TOWN OF WINDSOR
PROFESSIONAL SERVICES AGREEMENT
WITH
Contractor/Vendor
Title of Agreement
Contract #Eden#

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into and effective as of _____, 20____ by and between the Town of Windsor, a municipal corporation ("Town") and **Consultant/Vendor** ("Consultant") (collectively, the "Parties").

WHEREAS, the Parties enter into this Agreement for the purpose of Consultant providing professional services to Town under the terms and conditions set forth herein.

THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **Services.** Consultant shall provide the professional services as described in and in accordance with the schedule set forth in Exhibit A, attached hereto and incorporated herein ("Services").

2. **Compensation.**

   A. For the full performance of the Services described in Exhibit A hereto Town shall compensate Consultant on a time-and-materials basis at the compensation rates specified in Consultant's Services Rate Schedule included in Exhibit A; provided, however, that total compensation for the full performance by Consultant of the Services shall not exceed **Alpha Amount** dollars (**$Numeric Amount**), said amount being referred to herein as the "not-to-exceed" amount.

   B. Consultant shall submit detailed monthly invoices reflecting all services performed during the preceding month, and including a revised schedule for performance and additional documentation requested by Town, as applicable.

   C. Consultant shall be compensated for services in addition to those described in Exhibit A, only if Consultant and Town execute a written amendment to this Agreement describing the additional services to be performed and the compensation to be paid for such services. In no case shall the total compensation under this Agreement exceed the "not-to-exceed" amount specified in Paragraph A, above, without prior written authorization of the Town Manager.

   D. Town's obligation to pay compensation to Consultant as provided herein is contingent upon Consultant's performance of the Services pursuant to the terms and conditions of this Agreement and any amendments thereto. Notwithstanding any other provision herein, Consultant shall not be paid any compensation until Consultant has complied with the Town's Business License Ordinance.

3. **Term.** The term of this Agreement commences on the Effective Date, and terminates on **Expiration Date**, unless sooner terminated in accordance with Section 4. Upon termination, any and all of Town's documents or materials provided to Consultant and any and all of the documents or materials prepared for Town or relating to the performance of the Services, shall be delivered to the Town as soon as possible, but not later than fourteen (14) days after termination of the Agreement.

4. **Termination**. Town may terminate this Agreement without cause upon ten (10) days' written notice. Town may immediately terminate or suspend this Agreement for cause. Cause for immediate termination or suspension shall include, but not be limited to, any breach of this Agreement by Consultant or Consultant's bankruptcy or insolvency. Upon receipt of notice of termination or suspension for cause, Consultant shall immediately stop all work in progress under this Agreement. In the event of early termination of this Agreement by Town, Consultant shall be entitled to payment for all Services performed to the date of termination to the extent such Services were performed to the satisfaction of Town in accordance with the terms and conditions of this Agreement. If Town terminates this Agreement for cause, Consultant shall be liable to Town for any excess cost Town incurs for completion of the Services.

5. **Consultant's Representation; Independent Contractor.** Consultant represents that Consultant possesses distinct skills in performing the Services. Town has relied upon said representation as a material inducement to enter into this Agreement. Consultant shall, therefore, provide properly skilled and technical personnel to perform all Services under this Agreement. It is expressly understood that Consultant, its agents and employees shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of Town. This Agreement shall not be construed as an agreement for employment.

6. **Facilities and Equipment.** Consultant shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing Services pursuant to this Agreement. Town shall furnish to Consultant no facilities or equipment, unless the Town otherwise agrees in writing to provide the same.

7. **Licenses, Permits, Etc.** Consultant shall, at Consultant's sole cost and expense, keep in effect and require its subcontractors, if any, to keep in effect at all times during the term of this Agreement any licenses, permits or other such approvals which are legally required for performing the Services.

8. **Time.** Consultant shall devote such time to the performance of the Services as may be reasonably necessary for satisfactory performance of Consultant's obligations pursuant to this Agreement.

9. **Inspection.** Consultant shall provide the Town every reasonable opportunity to ascertain that the Services are being performed in accordance with the requirements and intentions of this Agreement. All work done and materials furnished, if any, shall be subject to inspection and approval by the Town. The inspection of such work shall not relieve Consultant of any of its obligations pursuant to this Agreement.

10. **Progress Reports.** Upon the Town's request, Consultant shall provide, in a form acceptable to Town, written progress reports of all oral and written observations, opinions, recommendations, analyses, progress and conclusions related to Consultant's performance of the Services.

11. **Confidentiality**. In the course of providing services for Town, Consultant may have access to trade secrets and confidential information, disclosure of which is protected or limited by law. Consultant shall not directly or indirectly disclose or use any such confidential information, except as required for the performance of the Services.

12. **Conflict of Interest.** Consultant represents that it presently has no interest, and covenants that it shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services hereunder. Consultant further covenants that, in the performance of this Agreement, it shall not employ any subcontractor or person having such a conflict of interest. Consultant represents that no one who has or will have any financial interest under the Agreement is an officer or employee of Town. If such conflict of interest arises during this Agreement or any extension, Consultant will immediately advise Town and Town may, at its sole discretion, immediately terminate this Agreement.

13. **Consultant No Agent.** Except as Town may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Town in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Town to any obligation whatsoever.

14. **Standard of Performance.** Consultant shall perform all the Services in a manner consistent with the standards of Consultant's profession or, if no such professional standard, in a manner consistent with the standards applicable to said Consultant or type of work. All instruments of service of whatsoever nature, which Consultant delivers to Town pursuant to this Agreement, shall be prepared to comply and conform to the standards of Consultant's type of work. All such instruments of service shall become the sole and exclusive property of Town upon delivery of the same.

15. **Assignment/Transfer.** Consultant shall make no assignment or transfer in whole or in part of this Agreement shall be made without the prior written consent of Town.

16. **Subcontractors**. Consultant shall directly perform all Services, and shall not subcontract any portion of performance of the Services without the prior written consent of the Town. Any such subcontractors shall be required to comply, to the full extent applicable, with the terms and conditions of this Agreement. Upon execution of this Agreement, Consultant shall furnish a separate schedule of names and addresses of subcontractors, if any, and shall notify Town in advance if changes in subcontractors occur.

17. **Statement of Economic Interests.** The Town may determine that the Consultant must file a Form 700, Statement of Economic Interests, as required by the Town's Conflict of Interest Code. If such is the case, the Town Clerk's office will provide the Consultant with form and Consultant shall file form with the Town Clerk's office. Said filing shall

include an Assuming Office Statement within thirty (30) days of execution of this contract, annual statements on or before April 1 of each year, and a Leaving Office Statement within thirty (30) days after termination of this Agreement or any extensions thereto.

18. **Internal Revenue Service Form W-9.** The Town may determine that the Consultant must file an Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification, as required by the Town to comply with regulations of the United States Department of the Treasury. If such is the case, the Administrative Services Department shall provide the Consultant with the required form. Consultant shall complete and file the form with the Town before any payment for Services under this Agreement is rendered.

19. **Business License.** Consultant shall file and require all its sub consultants to file, a Business License Application as required by the Town and shall pay or cause to be paid the business license fee before any payment for Services under this Agreement is rendered.

20. **Compliance With All Laws.** Consultant and any subcontractors shall fully comply with all applicable local, state and federal rules, laws, regulations and ordinances pertaining to performance of the Services required hereunder, including the Americans with Disabilities Act and any copyright, patent or trademark law. To the extent that any other government agency or entity provides compensation for any Services, Consultant shall comply with all rules and regulations applicable to such fiscal assistance. Consultant's failure to comply with any law(s) or regulations(s) applicable to the performance of the Services hereunder shall, at the discretion of the Town, be deemed to constitute a breach of contract.

    Such laws include, but are not limited to, the California Prevailing Wage Law, California Labor Code section 1720 et seq. Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of section 1720(a)(1) of the California Labor Code. Therefore, the services described in Exhibit A shall be performed in accordance with all applicable requirements of the California Prevailing Wage Law including, but not limited to, all applicable requirements contained in Exhibit B, which is attached to and made a part of this Agreement. To the extent that any other government agency or entity provides compensation for any services, consultant shall comply with all rules and regulations applicable to such fiscal assistance.

21. **Discrimination.** During the performance of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, ancestry, gender, sexual orientation, age or physical or mental disability in violation of any applicable law.

22. **Notice.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written

notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

A. Personal delivery, in which case notice is effective upon delivery;

B. Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

C. Nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

D. Facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day; or

E. Email, deemed delivered upon transmittal.

Town: Department Director, Department Director
Town of Windsor
P.O. Box 100
Windsor, California 95492-0100
(707) 838-Phone extension
Group Email address
Project Manager: Project Manager Name

Consultant: Consultant Contact Name
Company Name
Mailing Address
Mailing City, State, Zip
Phone #
Email Address

23. **Ownership of Documents.** All original papers, documents or computer material on disk or microfilm, and copies thereof, produced as a result of this Agreement (collectively "Project Documents"), shall be the property of the Town and may not be used by Consultant without the written consent of Town. Consultant shall provide documents in electronic form in a format required by the Town. Copies of such documents or papers shall not be disclosed to others without the written consent of the Town Manager or his/her designated representative. Town agrees to indemnify and hold Consultant harmless for claims resulting from Town's alteration for another Town project, of said Project Documents.

24. **Internet-Ready Deliverables.** If applicable to this Agreement, each contract deliverable shall be delivered as a data file suitable for publication on the Internet. The following specifications define the formats that satisfy this requirement:

A. Brochures, reports, plan documents, catalogues, flyers with graphics included, and forms are to be formatted as screen-optimized ".pdf" files, if possible.

B. Freestanding, individual graphics such as logos, small maps and photos are to formatted as ".tif" files, with the largest side no larger than four inches.

C. Large maps are to be formatted as ".jpg" files with the largest side no larger than four inches, unless mutually agreed otherwise by the Parties.

D. Short text documents with no graphics are to be in MS Word 2016 or later.

E. Freestanding charts, graphs and listings are to be in MS Excel 2016 or later.

25. **Indemnification.** To the fullest extent allowed by law, Consultant shall indemnify, defend with counsel acceptable to Town, and hold harmless Town and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, suits, actions, arbitrations proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, 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 Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of Town.

A. The Consultant's obligation to defend and indemnify 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 liable to the claimant. The Consultant must respond within thirty (30) days to the tender of any claim for defense and indemnity by the Town, unless this time has been extended by the Town. If the Consultant fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the Town, may be retained by the Town until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first. Furthermore, Consultant and Subcontractors' obligations to indemnify and defend the Town are binding on their successors and assigns and shall survive the termination or completion of this Agreement for the fullest extent and duration allowed by law.

B. With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

C. Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

D. Notwithstanding the foregoing, to the extent that this Agreement includes design professional services under Civil Code Section 2782.8, as may be amended from time to time, such duties of Consultant to indemnify shall only be to the full extent permitted by Civil Code Section 2782.8.

E. 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. If any term of portion of this section is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, said section shall be interpreted to allow the broadest indemnity permitted by law.

26. **Insurance.** Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, Consultant's agents, representatives and employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

2. Insurance Services Office form number CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 (any auto), or code 8, 9 if no owned auto.

3. Workers' Compensation Insurance as required by the State of California and Employers' Liability Insurance. If no employees are utilized, the Consultant shall sign a declaration as described in California Health and Safety Code Section 19825.

4. Professional liability insurance appropriate to the Consultant's profession.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1. General Liability: $2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $2,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation: statutory limit; Employer's Liability: $1,000,000 per accident for bodily injury or disease.

4. Professional liability: $2,000,000 per occurrence or claim as approved by the Town's Risk Manager.

C. Umbrella or Excess Insurance. The limits of insurance required in this Agreement 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 the Town before the Town's insurance or self-insurance shall be called upon to protect it as a named insured.

D. Deductibles and Self-Insured Retention. Any deductibles or self-insured retentions must be declared to and approved by the Town and shall not reduce the limits of liability. Policies containing any self-insured retention provision shall provide or be endorsed to provide that the self-insured retention may be satisfied by either the named Insured or the Town. At the option of the Town, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officers, officials, employees and volunteers, or the Consultant shall provide a financial guarantee satisfactory to the Town guaranteeing payment of losses and related investigations, claim administration and defense expenses. The Town 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 to so exercise later.

E. Other Insurance Provisions.

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

a. The Town, its officers, officials, employees and volunteers (the "Additional Insureds") are to be covered as insureds as respects: liability arising out of work or operations as performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.

b. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it. The Additional Insured coverage under the Consultant's policy shall be at least as broad as ISO Form CG 20 01 04 13.

c. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either Party, unless thirty (30)

days prior written notice by certified mail, return receipt requested, has been given to the Town.

2. The Workers' Compensation endorsement shall contain a Waiver of Subrogation against the Town. The Consultant shall provide to the Town an endorsement from the Workers' Compensation insurer, if any, agreeing to waive all rights of subrogation against the Town for injuries to employees of the Insured resulting from work for the Town or use of the Town's premises or facilities.

3. 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 included above shall be available to the Town. 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 named insured; whichever is greater.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Town.

G. Verification of Coverage. Consultant shall furnish the Town with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Town or on other than the Town's forms provided those endorsements conform to the Town's requirements. All certificates and endorsements are to be received and approved by the Town before work commences. The Town reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

H. Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor prior to commencement of subcontractor's work. Consultant agrees to include with all subcontractors in their subcontract the same requirements stated herein including the indemnity and insurance requirements. Subcontractors hired by Consultant agree to be bound to Consultant and the Town in the same manner and to the same extent as Consultant is bound to Town under this Agreement. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of these indemnity and insurance provisions shall be furnished by Consultant to any subcontractor. The Consultant shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and Consultant shall maintain proof of compliance.

27. **Amendment**. This Agreement may be amended only by a written instrument executed by both Parties.

28. **Litigation**. If litigation ensues between Town and a third-party which pertains to the subject matter of Consultant's services hereunder, Consultant, upon request from Town, agrees to testify therein at a reasonable and customary fee.

29. **Construction**. This Agreement is the product of negotiation and compromise on the part of both Parties and that the Parties agree that, notwithstanding Civil Code Section 1654, any uncertainty in the Agreement shall not be construed against the drafter of the Agreement.

30. **Governing Law; Venue**. This Agreement shall be enforced and interpreted under the laws of the State of California and the Town of Windsor. Any action arising from or brought in connection with this Agreement shall be venued in a court of competent jurisdiction in the County of Sonoma, State of California.

31. **Non-Waiver**. The Town's failure to enforce any provision of this Agreement or the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.

32. **Severability**. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

33. **No Third Party Beneficiaries**. The Parties do not intend to create, and nothing in this Agreement shall be construed to create, any benefit or right in any third party.

34. **Mediation**. The Parties agree to make a good faith attempt to resolve any dispute arising out of this Agreement through mediation prior to commencing litigation. The Parties shall mutually agree upon the mediator and shall divide the costs of mediation equally.

35. **Consultant's Books and Records**.

    A. Consultant shall maintain any and all ledgers, books of accounts, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the Town for a minimum period of three (3) years or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement.

    B. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years or for any longer period required by law, from the date of termination or completion of this Agreement.

    C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the Town Manager, Town Attorney, Town

Administrative Services Director, or a designated representative of these officers. Copies of such documents shall be provided to the Town for inspection at Windsor Town Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Where Town has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, Town may, by written request by any of the above-named officers, require that custody of the records be given to the Town and that the records and documents be maintained by the Town. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor in interest.

36. **Headings**. The headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of any provisions herein.

37. **Survival**. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Town and Consultant shall survive the termination or completion of this Agreement for the fullest period of time allowed by law.

38. **Entire Agreement**. This Agreement, including the exhibits attached hereto and incorporated herein, constitutes the entire agreement between the Parties with respect to the Services, and supersedes all prior agreements or understandings, oral or written, between the Parties in this regard.

39. **Electronic Signatures**. This Agreement may be signed by an electronic signature as defined in California Civil Code Section 1633.2 unless, in the Town's discretion, the Town requires that it be signed by a digital signature that complies with the requirements of California Government Code Section 16.5 and its implementing regulations, as the same may be amended from time to time.

IN WITNESS WHEREOF, the Parties have executed this document to be effective as of the day, month and year first entered above.

Consultant

Consultant Name
Title

Consultant Name 2
Title 2

Town of Windsor

Ken MacNab
Town Manager

Recommended for Approval:

Jeneen Peterson
Administrative Services Director

Director Name
Department Director

Approved As to Form:

Jose M. Sanchez
Town Attorney

EXHIBIT A

SCOPE OF SERVICES AND SCHEDULE

EXHIBIT B

PROVISIONS REQUIRED FOR PUBLIC WORKS PROJECTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 ET SEQ.

HOURS OF WORK:

A. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Services shall constitute a legal day's work under this Agreement.

B. By signing this Agreement, Consultant agrees that Consultant is aware of the provision of California Labor Code section 3700 which requires every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of the California Labor Code, and that Consultant will comply with such provisions before commencing performance of the Services.

C. The Consultant and its sub consultants shall forfeit as a penalty to the Town $25 for each worker employed in the performance of the Services for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

A. The services of the Consultant shall be done on or in the execution of a "public works" project as defined by Law. In accordance with California Labor Code Section 1773.2, the Town has determined the general prevailing wages in the locality in which the Services are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file with the Town and shall be made available on request. The Consultant and sub consultants engaged in the performance of the Services shall pay no less than these rates to all persons engaged in performance of the Services. The Consultant shall be responsible for the compliance of its subcontractors.