

EXHIBIT C

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of _____ by and between the City of San Carlos hereinafter called "CITY" and _____ hereinafter called "CONSULTANT".

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

- A. That CITY desires to engage CONSULTANT to render certain professional services in the CITY;
- B. That CONSULTANT is qualified to provide such services to the CITY and;

THEREFORE, the CITY has elected to engage the services of CONSULTANT upon the terms and conditions as hereinafter set forth.

1. Services. The services to be performed by CONSULTANT under this Agreement shall include those services set forth in Exhibit A, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

2. Term; Termination. (a) The term of this Agreement shall commence upon the date hereinabove written and shall expire upon completion of performance of services hereunder by CONSULTANT. (b) Notwithstanding the provisions of (a) above, CITY may terminate this Agreement without cause by giving written notice not less than ten (10) days prior to the effective date of termination, which date shall be included in said notice. In the event of such termination, CITY shall compensate CONSULTANT for services rendered, and reimburse CONSULTANT for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of

CITY to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to CITY hereunder.

3. Compensation; Expenses; Payment. CITY shall compensate CONSULTANT for all services performed by CONSULTANT hereunder in an amount based upon CONSULTANT's hourly rates during the time of the performance of said services. A copy of CONSULTANT's hourly rates for which services hereunder shall be performed are set forth in CONSULTANT's fee schedule marked Exhibit B hereof, attached hereto and by this reference incorporated herein.

Notwithstanding the foregoing, the combined total of compensation and reimbursement of costs payable hereunder shall not exceed the sum of (\$) unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by CITY's City Manager (for contracts less than \$75,000 or authorized by City Council action for contracts \$75,000 or more by motion duly made and carried).

Compensation and reimbursement of costs and expenses hereunder shall be payable upon monthly billing therefor by CONSULTANT to CITY, which billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed.

4. Additional Services. In the event CITY desires the performance of additional services not otherwise included within the services described in Exhibit A, such services shall be authorized in advance of the performance thereof by CITY's City Manager (for contracts less than \$75,000 or authorized by City Council action for contracts \$75,000 or more by motion duly made and carried). Such amendment to this Agreement shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefor, the time of performance thereof, and such other matters as the parties deem appropriate for the accomplishment of such services. Any additional services causing the total contract price to exceed \$75,000, shall require approval by the City Council. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.
5. Records. CONSULTANT shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to services to be performed by CONSULTANT hereunder. Said records shall be available to CITY for review and copying during regular business hours at CONSULTANT's place of business or as otherwise agreed upon by the parties.

6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder. CONSULTANT acknowledges the importance to CITY of the skill, competency, ability to appropriately work with CITY staff and expertise of individual staff assigned to the project, and accordingly the individuals assigned to the Project must be acceptable to CITY.
8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the CITY is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the CITY.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit A; provided, that CITY shall grant reasonable extensions of time for the performance of such services occasioned by governmental reviews of CONSULTANT's work product or other unavoidable delays; provided, further, that such unavoidable delay shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, CONSULTANT's officers or employees.

CONSULTANT acknowledges the importance to CITY of CITY's Project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule.

11. Indemnity. CONSULTANT shall indemnify, defend, and hold harmless City, its officers, employees, agents and volunteers from and against all liability, loss, damage, expense, and cost (including, without limitation, reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's negligence, recklessness, or willful misconduct in the performance of work hereunder, or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage

caused by the active negligence or willful misconduct of the City. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement. Nothing herein contained shall be construed to require CONSULTANT to indemnify CITY its officers, employees, agents and volunteers against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

12. Insurance. CONSULTANT shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability, owned and non-owned and hired automobile liability, and professional liability insurance covering risks relating to CONSULTANT's services to be performed hereunder in form subject to the approval of the City Attorney and/or CITY's Risk Manager. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be as follows:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	statutory minimum
Employer's Liability	\$1,000,000 per accident for bodily injury or disease. CONSULTANT shall submit to City a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.
Commercial General Liability	\$1,000,000 (to \$5,000,000 depending on exposure) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse and underground property damage hazards. 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. Coverage must be at least as broad as Insurance Services Office form CG 00 01.
Automobile Liability	\$1,000,000 per accident for bodily injury and property damage (coverage

required to the extent applicable to CONSULTANT's vehicle usage in performing services hereunder)

¹Professional Liability \$1,000,000 per claim and if a general aggregate limit applies, general aggregate limit shall be twice the required occurrence limit.

Concurrently with the execution of this Agreement, CONSULTANT shall furnish CITY with certificates and copies of information or declaration pages of the insurance required hereunder and, with respect to evidence of commercial general liability and automobile liability insurance coverage, original endorsements:

- (a) Precluding cancellation or **reduction in per occurrence limits** before the expiration of thirty (30) days (10 days for nonpayment) after City shall have received written notification of cancellation in coverage or **reduction in per occurrence limits** by first class mail;
- (b) CONSULTANT's general liability policies shall be primary and non-contributory, and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insured under such policies. An endorsement providing completed operations coverage for the additional insured, ISO form CG 20 37, is also required.

Claims Made Policies

If any of the required policies provide claims-made coverage:

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

¹ Note: Professional liability insurance coverage is not required if the contractor/vendor/consultant is not providing a service regulated by the state. (Examples of service providers regulated by the state are insurance agents, professional engineers, doctors, certified public accountants, lawyers, etc.) Please check and initial the following if professional liability is **NOT** required for this agreement. Recommended _____ [Project Manager] Approved _____ [Risk Manager]

Consultant shall furnish the CITY with original certificates and amendatory endorsements 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.

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. This provision applies regardless of whether or not the CITY has requested or received a waiver of subrogation endorsement from the insurer.

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.

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.

Coverage

It is a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and 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, whichever is greater.

Primary and Non-Contributory Coverage

The Additional Insured coverage under the Consultant's policy shall be "primary and non-contributory" as will not seek contribution from the CITY insurance or self-insurance and shall be at least as broad as CG 20 01 04 12.

Excess Insurance

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of CITY before the CITY insurance or self-insurance shall be called upon to protect it as a named insured.

13. Workers' Compensation. CONSULTANT acknowledges and certifies awareness of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and CONSULTANT certifies and agrees to compliance with such provisions before commencing the performance of the work of this agreement.
14. Subcontractors (If applicable). CONSULTANT agrees to include with all subcontractors in their subcontracts the same requirements and provisions of this agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the Subcontractors' work. Subcontractors 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 the Contract documents. Subcontract shall agree to include these same provisions in any agreement with a sub-subcontractor. CONSULTANT shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and will provide proof of compliance to the CITY.

Subcontractor shall agree to be bound to CONSULTANT and CITY in the same manner and to the same extent as CONSUTLANT is bound to CITY under the Contract Documents. Subcontractor shall further agree to include the same requirements and provisions of this agreement, including the indemnity and Insurance requirements, with a Sub-subcontractor to the extent they apply to the scope of the Sub-subcontractors' work. A copy of the CITY Contract Document Indemnity and Insurance provisions shall be furnished to the subcontractor upon request.

15. Non-Discrimination. The CONSULTANT hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Section 2000 (e)(17), to the end that CONSULTANT will not exclude any person from participation in, be denied the benefits of, or be otherwise subject to discrimination from any project, program, or activity supported by this Agreement, based on the grounds of race, color, national origin, sex, disability, age, or religion,. CONSULTANT shall comply with its EEO Certification (Form PW-7). In addition, CONSUTLANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to insure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer,

recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

- 15. Notice. All notices required by this Agreement shall be given to the CITY and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:

CITY: City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attention: [Redacted]

CONSULTANT: [Redacted]
Address [Redacted]
Phone [Redacted]
Attention: [Redacted]

- 16. Non-Assignment. This Agreement is not assignable either in whole or in part.
- 17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
- 18. Business Registration. VENDOR agrees to comply with Chapter 5.04 of the Municipal Code and pay all fees required to be paid.
- 19. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 20. Governing Law. This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney’s fees and expenses of litigation of the successful party.

21. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs. If a party refuses or fails to participate in mediation in good faith prior to filing a lawsuit, then that party shall be barred from recovery of attorneys fees and costs of suit.

22. Conflict of Interest. CONSULTANT may serve other clients, but none who are active within the City of San Carlos or who conduct business that would place CONSULTANT in a "conflict of interest" as that term is defined in State law.

23. Entire Agreement. Each party acknowledges that this agreement, the exhibits hereto, and the documents incorporated by reference herein constitute the complete agreement and exclusive statement of the terms and conditions between the parties, which supercedes and merges all prior proposals, understandings and all other agreements, verbal and written, between the parties relating to the subject matter of this agreement. This agreement may not be modified or altered except by written instrument duly executed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF SAN CARLOS:

Dated: _____

 Jeff Maltbie, City Manager

ATTEST:

Dated: _____

 Crystal Mui, City Clerk

APPROVED AS TO FORM:

Dated: _____

Gregory J. Rubens, City Attorney

CONSULTANT/CONTRACTOR/VENDOR:

I acknowledge that I have full authority to execute this agreement on behalf of the Consultant/Contractor/Vendor, and have read, understand, and agree to comply with the provisions of this Agreement, including the Insurance and indemnity requirements set forth herein.

Dated: _____
