CITY OF COTATI
STANDARD
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into and effective as of _____, 20__ ("Effective Date"), by and between the City of Cotati, a municipal corporation ("City") and _____("Consultant") (collectively, the "Parties").

WHEREAS, the Parties enter into this Agreement for the purpose of Consultant providing professional services to City 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 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 City shall compensate Consultant on a time-and-materials basis at the compensation rates specified in Consultant's Services Rate Schedule included as the last page of Exhibit A; provided, however, that total compensation for the full performance by Consultant of all Services under all Task Orders shall not exceed _____ dollars ($_____), 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 City, as applicable.

   C. Consultant shall be compensated for services in addition to those described in Exhibit A, only if Consultant and City 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 City Manager.

   D. City'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 City's Business Registration Ordinance.

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

4. **Termination.** City may terminate this Agreement without cause upon ten (10) days' written notice. City 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 City, 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 City in accordance with the terms and conditions of this Agreement. If City terminates this Agreement for cause, Consultant shall be liable to City for any excess cost City incurs for completion of the Services.

5. **Consultant's Representation; Independent Contractor.** Consultant represents that Consultant possesses distinct professional skills in performing the Services. City has relied upon said representation as a material inducement to enter into this Agreement. Consultant shall, therefore, provide properly skilled professional 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 City. 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. City shall furnish to Consultant no facilities or equipment, unless the City otherwise agrees in writing to provide the same.

7. **Licenses, Permits, Etc.** Consultant shall, at Consultant's sole cost and expense, 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 City 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 City. The inspection of such work shall not relieve Consultant of any of its obligations pursuant to this Agreement.

10. **Progress Reports.** Upon the City's request, Consultant shall provide, in a form acceptable to City, 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 City, 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 subconsultant 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 City. If such conflict of interest arises during this Agreement or any extension, Consultant will immediately advise City and City may, at its sole discretion, immediately terminate this Agreement.

13. **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.

14. **Standard of Performance.** Consultant shall perform all the Services in a manner consistent with the standards of Consultant's profession. All instruments of service of whatsoever nature, which Consultant delivers to City pursuant to this Agreement, shall be prepared in a substantial, first class and workmanlike manner and conform to the standards of Consultant's profession. All such instruments of service shall become the sole and exclusive property of City 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 City.

16. **Subconsultants.** Consultant shall directly perform all Services, and shall not subcontract any portion of performance of the Services without the prior written consent of the City. Any such subconsultants shall be required to comply, to the full extent applicable, with the terms and conditions of this Agreement, including but not limited to, procuring and maintaining insurance coverage as required herein and which shall name City as an additional insured.

17. **Business Registration.** Consultant shall file a Business License Application as required by the City. The Administrative Services Department shall provide the Consultant with the required form. Consultant shall complete and file the form with the City and shall

pay the business license fee before any payment for Services under this Agreement is rendered.

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

19. **Internal Revenue Service Form W-9.** Consultant must file an Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification, as required by the City 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 City before any payment for Services under this Agreement is rendered.

20. **Compliance With All Laws.** Consultant and any subconsultants 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 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; or

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.

City: Attn: _____
City of Cotati
201 West Sierra Avenue
Cotati, California 94931-4217

Consultant: Attn: _____
_____
_____
_____
Telephone:_____

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, shall be the property of the City and may not be used by Consultant without the written consent of City. Consultant shall provide documents in electronic form in a format required by the City. Copies of such documents or papers shall not be disclosed to others without the written consent of the City Manager or his or her designated representative.

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.

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

25. **Indemnification.** To the fullest extent allowed by law, Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City 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 City.

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 City, unless this time has been extended by the City. 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 City, may be retained by the City 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.

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.

Notwithstanding the forgoing, 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.

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.

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.

This obligation to defend and indemnify City set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination or completion of this Agreement or this section or final payment to the fullest extent and duration allowed by law.

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.

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. Errors and Omissions liability insurance appropriate to the Consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.

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. Employers Liability: $1,000,000 per accident for bodily injury or disease

4. Workers' Compensation, Statutory Limits: $1,000,000 per accident for bodily injury or disease.

5. Errors and Omissions liability: $1,000,000 per occurrence or claim as approved by the City's Administrative Services Director.

C. No Coverage Limitations or Restrictions. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the aforementioned specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insureds (defined below). 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.

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

E. Other Insurance Provisions. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers ("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.

2. The Additional Insured coverage under Consultant's policy shall be "primary and non-contributory" and 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.

3. 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 City.

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

5. 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 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 City as a named insured.

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 City.

G. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to the City's requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City 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. Subconsultants. Consultant agrees to include with all subconsultants in their subcontract the same requirements and provisions of this Agreement, including the indemnity and insurance requirements to the extent they apply to the scope of a subconsultant's work. Subconsultants hired by Consultant agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under this Agreement. Subconsultants shall further agree to include these same provisions with any sub-subconsultant. A copy of these indemnity and insurance provisions will be furnished by Consultant to a subconsultant on request. Consultant shall require all subconsultants to provide a valid certificate of insurance and the required endorsements included in their agreement prior to commencement of any work and Consultant shall provide proof of compliance to City.

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

28. **Litigation.** If litigation ensues between City and a third-party which pertains to the subject matter of Consultant's services hereunder, Consultant, upon request from City, 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 City of Cotati. 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 City'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 City 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 City Manager, City Attorney, City Finance Director, or a designated representative of these officers. Copies of such

documents shall be provided to the City for inspection at Cotati City 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 City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained by the City. 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 City and Consultant shall survive the termination of this Agreement.

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.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day, month and year first above written.

For City of Cotati:

_____
Damien O'Bid
City Manager

For Consultant:

_____
Name:
Title:
Taxpayer I.D. No.: _____

Recommended for Approval:

_____
Angela Courter
Director of Administrative Services

Recommended for Approval:

_____
Craig A. Scott
Public Works Director/City Engineer

Approved As to Form:

_____
John Bakker
City 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 subconsultants shall forfeit as a penalty to the City $50 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 City 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 City and shall be made available on request. The Consultant and subconsultants 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.