

## **AGREEMENT BETWEEN THE CITY OF FORTUNA AND CSG CONSULTANTS**

This Agreement is made and entered into effective on March 18, 2024, by and between the CITY OF FORTUNA, a California municipal corporation, (hereinafter referred to as “CITY”) and CSG CONSULTANTS (hereinafter referred to as “CONSULTANT”).

### **RECITALS**

WHEREAS, CITY desires to obtain consultant services from a qualified consultant to provide FRANCHISE AGREEMENT NEGOTIATION SUPPORT & SB 1383 COMPLIANCE ASSISTANCE.

WHEREAS, CONSULTANT warrants that it is specially trained, experienced, expert, and competent to perform such services and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of this Agreement, the terms and conditions hereinafter contained, it is mutually agreed as follows:

1. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY, services as requested by CITY as specifically set forth in Exhibit “A,” which is attached hereto and hereafter referred as “Franchise Agreement Negotiation Support & SB 1383 Compliance Assistance.”
2. Term of Agreement. This Agreement shall be effective from February 5, 2024, to July 1, 2024, subject to any earlier termination in accordance with this Agreement. Thereafter, this Agreement may be extended annually by mutual agreement of CITY and CONSULTANT pursuant to annual program budget as approved by City Council.
3. Compensation. CONSULTANT’S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be as follows: shall be at the rate and schedules attached hereto as Exhibit “A,” which are on a time and material basis and NOT TO EXCEED \$12,980.
4. Termination.
  - (a) This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the CITY upon written notice to the CONSULTANT upon thirty (30) day’s written notice. CONSULTANT may terminate this Agreement upon 60 days’ written notice.

(b) If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

(c) Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

(d) In the event termination is without cause, Consultant shall be entitled to any compensation owing it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination. Notice of termination shall be mailed as follows:

To the City:

City of Fortuna  
Attn: City Manager  
Merritt Perry  
621 11<sup>th</sup> Street  
Fortuna, CA 95540  
Email:  
mperry@ci.fortuna.ca

To the Consultant:

CSG Consultants, Inc.  
Attn: Cyrus Kianpour, President  
550 Pilgrim Drive  
Foster City, CA 94404  
Email: [Contracts@csgengr.com](mailto:Contracts@csgengr.com)

CC: Kathleen Gallagher, Principal  
Senior Sustainability Manager  
550 Pilgrim Drive  
Foster City, CA 94404  
Email: [kathleeng@csgengr.com](mailto:kathleeng@csgengr.com)

5. Indemnification. To the furthest extent allowed by law, CONSULTANT agrees to indemnify, including the cost to defend, City and each of its officers, officials, employees, agents, and volunteers from and against all claims, demands, costs, or liability, and expenses including attorney's fees arising out of the performance of the work described in this Agreement, caused in whole or in part by the sole negligence, recklessness, or willful misconduct of CONSULTANT, its principals, officers, employees, agents, or volunteers in the performance of this Agreement or anyone for whose acts any of them may be liable excluding, however, such claims, demands, loss, damages, or arising from City's sole negligence or willful acts.

6. Insurance.
  - (a) Throughout the life of this Agreement, CONSULTANT shall pay for, maintain in full force, and effect all insurance as required in Exhibit "C" or as may be authorized, and any additional insurance as may be required, in writing by City Manager or his or her designee at any time and in her sole discretion.
  - (b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. This phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.
7. Nondiscrimination. To the extent required by controlling federal, state, and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era.
8. Independent Contractor. In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venture, partner, or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.
9. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of mailing thereof.
10. Assignment. This agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights of obligations under this Agreement without the prior written approval of the City Manager or her designee.
11. Compliance with Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California, and CITY, and with all applicable regulations promulgated by federal,

state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

12. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
13. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.
14. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.
15. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.
16. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.
17. Attorneys' Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.
18. Exhibits. Each exhibit and attachment referenced in this Agreement is, by reference, incorporated into and made a part of this Agreement.
19. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be invalid.
20. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

21. No Third-Party Beneficiaries. The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

CITY OF FORTUNA

CSG CONSULTANTS

\_\_\_\_\_  
Merritt Perry, City Manager

Date: \_\_\_\_\_, 2024

\_\_\_\_\_  
Cyrus Kianpour,

President

Date: \_\_\_\_\_, 2024

\_\_\_\_\_

Exhibit 'A'

**SCOPE OF SERVICES**

Tasks		Senior Sustainability Manager \$200 per Hour
	Hours	Cost
<b>Task 1: Provide Technical Assistance in Franchise Agreement Negotiation meetings to ensure City's Franchise Agreement includes SB 1383 compliant programs, industry standards and City priorities.</b>	36	\$7,200
<b>Task 2: Complete analysis of Recology's comprehensive cost proposal to the City of Fortuna for the new and existing services to establish new cost baseline in collaboration with Chris Bell &amp; Associates upon conclusion of franchise agreement negotiations</b>	18	\$3,600
<b>Task 3: Complete draft staff report and supporting documentation for presentation to City Council for approval of new franchise agreement</b>	3	\$600
<b>Task 4: Complete analysis of new SB 1383 fee in franchise agreement to provide the City with a sustainable revenue stream for SB 1383 programs</b>	2	\$400
		\$11,800
<b>Task 5: Provide on call, as needed technical assistance, at the direction of City Manager on a time and materials basis at \$200/hr.</b>	As Needed	As Needed
<b>10% contingency</b>		\$1,180
<b>Total Cost:</b>		<b>\$12,980</b>

Exhibit 'C'

**INSURANCE REQUIREMENTS**

CONSULTANT shall procure and maintain for the duration of the contract 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, its agents, representatives, or employees.

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury, and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, 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: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONSULTANT has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.  
*(Not required if CONSULTANT provides written verification, it has no employees)*
- 4 Professional Liability (Errors and Omissions) Insurance appropriate to the CONSULTANT's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONSULTANT maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

**Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

*Additional Insured Status* The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to

the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

*Primary Coverage* For any claims related to this contract, the CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be in excess of the CONSULTANT's insurance and shall not contribute to it.

*Notice of Cancellation* Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Entity.

*Waiver of Subrogation* CONSULTANT hereby grants to CITY a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

*Deductibles and Self-Insured Retentions* Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require the CONSULTANT to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

*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.

*Claims Made Policies* If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work.*
3. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, the CONSULTANT must purchase "extended reporting" coverage for a minimum of *five (5) years* after completion of contract work.

*Verification of Coverage* CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.



*Subcontractors* CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONSULTANT shall ensure that CITY is an additional insured on insurance required from subcontractors.

*Special Risks or Circumstances* CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.