

Professional Services Agreement With
WILLDAN ENGINEERING
For **SIDEWALK VENDING CODE ENFORCEMENT**

THIS AGREEMENT for professional services is made by and between the City of Santa Cruz (“City”) and WILLDAN ENGINEERING (“Consultant”) (each is referred to individually as a “Party” and collectively, as the “Parties”) as of May 1, 2024 (the “Effective Date”).

NOW, THEREFORE, in consideration of each other’s mutual promises, the Parties hereto agree as follows:

SECTION 1: SCOPE OF WORK

Consultant will furnish services as defined and described in the Scope of Work, attached hereto as Exhibit A and incorporated herein.

SECTION 2: RESPONSIBILITIES OF CONSULTANT

All work performed by Consultant, or under Consultant’s direction, shall be rendered in accordance with the generally accepted practices, and to the standards of, Consultant's profession. Consultant represents and agrees that Consultant: (i) is fully experienced and properly qualified to perform the work and services provided for herein, (ii) has the financial capability required for the performance of the work and services, and (iii) is properly equipped and organized to perform the work and services in a competent, timely, and workmanlike/professional manner, in accordance with the requirements of this Agreement.

Consultant shall not undertake any work beyond the **Scope of Work** set forth in **Exhibit A** unless such additional work is approved in advance and in writing by City. The cost of such additional work shall be reimbursed to Consultant by City on the same basis as provided for in Section 4.

If, in performing the work, it is necessary to conduct field operations, security and safety of the job site will be the Consultant's responsibility excluding, the security and safety of any facility of City within the job site which is not under the Consultant's control.

Consultant shall meet with LEE BUTLER, Director of the PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT, hereinafter called "Director", or other designated and authorized City personnel, or third parties as necessary, on all matters connected with carrying out of Consultant’s services described in Exhibit A. Such meetings shall be held at the request of either Party. Review and City approval of completed work shall be obtained monthly, or at other intervals as may be mutually agreed upon during the course of this Agreement. Review, approval, or acceptance of Consultant’s work by City or others shall not relieve Consultant from responsibility for errors and omissions in Consultant’s work.

SECTION 3: RESPONSIBILITIES OF THE CITY

City shall make available to Consultant all necessary data and information in the City's possession and shall actively assist Consultant in obtaining such information from other agencies and individuals as needed. Consultant is entitled to reasonably rely upon the accuracy and completeness of such data and information, and Consultant shall provide City prompt written notice of any known defects in such data and information.

The Director may authorize a staff person to serve as his or her representative. The work in progress shall be reviewed at such intervals as may be mutually agreed upon between the Parties. The City will be the sole judge of acceptable work, provided that such approval will not be unreasonably withheld or delayed. If the work is not acceptable, City will inform Consultant of the changes or revisions necessary to secure approval.

SECTION 4: FEES AND PAYMENT

For services actually performed, the City will compensate Consultant at the rates set forth in the **Fee Schedule** detailed in **Exhibit B** and in accordance with the terms set forth therein. Payment for Consultant's services in carrying out the entire Scope of Work shall be made within the budget limit, or limits shown, upon Exhibit B. Markups shall not be charged for any approved sub-consultants or subcontractors.

Consultant agrees that the payments to Consultant specified in this Section 4 will constitute full and complete compensation for all obligations assumed by Consultant under this Agreement. Such payments shall be considered the full compensation for all personnel, materials, supplies, and equipment used by Consultant in the Scope of Work Where conflicts regarding compensation may occur, the provisions of this section apply.

Variations from the budget for each task which are justified by statements indicating personnel time expended and submittal of a revised budget are only allowed with prior City approval; however, in no event shall the total fee charged for the Scope of Work set forth in Exhibit A exceed the budget of **\$120,000** without advance written City authorization in the form of an amendment or change order.

Invoices shall detail the time worked by each class of employee on each task and the expenses incurred for which billing is made. Unless otherwise specified in the fee schedule, payments shall be made monthly by the City within 30 days based on itemized invoices from the Consultant which list the actual costs and expenses.

All invoices shall contain the following affidavit signed by Consultant (if individual) or by an authorized representative of Consultant (if Consultant is an entity):

"I hereby certify [or as an authorized representative of Consultant] that the charge of (Insert invoice amount) as summarized above and shown in detail on the attachments is in accordance with the terms of Agreement dated (Insert Agreement Date), and has not been previously paid."

This Agreement is contingent upon the appropriation of sufficient funding by the City for the services covered by this Agreement. If funding is reduced or deleted by the City for the services covered by this Agreement, the City has the option without penalty or liability to either terminate this Agreement or to offer an amendment to this Agreement indicating the reduced amount.

SECTION 5: TRAVEL REIMBURSEMENT POLICY

The City shall not be responsible for any travel, meal, or lodging reimbursements to Consultant and/or Consultant's employees.

SECTION 6: CHANGES IN WORK

City may negotiate changes in the Scope of Work. No changes in the Scope of Work shall be made without the written approval of City and Consultant. Any change requiring compensation in excess of the sum specified in Exhibit B shall be approved in advance in writing by the City. Only City's authorized representative(s) is authorized to approve changes to this Agreement on behalf of City.

SECTION 7: TERM AND SCHEDULE

The term of this Agreement shall be for 12 months beginning on the Effective Date of this Agreement and terminating on May 1, 2025. At the option of the City, this Agreement may be renewed annually under the same contractual terms and conditions by letter agreement.

Consultant shall begin work as specified in a written authorization (e.g., Notice to Proceed) to perform services. The written authorization to perform work shall not be issued until after this Agreement has been approved and authorized by the City.

Neither party will be held responsible for delay or default caused by declared emergencies, natural disasters, or any Force Majeure event which is beyond the party's reasonable control. Consultant will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations in this Agreement.

The City reserves the right to obtain the item(s) and/or services covered by this Agreement from another source during any on-going suspension of service due to the circumstances outlined above.

The Parties agree that time is of the essence in the performance of this Agreement.

SECTION 8: TERMINATION

The City may terminate the Agreement for any reason by providing written notice to Consultant not less than 10 calendar days prior to an effective termination date.

The City may, at its option, allow Consultant to cure its failure to perform within 10 business days (or longer period authorized in writing by the City) from the date of the City's termination notice. The termination shall become effective if Consultant has not cured within the specified time period to the City's satisfaction.

Consultant may terminate this Agreement for cause if the City fails to cure a material default in performance within a period of 30 calendar days (or such longer period agreed to by the Consultant), from the date of the Consultant's written termination notice specifying the default in performance. Consultant must provide a written notice of termination to the City not less than 30 calendar days of the effective termination date.

Upon notice of termination by either the City or Consultant, the Consultant will immediately act to not incur any additional obligations, costs or expenses, except as may be reasonably necessary to terminate its activities. The City's only obligation to the Consultant will be just and equitable payment for services authorized by, and received to the satisfaction of, the City up to and including the effective date of termination less any amounts withheld. All finished or unfinished work or documents procured or produced under the Agreement will become property of the City upon the termination date. In the event of Consultant's failure to perform pursuant to the Agreement, the City reserves the right to obtain services elsewhere and Consultant will be liable for the difference between the prices set forth in the terminated Agreement and the actual cost to the City. Termination of the Agreement pursuant to this paragraph shall not relieve the Consultant of any liability to City for additional costs, expenses, or damages sustained by City due to failure of the Consultant to perform pursuant to the Agreement. City may withhold any payments to Consultant for the purpose of set-off until such time as the exact amount of damages due City from Consultant is determined. After the effective date of termination, Consultant will have no further claims against the City under the Agreement. No other compensation will be payable for anticipated profit on unperformed services.

SECTION 9: INSURANCE

Prior to the beginning of and throughout the duration of the Agreement, Consultant will maintain and comply with the **Insurance Requirements** as set forth in **Exhibit C**. Consultant will insure the City against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder. The insurance coverages required shall not in any way limit the liability of the Consultant.

SECTION 10: INDEMNIFICATION

Consultant agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents, and volunteers (collectively, "Indemnitees") from and against any and all liability, claim, action, loss, injury, damage, judgment, or expense, including attorneys' fees and costs ("Losses") caused by or resulting from the negligence, recklessness, or willful misconduct of Consultant, Consultant's officers, employees, agents, or subcontractors in any way related to this Agreement. Consultant's duty to indemnify and hold harmless Indemnitees shall not apply to the extent such Losses are caused by the sole or active negligence or willful misconduct of Indemnitees. Consultant's obligation to defend shall arise regardless of any claim or assertion that Indemnitees caused or contributed to the Losses.

In the event this Agreement involves the performance of design professional services by Consultant, Consultant's officers, employees, agents, or subcontractors, Consultant's costs to defend Indemnitees shall not exceed the Consultant's proportionate percentage of fault per Civil Code §2782.8. This section shall survive the termination or expiration of this Agreement.

SECTION 11: EQUAL EMPLOYMENT OPPORTUNITY/NON-DISCRIMINATION POLICIES

City's policies promote a working environment free from abusive conduct, discrimination, harassment, and retaliation; and require equal opportunity in employment for all regardless of race, religious creed (including religious dress and grooming practices), color, national origin (including language use restrictions), ancestry, religion, disability (mental and physical), medical condition, sex, gender (including gender identity and gender expression), physical characteristics, marital status, age, sexual orientation, genetic information (including family health history and genetic test results), organizational affiliation, and military or veteran status, or any other consideration made unlawful by local, State or Federal law. City requires Consultant to comply with all applicable Federal and State and local equal employment opportunity laws and regulations, and Consultant is responsible for ensuring that effective policies and procedures concerning the prevention of abusive conduct, discrimination, harassment, and retaliation exist in Consultant's business organization. The City's current Equal Employment Opportunity and Non-Discrimination policies to which this Section applies may be viewed at <http://www.codepublishing.com/CA/SantaCruz/?SantaCruz09/SantaCruz0983.html> and <http://www.cityofsantacruz.com/home/showdocument?id=59192>.

SECTION 12: LEGAL ACTION/ATTORNEYS' FEES

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief. The laws of the State of California, with jurisdiction in the Santa Cruz County Superior Court, shall govern all matters relating to the validity, interpretation, and effect of this Agreement and any authorized or alleged changes, the performance of any of its terms, as well as the rights and obligations of Consultant and the City.

SECTION 13: AMENDMENTS

This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the City and Consultant. Consultant acknowledges that no such amendment shall be effective until approved and authorized by the City's authorized representative. No representative of the City is authorized to obligate the City to pay the cost or value of services beyond the scope of services set forth in Exhibit A. Such authority is retained solely by the City Manager, Director, or their designee. Unless expressly authorized by the City Manager or Director, Consultant's compensation shall be limited to that set forth in Exhibit B, Fee Schedule.

SECTION 14: MISCELLANEOUS PROVISIONS

1. Project Manager/Key Staff. Director reserves the right to evaluate and confer with Consultant regarding the project manager or other key staff assigned by Consultant to perform the work under this Agreement. Consultant shall

replace the project manager or key staff upon Director's request due to Director's concern about their performance. Otherwise, no change in assignment by the Consultant may occur without prior written approval of the City.

2. Consultant Services Only. Consultant is employed to render professional services only and any payments made to Consultant are compensation solely for such professional services.
3. Independent Contractor. In the performance of this Agreement, it is expressly understood that Consultant, including each of Consultant's employees, agents, subcontractors or others under Consultant's supervision or control, is an independent contractor solely responsible for its own acts and omissions, and shall not be considered an employee of the City for any purpose. Consultant agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, and agents against any claim or liability, including attorneys' fees and costs, arising in any manner related to this Agreement that an employee, agent or others under Consultant's supervision or control was misclassified.

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.

4. Consultant Not an 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.
5. Subcontractors. Consultant shall obtain prior approval of the City prior to subcontracting of any work pursuant to this Agreement. If at any time, the City determines any subcontractor is incompetent or unqualified, Consultant will be notified and will be expected to immediately cancel the subcontract. Consultant shall require and verify that all subcontractors maintain insurance meeting all of the requirements stated herein, including naming the City of Santa Cruz, its officers, officials, employees, agents, and volunteers as additional insureds. Any modification to the insurance requirements for subcontractors must be agreed to by the City in writing.

Consultant shall be as fully responsible to the City for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, or acting on Consultant's behalf pursuant to this Agreement, as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultants is an independent obligation from the City's obligation to make payments to the Consultant.

6. Assignment. This Agreement shall not be assigned without first obtaining the express written consent of the Director or after approval of the City Council. Neither party may assign this Agreement unless this Agreement is amended in accordance with its terms.
7. Conflicts of Interest. Consultant agrees to comply with conflict of interest laws in performing the work and services under this Agreement. Consultant covenants (on behalf of Consultant and Consultant's employees, agents, representatives, and subcontractors) that there is no direct or indirect interest, financial or otherwise, which would conflict in any manner or degree with the performance of services required under this Agreement. Consultant acknowledges and agrees to comply with applicable provisions of conflict of interest law and regulations, including the CA Political Reform Act, Sections 1090 and 87100 of the Government Code, and the City's conflict of interest code. Consultant will immediately advise City if Consultant learns of a conflicting financial interest of Consultant during the term of this Agreement.

8. City Property. The work, or any portion, of Consultant in performing this Agreement shall become the property of City. The Consultant may be permitted to retain copies of such work for information and reference in connection only with the provision of services for the City. All materials and work product, whether finished or unfinished, shall be delivered to City upon completion of contract services or termination of this Agreement for any reason. Consultant acknowledges and agrees that the work product shall be considered a work made for hire within the meaning of the patent and copyright laws of the United States; and Consultant agrees that all copyrights which arise from creation of project-related documents and materials pursuant to this Agreement shall be vested in the City and Consultant waives and relinquishes all claims to copyright or other intellectual property rights in favor of City. Any work product related to this Agreement shall be confidential, not to be used by the Consultant on other projects or disclosed to any third party, except by agreement in writing by the City, or except as otherwise provided herein. Consultant's final deliverables shall comply with Section 508 (29 U.S.C. Section 794d) accessibility requirements, as applicable.
9. Intellectual Property and Indemnity. Consultant represents to City that, to the best of Consultant's knowledge, any Intellectual Property (including but not limited to: patent, patent application, trade secret, copyright and any applications or right to apply for registration, computer software programs or applications, tangible or intangible proprietary information, or any other intellectual property right) in connection with any services and/or products related to this Agreement does not violate or infringe upon any Intellectual Property rights of any other person or entity.

To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless City, its officials, officers, employees, and agents, from any and all claims, demands, actions, liabilities, damages, or expenses (including reasonable attorneys' fees and costs) arising out of a claim of infringement, actual or alleged, direct or contributory, of any Intellectual Property rights in any way related to Consultant's performance under this Agreement or to the City's authorized intended or actual use of Consultant's product or service under this Agreement. This provision shall survive termination or expiration of this Agreement.

If any product or service becomes, or in the Consultant's opinion is likely to become, the subject of a claim of infringement, the Consultant shall, at its sole expense: (i) provide the City the right to continue using the product or service; or (ii) replace or modify the product or service so that it becomes non-infringing; or (iii) if none of the foregoing alternatives are possible even after Consultant's commercially reasonable efforts, in addition to other available legal remedies, City will have the right to return the product or service and receive a full or partial refund of an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which may be due to the Consultant. City shall have the right to retrieve its data and proprietary information at no charge prior to any return of the product or termination of service.

10. Confidentiality.
- a. Consultant shall not acquire any ownership interest in data and information ("City Data") received by Consultant from City, which shall remain the property of the City. Certain information may be considered confidential ("Confidential Information"). Confidential Information shall mean all information or proprietary materials (in every form and media) not generally known to the public and which has been or is hereafter disclosed or made available directly or indirectly to Consultant through any means of communication, either verbally or in writing even if it has not been designated in writing as "Confidential" to Consultant in connection with this Agreement. Unless otherwise required by law, Consultant shall not, without City's written permission, use or disclose City Data and/or Confidential Information other than in the performance of the obligations under this Agreement. As between Consultant and City, all City Confidential Information shall remain the property of the City. Consultant shall not acquire ownership interest in the City's Confidential Information.

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- b. Consultant shall be responsible for ensuring and maintaining the security and confidentiality of City Data and Confidential Information, protect against any anticipated threats or hazards to the security or integrity of City Data and Confidential Information, protect against unauthorized access to or use of City Data and Confidential Information that could result in substantial harm or inconvenience to City or any end users; and ensure the proper return and/or disposal of City Data and Confidential Information upon termination of this Agreement with notice to the City.
- c. Consultant shall take appropriate action to address any incident of unauthorized access to City Data and Confidential Information, including addressing and/or remedying the issue that resulted in such unauthorized access, notifying City as soon as possible of any incident of unauthorized access to City Data and Confidential Information, or any other breach in Consultant's security that materially affects City or end users; and be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality provisions hereof. Should confidential and/or legally protected City Data be divulged to unauthorized third parties, Consultant shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code sections 1798.29 and 1798.82 at Consultant's sole expense. Consultant shall not charge City for any expenses associated with Consultant's compliance with these obligations.
- d. Consultant shall defend, indemnify and hold harmless City, its officials, officers, employees and agents against any claim, liability, loss, injury or damage (including attorneys' fee and costs) arising out of, or in connection with, the unauthorized use, access, and/or disclosure of City Data and/or Confidential Information by Consultant and/or its agents, employees or subcontractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of the City. This provision shall survive the termination or expiration of this Agreement.
11. Consultant's Records/Audits. Consultant shall maintain accurate accounting records and other written documentation pertaining to the costs incurred relating to this Agreement for examination and audit by the City, State, or federal government, as applicable, in compliance with Gov. Code §8546.7 for a contract in excess of \$10,000, or in compliance with other applicable federal laws (e.g. 48 CFR 31) or regulations for a period of three (3) years from: the date of the final City payment for Consultant's services, or from the date of final disposition of real property or equipment acquired with federal funds, or date of the termination of this Agreement, whichever is later. If Consultant engages a subcontractor to perform work related to this Agreement with a cost of \$10,000 or more over a 12-month period, such subcontract shall contain these same requirements. This provision shall survive the termination of this Agreement.
12. California Public Records Act. City is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Consultant's proprietary information is contained in documents or information submitted to City, and Consultant claims that such information falls within one or more CPRA exemptions, Consultant must clearly mark such information "Confidential and Proprietary," and identify the specific lines containing the information. In the event of a request for such information, City will make best efforts to provide notice to Consultant prior to such disclosure. If Consultant contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief, or other appropriate remedy from a court of law in Santa Cruz County before the City is required to respond to the CPRA request. If Consultant fails to obtain such remedy within the time the City is required to respond to the CPRA request, City may disclose the requested information without any liability. Consultant further agrees that it shall defend, indemnify and hold City harmless against any claim, action or litigation (including but not limited to all judgments, costs, and attorney's fees) that may result from denial by City of a CPRA request for information arising from any representation, or any action (or inaction), by the Consultant.

13. Compliance with Laws. All activities of Consultant, its employees, subcontractors and/or agents will be carried out in compliance with all applicable federal, state, and local laws and regulations. Consultant further agrees to comply with the covenant of good faith and fair dealing and other provisions of Santa Cruz Municipal Ordinance chapter 3.09, or otherwise Consultant may be subject to penalties including being declared an irresponsible contractor.
14. Licensure. Consultant agrees that Consultant, its subcontractors and/or agents (if any) has/have complied with all applicable federal, state, and local licensing requirements and agrees to provide proof of a current City of Santa Cruz Business Tax Certificate if:
- Consultant, its subcontractor(s) and agent(s) or its business is/are located in the City of Santa Cruz;
 - Will perform actual work in the City of Santa Cruz for 6 or more days annually; or
 - Will use company vehicles to deliver within the City of Santa Cruz for 6 or more days annually.
- For additional information and licensing requirements, view the City's [Business Licenses and Permits webpage](#) or call the Revenue and Taxation division at 831/420-5070.
15. Living Wage. Every contract for services to the City for \$10,000 or more, is subject to City of Santa Cruz Living Wage Ordinance number 2000-25. If applicable, Consultant agrees to comply with the requirements of the Living Wage ordinance as provided in Santa Cruz Municipal Code Chapter 5.10.
16. Prevailing Wages for Public Work. To the extent that the work or services to be performed under this Agreement may be considered a "public work" (construction, alteration, demolition, or repair work) pursuant and subject to Labor Code section 1720 *et seq.*, Consultant (and any subconsultant performing the work or services) shall conform to any and all prevailing wage requirements applicable to such work/and or services under this Agreement. Consultant (and any subconsultant) shall adhere to the prevailing wage determinations made by the Director of Industrial Relations (DIR) pursuant to California Labor Code Part 7, Chapter 1, Article 2, applicable to the work, if any. All workers employed in the execution of a public works contract (as such term is defined California Labor Code section 1720 *et seq.* and section 1782(d)(1)) must be paid not less than the specified prevailing wage rates for the type of work performed. (CA Labor Code sections 1720, 1774 and 1782.) To the extent applicable to the scope of work and services under this Agreement, Consultant agrees to be bound by the state prevailing wage requirements, including, but not limited to, the following:
- a. If a worker is paid less than the applicable prevailing wage rate owed for a calendar day (or any portion thereof), Consultant shall pay the worker the difference between the prevailing wage rate and the amount actually paid for each calendar day (or portion thereof) for which the worker(s) was paid less than the prevailing wage rate, as specified in Labor Code section 1775;
 - b. Consultant shall maintain and make available payroll and worker records in accordance with Labor Code sections 1776 and 1812;
 - c. If Consultant employs (and/or is legally required to employ) apprentices in performing the work and/or services under this Agreement, Consultant shall ensure compliance with Labor Code section 1777.5;
 - d. Consultant is aware of the limitations imposed on overtime work by Labor Code sections 1810 *et seq.* and shall be responsible for any penalties levied in accordance with Labor Code section 1813 for failing to pay required overtime wages;
 - e. Consultant shall post a copy of the applicable wage rates at each jobsite at a location readily available to its workers.

- f. Any failure of Consultant and/or its subconsultant to comply with the above requirements relating to a public work project shall constitute a breach of this Agreement that excuses the City's performance of this Agreement at the City's sole and absolute option and shall be at the sole risk of Consultant. Consultant on behalf of itself and any subconsultant, agree to indemnify, defend and hold harmless the City and its officials, officers, employees, and agents from and against any and all claims, liabilities, losses, costs, expenses, attorney's fees, damages, expenses, fines, financial consequences, interest, and penalties, of any kind or nature, arising from or relating to any failure (or alleged failure) of the Consultant and any subconsultant to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law relating to a public work.
- g. Consultant acknowledges that it and/or any subconsultant may not engage in the performance of any contract for public work unless currently registered with the DIR and qualified to perform public work pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
17. Storm Water Requirements. To the extent applicable to the Scope of Work under this Agreement, Consultant, Consultant's employees, subcontractors, and agents are required to abide by the applicable City of Santa Cruz Storm Water Best Management Practices (BMPs) for the duration of the work. The City's mandatory Storm Water BMPs, which are listed according to the type of work, operations, or business, are located on the City website at: <https://www.cityofsantacruz.com/government/city-departments/public-works/stormwater/best-management-practices>
18. Dispute Resolution. The Parties agree to attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Either party may initiate negotiations by providing written notice in letter form to the other party, setting forth the subject of the dispute and the relief requested. Promptly upon such notification, the Parties shall meet at a mutually agreeable time and place in order to exchange relevant information and perspective, and to attempt to resolve the dispute. In the event that no resolution is achieved, and if, but only if, the parties mutually agree, then prior to pursuing formal legal action, the parties shall make a good faith effort to resolve the dispute by non-binding mediation or negotiations between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute. To the extent that the dispute involves or relates to a public works project, the Parties agree to attempt to resolve the dispute by complying with the claims process as set forth in Public Contract Code sections 9204(e), 20104-20104.6, but without waiving the requirements of the California Tort Claims Act, Gov't Code section 800 et seq. unless otherwise agreed to by the Parties.
19. Force Majeure. Neither party hereto shall be considered in default in the performance of its obligation hereunder to the extent that the performance of any such obligation is prevented or delayed by an act of God, natural disaster, pandemic, acts of terrorism, war, a strike, lockout or other labor difficulty, or other peril, which is beyond the reasonable control of the affected party and without the negligence of the respective Parties. Each party hereto shall give notice promptly to the other of the nature and extent of any Force Majeure claimed to delay, hinder or prevent performance of the services under this Agreement. Each Party will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations in this Agreement. In the event either party is prevented or delayed in the performance of its respective obligation by reason of such Force Majeure, the only remedy is that there may be an equitable adjustment of the schedule based on City's sole discretion.
20. Complete Agreement. This Agreement, along with any attachments, is the full and complete integration of the Parties' agreement with respect to the matters addressed herein, and that this Agreement supersedes any previous written or oral agreements between the Parties with respect to the matters addressed herein. Unless otherwise stated,

to the extent there is any conflict between this Agreement and any other agreement (written or oral), the terms of this Agreement shall control.

- 21. Severability. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.
- 22. Waiver. Waiver by any party of any portion of this Agreement shall not constitute a waiver of the same or any other portion hereof.
- 23. Governing Law. This Agreement shall be governed by and interpreted in accordance with California law.
- 24. Contract Interpretation. Each party acknowledges that it has reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- 25. MacBride Principles/Peace Charter. City of Santa Cruz Resolution NS-19,378 (7/24/90) encourages all companies doing business in Northern Ireland to abide by the MacBride Principles and Peace Charter.
- 26. Notices. If either party shall desire or is required to give notice to the other such notice shall be given in writing, via email, and concurrently delivered by: (a) personal delivery, in which case notice is effective upon delivery; (b) overnight courier (i.e., Federal Express) with charges prepaid or charged to the sender’s account, in which case notice is effective when delivered; (c) priority U.S. Mail, in which case notice shall be deemed delivered on the second business day after the deposit thereof with the U.S. Postal Service. Notices shall be addressed to recipient as follows:

To CITY:
 Planning and Community
 Development Department
 Viviane Pearson
 809 Center Street, Room 101, Santa
 Cruz, CA 95060
 vpearson@santacruzaca.gov
 831-420-5245

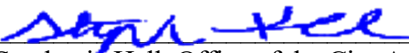
To CONSULTANT:
 Willdan Engineering
 Albert Brady
 2401 E. Katella Ave, Suite 300, Anaheim, CA
 92806
 abrady@willdan.com
 951-454-3539

Changes to the above information shall be given to the other party in writing ten (10) business days before the change is effective.

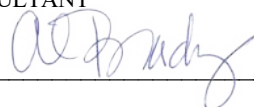
- 27. Counterparts. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be deemed an original but all of which, together, shall constitute one and the same instrument. A scanned, electronic, facsimile or other copy of a party’s signature shall be accepted and valid as an original.
- 28. Warranty of Authority. The signatories to this Agreement warrant and represent that each is authorized to execute this Agreement and that their respective signatures serve to legally obligate their respective representatives, agents, successors and assigns to comply with the provisions of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

Approved As To Form:


By:  Date: April 10, 2024
 Stephanie Hall, Office of the City Attorney

CONSULTANT

By:  Date: April 11, 2024
 Printed: Al Brady Title: Deputy Director of Building & Safety

By: _____ Date: _____
 Printed: _____ Title: _____

CITY OF SANTA CRUZ

By:  Date: 5/1/2024
 Matt Huffaker, City Manager

Signature Requirements for Business Entity:

- a. Corporation – 2 officer signatures required (one from each group, unless person signing holds officer positions in both Group 1 and 2):
 - Group 1: Chief Executive Officer, Chairman of the Board, President, or Vice President
 - Group 2: Secretary, Assistant Secretary, Chief Financial Officer, Treasurer, Assistant Treasurer
 - b. Partnership - Signature of General Partner, or signature of partner who is authorized to execute documents per the Certificate of Partnership. If authorized partner is a corporation, follow Corporation signature requirement.
 - c. LLC- For a member-managed LLC, signature of any member. For a manager-managed LLC, signature of the manager. If the LLC has corporate officer designations, follow Corporation signature requirement.
- See, City’s Signature Requirements for Business Entities for more information.

EXHIBIT A: SCOPE OF WORK

The Consultant shall perform all necessary aspects to complete the scope of work described herein. Dedicated code enforcement officer(s) will be provided to the City of Santa Cruz on a regular schedule accepted by the City to perform Code Enforcement duties, as further provided herein. Code enforcement officers shall also be made available by phone or email for requests for information in response to technical questions from City staff within one business day.

Task 1 – Enforcement of SCMC 5.82 and SB 946

At a minimum, Consultant shall provide:

- A. Enforcement of all applicable California legislation related to Senate Bill (SB) 946 Sidewalk Vendors.
- B. Enforcement of all ordinances and amendments to codes as amended and adopted by the City of Santa Cruz related to Santa Cruz Municipal Code (“SCMC”) Chapter 5.82.

Task 2 – Coordinate staffing for Code Enforcement

At a minimum, Consultant shall:

- A. Provide a monthly schedule to the City’s Code Compliance Manager of the shifts and personnel assigned to this scope of work at least two weeks prior to the beginning of the work month;
- B. In the event the Consultant’s assigned personnel is not able to cover a shift or needs to leave early, the Consultant will make necessary arrangements to cover said shift;
- C. Provide a minimum of one (1) full time code enforcement officer per shift, an AM shift, 7am – 5PM, and a PM shift, 12PM – 9PM, with an unpaid hour lunch;
- D. Consultant shall complete the following services for Code Enforcement:
 1. Provide a minimum of one (1) full time code enforcement officer for the following days, times and events:
 - a. 2024 Season - April 1, 2024 to October 31, 2024
 - b. Friday through Sunday, from 8:00AM – 5:00PM (12:00PM – 1:00PM unpaid lunch) and 12:00PM – 9:00PM, (4:00PM – 5:00PM unpaid lunch)
 - c. Memorial Day
 - d. Juneteenth
 - e. Independence Day
 - f. Labor Day
 - g. October 31
 - h. Day after Thanksgiving and Weekend
 - i. Weekend before Christmas
 - j. Weekend before New Years
- E. Investigate complaints regarding sidewalk vendors;
- F. Sidewalk Vending Enforcement Program review and analysis. At the completion of the season, the Consultant shall provide an analysis report consolidating data obtained during the season with recommendations of how to improve the City’s Sidewalk Vending Program;
- G. Perform field surveys and investigate complaints of possible sidewalk vending violations and needs for impoundment, including recognize the need for; implement appropriate remedial actions to correct violations and only impounding upon meeting the threshold of exhausting all warnings, citations, and direct education with vendors; and
- H. Perform and document inspections to determine the validity of complaints, and to identify conformance with applicable codes and ordinances;

Task 3 – Provide uniform and travel coordination

At a minimum, Consultant shall provide their assigned code enforcement personnel the following:

- A. Provide all necessary equipment, uniforms, vehicles, and gas fare for code enforcement officer(s);

- B. Provide for all of its assigned code enforcement personnel lodging, including travel time.

Task 4 – Provide the necessary training

Consultant shall ensure, at its sole expense, the following:

- A. Ensure that the Consultant’s employees and assigned personnel maintain certifications to perform the services requested by the City;
- B. Coordinate training for Consultant’s employees and assigned personnel, and ensure that Consultant’s employees and assigned personnel maintain all training certifications as required by the State Regulation and local ordinances and/or amendments to State codes; and
- C. Provide IT security, ethics, and harassment training that complies with City standards; and
- D. Consultant agrees that it will not charge CITY for training, time in training, or any expenses related to training.

Task 5 – Issue citations

At a minimum, Consultant shall coordinate the City’s Sidewalk Vending Enforcement Program, and oversee and implement all enforcement of the City’s Municipal Code with regards to sidewalk vending, including citation issuance, impoundments, and follow up documentation and reports. Consultant will also perform field surveys, including:

- A. Recognize the need for, and implement appropriate remedial actions to correct violations and only impounding upon meeting the threshold of exhausting all warnings, citations, and direct education with vendors;
- B. Perform and document inspections to determine the validity of complaints, and to identify conformance with applicable codes and ordinances;
- C. At the end of each shift, provide the City’s Code Compliance Manager a complete documentation of all citations or impoundments issued, including an itemized list of the impounded items and all photo documentation. These items shall be provided to the City’s Code Compliance Manager via email no later than the next business day;
- D. Provide the City’s Code Compliance Manager with a daily report of the code enforcement officers’ activities and actions no later than the next business day. This shall include, but not be limited to: the number of hours worked by the code enforcement officers; a list of any citations issued; a list of any warnings issued; documentation on any impoundments; any other findings from the code enforcement officers’ patrol; any reports on vendor issues.
- E. Take photographs and necessary measurements and gather all pertinent facts from the parties involved; and
- F. Provide patrols according to the schedule prepared by the City’s Code Compliance Manager.

Task 6 – Provide other professional code enforcement support services as determined by the City’s Code Compliance Manager

- A. Consultant shall help the City distribute any sidewalk vending regulation information to property owners, businesses, residents as well as agency departments and divisions as needed;
- B. Consultant shall prepare any documentation, staff reports, and committee and City Council presentations for the City’s Sidewalk Vending Program; and
- C. For the purposes of code enforcement regarding the City’s Sidewalk Vending Program, Consultant shall oversee coordination among various City departments including Planning and Community Development, Police, City Manager, and City Attorney.

Task 7 – Include in Cost Proposal

Consultant shall include in its cost proposal the following:

- A. Fully burdened cost rate per staff member per hour;

- B. Overtime rate per staff member per hour, subject to City's review and approval prior to approving overtime;
- C. Administrative cost per hour;
- D. Note that travel and lodging are not to be included and must be absorbed by Consultant.

EXHIBIT B: FEE SCHEDULE

Willdan will provide contract code enforcement services to the City of Santa Cruz for a flat hourly rate based on the Willdan hourly rate schedule below. All rates and costs shall be effective through the term of the agreement.

SERVICE PROVIDED	HOURLY RATE
Code Enforcement Technician	\$75/hour
Code Enforcement Officer	\$85-\$95/hour
Sr. Code Enforcement Officer	\$105/hour
Code Enforcement Supervisor	\$125/hour
Code Enforcement Manager/Consultant	\$150/hour

Should Willdan be required to provide vehicles for the officers, or the officers be required to drive personal vehicles, an additional **\$10/hr** will be added to the rate. **NOTE:** Overtime rates of 1.5x the regular hourly rate will be charged for all overtime hours worked.

EXHIBIT C: INSURANCE REQUIREMENTS

Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property and otherwise which may arise from or in connection with the performance of the work under this Agreement and the results of that work by Consultant, its agents, representatives, employees, or subcontractors.

A. CERTIFICATE REQUIREMENTS

The City will be issued a Certificate of Insurance (a Memorandum of Understanding will not be accepted) with the following minimum requirements:

- Certificate(s) will show current policy number(s) and effective dates,
- Coverage and policy limits will meet, or exceed, requirements below,
- The Certificate Holder will be City of Santa Cruz, Risk Management, 1200 Pacific Ave., Suite 290, Santa Cruz, CA 95060,
- Certificate will be signed by an authorized representative,
- An endorsement, if required below, will be provided to show the City, its officers, officials, employees, and volunteers as additional insureds, and
- Coverages must be maintained during the term of the Agreement with the City, unless a longer duration is required as specified below.

B. MINIMUM SCOPE AND LIMITS OF INSURANCE

Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. If Consultant maintains broader insurance coverage and/or higher limits than the minimums shown below, the City of Santa Cruz requires and shall be entitled to the broader insurance coverage and/or higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Santa Cruz.

Coverage will be at least as broad as:

- **COMMERCIAL GENERAL LIABILITY (CGL):** \$1,000,000 PER OCCURRENCE; \$2,000,000 AGGREGATE
Proof of coverage for \$1 Million per occurrence and \$2 Million in the aggregate including products and completed operations, property damage, bodily injury, personal and advertising injury will be provided on Insurance Services Office (ISO) Form CG 00 01 covering CGL.
- **PROFESSIONAL LIABILITY (ERRORS AND OMISSIONS):** \$2,000,000 PER OCCURRENCE OR CLAIM, \$2,000,000 AGGREGATE.

Consultant will maintain insurance appropriate to Consultant's profession; with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after date of completion of the services under this Agreement. 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 or start of work date, Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the contract of work.

- **AUTOMOBILE LIABILITY:**
Proof of coverage for \$2,000,000 provided on ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), per accident for bodily injury and property damage.
- **WORKERS' COMPENSATION AS REQUIRED BY THE STATE OF CALIFORNIA, WITH STATUTORY LIMITS, AND EMPLOYER'S LIABILITY INSURANCE:** \$1,000,000 per accident for bodily injury or disease.

The Worker's Compensation policy must be **endorsed** with a waiver of subrogation in favor of the City for all work performed by the Consultant and its employees.

(Not required if Consultant provides written verification it has no employees) - If Consultant has no employees, Consultant shall complete and sign a [Workers' Compensation Exemption Declaration and Release of Liability](#).

C. OTHER INSURANCE PROVISIONS

The insurance policies are to comply with the following provisions:

- **ADDITIONAL INSURED STATUS**
The City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations, products and completed operations. General liability coverage will be provided in the form of an **endorsement** to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 (if a later edition is used).
- **PRIMARY COVERAGE**
For any claims related to this Agreement, Consultant's and all subcontractor's insurance coverage will be **primary and non-contributory** as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or volunteers will be excess of Consultant's and all subcontractor's insurance and will not contribute with it.
- **NOTICE OF CANCELLATION**
Each insurance policy required above shall state that the coverage shall not be canceled, except with notice to the City.
- **WAIVER OF SUBROGATION**
Consultant hereby grants to the City a waiver of any right to subrogation, except as otherwise not applicable, which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss, including attorney's fees under such insurance. Consultant agrees to obtain any endorsement that may be necessary to effectuate 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.
- **EXCESS LIABILITY/UMBRELLA INSURANCE POLICIES**
Consultant may use excess liability/umbrella policies to meet the required liability limits on the condition that they provide all of the insurance coverages required herein, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The excess liability/umbrella insurance policies shall be provided on a true "**following form**" or broader coverage basis, with coverage at least as broad as provided on the underlying CGL insurance. No insurance policies maintained by the additional insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Consultant's primary and excess liability policies are exhausted.
- **DURATION OF COVERAGE**
CGL & Excess Liability/Umbrella policies for any construction related work, including, but not limited to, maintenance, service, or repair work, shall continue coverage for a minimum of 5 years for Completed

Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the contract of work.

- **SELF-INSURED RETENTIONS (SIR)**
Self-insured retentions must be declared to and approved by the City. City may require Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
- **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 will furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy (and CPL, automobile and any Excess Liability/Umbrella policies, as applicable) listing all policy endorsements to be approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning will 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.

D. SUBCONTRACTORS

Consultant shall include their subcontractor(s) as additional insured(s) under the policies or shall furnish separate certificates and endorsements for each contractor and subcontractor. Consultant shall require and verify that all contractors and subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are named as additional insureds on insurance required from its contractor(s) and subcontractor(s).

E. SPECIAL RISKS/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 and provide notice to Consultant.