on date of execution and expire on _____ unless the Agreement term is amended, or the Agreement is terminated in accordance with its terms.

3. PAYMENT TERMS AND NOT TO EXCEED AMOUNT

A. City agrees to pay Consultant for Services that are actually performed in accordance with this Agreement. To be eligible for payment, Consultant invoices must be submitted not more often than monthly to City and list the Services performed and the amounts to be paid according to the cost categories and prices in the Proposal. Invoices from Consultant shall be clearly marked with Consultant's name, project name, an itemized description of services rendered during the period covered by the invoice, and City's project account number, if applicable. Invoices shall also contain the total number of hours of work performed under the Agreement by the Consultant and each

employee, agent, and subcontractor of Consultant performing services hereunder. When the total number of hours of work by Consultant and any individual employee, agent or subcontractor of Consultant reaches or exceeds 800 hours, a separate notice shall be provided which shall include an estimate of the time necessary to complete the work described in Exhibit A.

B. In no event will City's obligation to pay the Consultant under this Agreement exceed $_____, (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. Where the Proposal provides for compensation on a time and materials basis, Consultant must maintain adequate records to permit inspection and audit of Consultant's time and material charges under this Agreement. Consultant will make such records available to City during normal business hours upon reasonable notice. In accordance with California Government Code Section 8546.7, if the Not to Exceed Amount exceeds TEN THOUSAND DOLLARS ($10,000.00), this Agreement and the Consultant's books and records related to this 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.

4. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standards of performance provided in Section 7 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement by _____ (the "Time of Completion"). The Time of Completion may only be modified by an amendment of the Agreement in accordance with its terms.

5. INDEPENDENT CONTRACTOR

Consultant and City agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the City. Consultant expressly warrants not to represent, at any time or in any manner, that Consultant is an employee of the City. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the City. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

6. SUBCONTRACTING

Consultant may subcontract portions of the Services upon the prior written approval of the City. The Consultant will be solely responsible for payment for such subcontract services. No contractual relationship will exist between any such subcontractors of the Consultant and the City.

7. STANDARD OF PERFORMANCE

A. Consultant will perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession and will prepare all work products required by this Agreement in accordance with those standards. City shall not control or direct the manner in which Consultant's services are to be performed. Consultant will comply with all federal, state and local laws and regulations applicable to performance of the Services, including, but not limited to, the California Building Code, the Americans with Disabilities Act, any copyright, patent or trademark law, and any air pollution control law(s) or regulation(s). Consultant's failure to comply

with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

B. Consultant shall assign only competent personnel to perform services pursuant to this agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from the city of such desire of City, reassign such person or persons.

8. OTHER GOVERNMENTAL REGULATIONS

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

9. USE OF RECYCLED PRODUCTS

Consultant shall endeavor to 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.

10. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City, (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

The Consultant's obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding is extended by an authorized representative of the City in writing. If the Consultant fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Consultant under this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first.

The Consultant waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Consultant arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement .

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code § 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to Cal. Civil Code § 2782.8, as amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by Civil Code § 2782.8.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

Consultant/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

11. INSURANCE

a. All required insurance must be provided in the form of "occurrence"-type policies underwritten by admitted insurers in the State of California with a rating of A or better from the current year Best Rating Guide. All policies must be issued at the expense of the Consultant and must be maintained at the Consultant's expense throughout the performance of the Work. Consultant shall maintain insurance as required by this contract to the fullest amount allowed by law. The City may request a declaration page of the policy.

b. The limits of the Commercial General Liability (including bodily injury, personal injury and property damage) insurance shall be:

   $2,000,000 per occurrence
   $2,000,000 aggregate

c. If the work to be performed involves vehicles or vehicular equipment, the Automobile insurance limit shall be:

   $2,000,000 per accident for bodily injury and property damage

   Automobile coverage should be at least as broad as Insurance Services Automobile Liability form CA 0001 Code 1 ("any auto"). No endorsement may be attached limiting the coverage. Anything less than 'any auto' coverage must be approved by the Risk Manager prior to approval. If the Risk Manager accepts anything less than 'any auto', additional information such as schedule of covered autos or proof of personal auto liability coverage, may be required by the City.

d. Worker's Compensation Insurance. Proof of Workers Compensation and Employers Liability insurance as required by any applicable law, regulation or statute, including the provisions of Division IV of the Labor Code of the State of California, and any act or acts amending it. Worker's compensation insurance must be for Statutory Limits and must cover the full liability

of the Consultant. The Consultant's Employer's Liability Insurance must be in an amount no less than $1,000,000.00 per occurrence. The workers' compensation policy must be endorsed with a waiver of subrogation. The insurance company, in its endorsement, must agree to waive all rights of subrogation against the City, its officers, officials, employees, agents and volunteers for losses paid under the terms of such policy.

e. Umbrella/Excess Policy. The limits of insurance required under this Contract may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

f. If applicable, the Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than ONE MILLION DOLLARS ($1,000,000) covering errors and omissions. Any deductible or self-insured retention under the required professional liability insurance may not exceed $150,000 per claim.

g. The City's Risk Manager may increase or decrease the insurance requirements and limits set forth in those cases in which he/she determines that special circumstances justify such an increase or decrease.

h. Both the General Liability and Auto endorsements must add the City, its officials, officers, employees, agents and volunteers as an additional insured ("Additional Insured"). The Additional Insured coverage under the Consultant's general liability policy shall be "primary and non-contributory" and Consultant's coverage will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

i. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the name insured; whichever greater.

j. The Consultant shall provide the City with a 30 day written notice of any reduction or cancellation of such insurance required to be furnished by the Consultant and include a severability of interest clause acceptable to the City and if requested by the City.

k. If an Umbrella or Excess Policy is used to satisfy the requirements, an endorsement must be provided from the insurance carrier/broker and that Umbrella/Excess Policy 'follows form' or is 'continuous' to the General liability and/ Auto liability policy in addition to the required endorsement.

l. Examples of City approved insurance forms are included in this PSA package. If the Consultant's insurance carrier chooses to use forms other than the City's approved forms, such forms shall be subject to the approval of the City. If the Consultant provides policy pages instead of an endorsement the insurance agent/broker will be asked to sign, initial and date all applicable sections of the policy that meet the City's insurance requirements.

m. All self-insured retentions (SIR) must be disclosed to City for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City. The City reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right exercise later.

n. Subcontractors

   i. Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this contract including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Consultant shall require all sub-contractors to provide a valid certificate of insurance and the required endorsements included in the Contract prior to commencement of any work and Consultant will provide proof of compliance, upon request, to the City.

   ii. Any Subcontractor hired by the Consultant agrees to be bound to the Consultant and the City in the same manner and to the same extent as Consultant is bound to the City under the Contract. Subcontractor further agrees to include the same requirements and provisions of this Contract, including the indemnity and insurance requirements, with any Subcontractor to the extent they apply to the scope of the Subcontractor's work. A copy of the contract indemnity and insurance provisions will be furnished to the Subcontractor upon request

12. NON-DISCRIMINATION

During the performance of this Agreement, Consultant will not discriminate against any employee of the Consultant or applicant for employment because of race, religion, creed, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation.

13. LICENSES AND PERMITS

A. BUSINESS LICENSE

Before the City will issue a notice to proceed with the Services, to the extent the business license requirements of the Healdsburg Municipal Code apply, Consultant and any subcontractors subject to the requirements must acquire at their sole expense a business license from City in accordance with the Code. Such licenses must be kept valid throughout the Agreement term.

B. OTHER LICENSES AND PERMITS

Consultant represents and warrants to City that it has an established trade, occupation, or business in the same nature of services Consultant is performing under this Agreement. 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 in their respective professions. Consultant expressly represents and warrants to City that Consultant and its employees, agents, and any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

14. OWNERSHIP OF WORK PRODUCTS AND TREATMENT OF DOCUMENTS

All plans, specifications, reports, designs and other documents prepared by Consultant pursuant to this Agreement shall be and remain the property of the City. Any modification or reuse of such documents by the City without Consultant's prior written consent will be at the City's sole risk. Except as may be otherwise required by law, Consultant will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of the City.

15. ALTERNATIVE DISPUTE RESOLUTION

If any dispute arises between the parties that cannot be settled after engaging in good faith negotiations, City and Consultant agree to resolve the dispute in accordance with the following:

A. Each party shall designate a senior management or executive level representative to negotiate any dispute.

B. The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

C. If the issue remains unresolved after ten (10) days of good faith negotiations, the parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

D. The mediation process shall provide for the selection within 15 days of both parties of a disinterested third person as mediator, shall be commenced within 30 day, and shall be concluded within 15 days from the commencement of the mediation.

E. The parties shall equally bear the costs of any third party in any alternative dispute resolution process.

F. The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to, nor shall be construed to, change the time periods for filing claims or action specified by Government Code section 900, et seq.

16. TERMINATION AND REMEDIES

A. City may terminate this Agreement for convenience by giving at least 10 days' written notice to Consultant specifying the termination effective date. Upon receipt of such notice, Consultant may continue performance of the Services through the date of termination. City shall pay Consultant for all Services actually performed in accordance with this Agreement through the termination effective date. City, however, may condition payment of such compensation upon Consultant delivering to City any and all documents provided to or prepared by Consultant, and any and all documents provided to or prepared by City for Consultant, in connection with this Agreement. Such material may consist of photographs, computer software, video and audio tapes and other materials.

B. If Consultant materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City may:

1. Terminate the Agreement by notice to the Consultant specifying the termination effective date;

2. Retain, and/or recover from the Consultant at no additional cost to the City, the plans, specification, drawings, reports and other design documents and work products prepared by Consultant, whether or not completed;

3. Complete the unfinished Services itself or have the unfinished Services completed, and/or;

4. Charge Consultant, or deduct from monies that may be due or become due the Consultant under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Consultant had Consultant completed the Services in accordance with this Agreement.

17. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Consultant, and their successors. Except as otherwise provided herein, neither City nor Consultant may assign, sublet or transfer its interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

18. REPRESENTATIVES

A. City representative for purposes of this Agreement will be _____. Consultant representative for purposes of this Agreement will be _____. The parties' designated representative will be the primary contact person regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such a manner so as to achieve performance of the Services in a timely and expeditious fashion. Consultant shall not substitute or replace primary representative without approval of the City.

B. Notices:

Any written notice to Consultant shall be sent to:
_____
_____
_____

Any written notice to City shall be sent to:

_____
City of Healdsburg
401 Grove Street
Healdsburg, CA 95448

19. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency or difference in interpretation of terms arises as to terms or provisions of this Agreement and any Exhibit(s) attached to this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the Parties with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by a representative authorized to bind the Consultant and a representative authorized to bind the City.

20. CONFLICT OF INTEREST PROHIBITION

City and Consultant will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to the provisions of California Government Code Section 87300 and following, the Political Reform Act (California Government Code Section 81000 and following), the regulations promulgated by the Fair Political Practices Commission (Title 2, Section 18110 and following of the California Code of Regulations), California Government Code Section 1090 and following, and any other ethics laws applicable to the performance of the Services and/or this Agreement. Consultant may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services unless the City Clerk determines that completion of a Form 700 is not required, pursuant to the City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

The Consultant may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to the Consultant's obligations pursuant to this Agreement. The Consultant agrees to cooperate fully with the City and to provide any necessary and appropriate information requested by the City or any authorized representative concerning potential conflicts of interest or prohibitions concerning the Consultant's obligations pursuant to this Agreement.

Consultant may not employ any City official, officer or employee in the performance of the Services, nor may any official, officer or employee of the City have any financial interest in this Agreement that would violate California Government Code Section 1090 and following. Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code Section 1090 and following, the entire Agreement is void and Consultant will not be entitled to any compensation for Consultant's performance of the Services, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code Section 1090 may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by the Consultant of the requirements of this provision will constitute a material breach of this Agreement, and the City reserves all its rights and remedies at law and equity concerning any such violations.

21. APPLICABLE LAW AND VENUE

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is

initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Sonoma County.

22. RECOVERY OF ATTORNEY'S FEES

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

23. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will 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.

24. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

City

By: _____
David Mickaelian, City Manager

By: _____
Heather Ippoliti, Administrative Services Director/
Risk Manager

ATTEST:

By: _____
Raina Allan, Acting City Clerk

APPROVED AS TO FORM:

By: _____
Samantha W. Zutler, City Attorney

CONSULTANT

By: _____

Exhibits: Exhibit A – Consultant's Proposal