

**CONTRACT FOR CONSULTANT SERVICES BETWEEN
THE CITY OF WATSONVILLE AND CUMMING MANAGEMENT GROUP, INC.**

THIS CONTRACT, is made and entered into this _____, by and between the **City of Watsonville**, a municipal corporation, hereinafter called "City," and **Cumming Management Group Inc.**, hereinafter called "Consultant."

WITNESSETH

WHEREAS, the City needs to obtain certain professional, technical and/or specialized services of an independent contractor to assist the City in the most economical manner; and

WHEREAS, Consultant has the requisite skill, training, qualifications, and experience to render such services called for under this Contract to City.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES. Consultant shall perform those services as specified in detail in Exhibit "A," entitled "SCOPE OF SERVICES" which is attached hereto and incorporated herein.

SECTION 2. TERM OF CONTRACT. The term of this Contract shall be from July 1, 2024 to June 30, 2027, inclusive.

SECTION 3. SCHEDULE OF PERFORMANCE. The services of Consultant are to be completed according to the schedule set out in Exhibit "B," entitled "SCHEDULE OF PERFORMANCE," which is attached hereto and incorporated herein. Consultant will diligently proceed with the agreed Scope of Services and will provide such services in a timely manner in accordance with the "SCHEDULE OF PERFORMANCE."

SECTION 4. COMPENSATION. The compensation to be paid to Consultant including both payment for professional services and reimbursable expenses as well as the rate and schedule of payment are set out in Exhibit "C" entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT. Except as otherwise provided in Exhibit "C," each month, Consultant shall furnish to the City a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.

SECTION 6. INDEPENDENT CONSULTANT. It is understood and agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent Consultant and not an agent or employee of City, and as an independent Consultant, shall obtain no rights to retirement

benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY. Consultant shall not assign or transfer any interest in this Contract nor the performance of any of Consultant's obligations hereunder, without the prior written consent of City, and any attempt by Consultant to so assign this Contract or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION.

To the full extent permitted by law (subject to the limitations of Civil Code section 2782.8 for any "design professional services" performed under this Contract), Consultant will indemnify, hold harmless, release and defend the City (including its officers, elected or appointed officials, employees, volunteers or agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses or costs [including legal costs and attorney's fees])(collectively "Liability") of any nature, to the extent arising out of, pertaining to, or relating to Consultant's negligence, recklessness, or willful misconduct in the performance of this Contract. In no event shall the cost to defend charged to the Consultant exceed the Consultant's proportionate percentage of fault. Consultant's indemnification obligations under this Contract are not limited by any limitations of any insurance held by Consultant, including, but not limited to, workers compensation insurance.

SECTION 9. WAIVER OF CONSEQUENTIAL DAMAGES.

Notwithstanding any other provisions of this Agreement, and to the fullest extent permitted by law, neither Party shall be liable to the other for any incidental, special, indirect or other consequential damages incurred due to the fault of the other Party, regardless of the nature of the fault or whether it was committed by the City or Consultant, or their employees, subconsultants, or subcontractors. Consequential damages include, without limitation, liability for loss of use of the Project or existing property, loss of profits, loss of use, loss of production, loss of goodwill, or business interruption, however the same may be caused."

SECTION 10. INSURANCE.

A. Errors and Omissions Insurance. Consultant shall obtain and maintain in full force throughout the term of this Contract a professional liability insurance policy (Errors and Omissions), in a company authorized to issue such insurance in the State of California, with limits of liability of not less than One Million Dollars (\$1,000,000.00) to cover all professional services rendered pursuant to this Contract.

B. Auto and Commercial General Liability Insurance. Consultant shall also maintain in full force and effect for the term of this Contract, automobile insurance and commercial general liability insurance with an insurance carrier satisfactory to City, which insurance shall include protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from any

actual occurrence arising out of the performance of this Contract. The amounts of insurance shall not be less than the following:

(1) Commercial general liability insurance, or equivalent form, with a combined single limit of not less than \$500,000.00 per occurrence. If such insurance contains a general aggregate limit, such limit shall apply separately to each project Consultant performs for City. Such insurance shall (a) name City, its appointed and elected officials, and its employees as insureds; and (b) be primary with respect to insurance or self-insurance programs maintained by City and (c) contain standard separation of insured's provisions.

(2) Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$500,000.00 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

C. Workers' Compensation Insurance. In accordance with the provisions of Section 3700 of the Labor Code, Consultant shall be insured against liability for Workers' Compensation or undertake self-insurance. Consultant agrees to comply with such provisions before commencing performance of any work under this Contract.

D. Proof of Insurance to City before Notice to Proceed to Work. Consultant shall satisfactorily provide certificates and endorsements of insurance to the City Clerk before Notice to Proceed to Work of this Contract will be issued. Certificates and policies shall state that the policy shall not be canceled or reduced in coverage without thirty (30) days written notice to City. Approval of insurance by City shall not relieve or decrease the extent to which Consultant may be held responsible for payment of damages resulting from services or operations performed pursuant to this Contract. Consultant shall not perform any work under this Contract until Consultant has obtained the required insurance and until the required certificates have been submitted to the City and approved by the City Attorney. If Consultant fails or refuses to produce or maintain the insurance required by these provisions, or fails or refuses to furnish City required proof that insurance has been procured and is in force and paid for, City shall have the right at City's election to forthwith terminate this Contract immediately without any financial or contractual obligation to the City. As a result of such termination, the City reserves the right to employ another consultant to complete the project.

E. Written notice. Contractor shall provide immediate written notice if (1) any insurance policy required by this Contract is terminated; (2) any policy limit is reduced; (3) or any deductible or self insured retention is increased.

SECTION 11. NON-DISCRIMINATION. Consultant shall not discriminate, in any way, against any person on the basis of age, sex, race, color, creed, national origin or disability in connection with or related to the performance of this Contract.

SECTION 12. TERMINATION.

A. City and Consultant shall have the right to terminate this Contract, without cause, by giving not less than ten (10) days written notice of termination.

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

C. The City Manager is empowered to terminate this Contract on behalf of City.

D. In the event of termination, Consultant shall deliver to City copies of all work papers, schedules, reports and other work performed by Consultant and upon receipt thereof, Consultant shall be paid in full for services performed and reimbursable expenses incurred to the date of termination.

SECTION 13. COMPLIANCE WITH LAWS. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. Consultant shall obtain and maintain a City of Watsonville business license during the term of this Contract.

SECTION 14. GOVERNING LAW. City and Consultant agree that the law governing this Contract shall be that of the State of California. Any suit brought by either party against the other arising out of the performance of this Contract shall be filed and maintained in the Municipal or Superior Court of the County of Santa Cruz.

SECTION 15. PRIOR CONTRACTS AND AMENDMENTS. This Contract represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Contract may only be modified by a written amendment.

SECTION 16. CONFIDENTIAL INFORMATION. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Contract are confidential and not to be disclosed to any person except as authorized by the City Manager or his designee, or as required by law.

SECTION 17. OWNERSHIP OF MATERIALS. All reports, documents or other materials developed or received by Consultant or any other person engaged directly by Consultant to perform the services required hereunder shall be and remain the property of City without restriction or limitation upon their use.

SECTION 18. COVENANT AGAINST CONTINGENT FEES. The Consultant covenants that Consultant has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure the Contract, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fees, commissions, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Contract, for breach or violation of this covenant, the City shall have the right to annul this Contract without liability, or in its discretion, to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage fee, gift, or contingency.

SECTION 19. WAIVER. Consultant agrees that waiver by City or any one or more of the conditions of performance under this Contract shall not be construed as waiver of any other condition of performance under this Contract.

SECTION 20. CONFLICT OF INTEREST.

A. A Consultant shall avoid all conflict of interest or appearance of conflict of interest in performance of this Contract. Consultant shall file a disclosure statement, if required by City Council Resolution, which shall be filed within thirty (30) days from the effective date of this Contract or such Resolution, as applicable.

B. No member, officer, or employee of the City, during their tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in this Contract or the proceeds thereof and Consultant agrees not to allow, permit, grant, transfer, or otherwise do anything which will result in such member, officer, or employee of the City from having such interest.

SECTION 21. AUDIT BOOKS AND RECORDS. Consultant shall make available to City, its authorized agents, officers and employees, for examination any and all ledgers and books of account, invoices, vouchers, canceled checks and other records or documents evidencing or related to the expenditures and disbursements charged to the City, and shall furnish to City, its authorized agents and employees, such other evidence or information as City may require with respect to any such expense or disbursement charged by Consultant.

SECTION 22. NOTICES. All notices shall be personally served or mailed, postage prepaid, to the following addresses, or to such other address as may be designated by written notice by the parties:

CITY

City Clerk's Office
275 Main Street, Suite 400
Watsonville, CA 95076
(831) 768-3040

CONSULTANT

Cumming Group, Inc.
3230 Monument Way
Concord, CA 94518
(925) 768 - 7184

SECTION 23. EXHIBITS:

Exhibit A: Scope of Services
Exhibit B: Schedule of Performance
Exhibit C: Compensation

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WITNESS THE EXECUTION HEREOF, on the day and year first hereinabove written.

CITY

CONSULTANT

CITY OF WATSONVILLE

BY _____
Tamara Vides, City Manager Pro
Tempore

DocuSigned by:

BY _____
John Caputo, Vice President, Operations
and Development

ATTEST:

BY _____
Irwin I. Ortiz, City Clerk

APPROVED AS TO FORM:

BY _____
Samantha W. Zutler, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

The scope of services is as follows: On-Call Labor Compliance Services on an as-needed basis which may include the following items on any particular project, as requested by the City:

- Provide the City with a list of applicable worker classifications and wage determinations to be included in bidding documents for pre-construction professional service agreements and construction contracts.
- Attend pre-construction meetings on selected projects to ensure contractors are informed and educated on relevant laws and provide forms/documentation for California Department of Industrial Relations prevailing wage and Davis Bacon compliance.
- Provide contractors with a telephone and email contact where contractors and subcontractors can call for clarification of compliance requirements and assistance.
- Confirm contractors are in compliance with all state and federal labor compliance standards and regulations; review and audit project time sheets, verify project wage determinations and work classifications used including hours worked. Verify contractors are maintaining proper records per California Labor Code Sections 1776 and 1812. Review work classifications with the state and federal wage classifications and/or Davis-Bacon Act requirements.
- Conduct site visits during construction and interview workers. Interview a minimum of one worker per craft on site, or as required by the project funding source. Site visits are to be coordinated with contractors.
- For projects subject to Davis-Bacon provisions, complete U.S. General Services Administration Standard Form (SF) 1445, Labor Standards Interview.
- Confirm that contractors have posted job site notices for all projects with regard to prevailing wage requirements per California Labor Code Section 1773.2 and WH-1321, when applicable.
- Monitor weekly certified payroll reports (CPRs) including, but not limited to:
 - Proper wages paid for the classification selected;
 - Proper calculations and payment of fringe benefits and training contributions;
 - Review overtime hours, shift pay, weekend or holiday work and payments;
 - Notify the prime contractor of any deficiencies in wages, overtime compensation, incomplete or inaccurate CPRs, and/or incomplete or inaccurate Statements of Compliance.
 - Prepare a project summary sheet that identifies the total number of workers by classification and City and County of residence.
- Cross reference certified payroll records with onsite interviews to verify all workers are listed and review that the Statement of Compliance is complete and signed by an individual of knowledge and authority.
- Monitoring of all apprenticeship requirements including: Collection and review of DAS-140 and DAS-142 forms.
 - Review of applicable ratios, correct wages paid, and training contributions (CAC Forms).
 - Verification that all apprentices also have an active Division of Apprentice Standards and/or BAT (US Dept. of Labor Bureau of Apprenticeship Training) registration.
 - Verify apprenticeship utilization as set forth in California Labor Code Section 1777.5.
- Identify inconsistencies or deliberate deceptions on the part of the contractors and/or subcontractors through review of cancelled checks, time sheets, and related records and seek appropriate resolution within the California Prevailing Wage laws and/or Davis-Bacon Act regulations.

- Coordinate with the City, contractors, and subcontractors with the goal of amicable agreement on resolving issues related to violations, penalties, and compliance.
- Provide a monthly report to City for each project assigned containing a list of compliance tasks performed, compliance status for each Contractor and Subcontractor on project, use of apprentices, and the submitted Local Hire Residency Compliance Forms.
- Attend any compliance or auditing meetings with the state and/or federal agencies relating to the labor compliance on all projects.
- Provide training and other assistance relating to labor compliance as requested by the City.
- Prior to project closeout, submit a notice to contractors or subcontractors if there are still outstanding items. Allow contractors or subcontractors ten (10) days to submit additional documentation or to make corrections.
- Upon project completion, provide the City with a written statement that all state and federal labor standards and regulations have been successfully complied with, as well as all CPRs and all other documentation and correspondence related to the project.
- Assist the City with public records requests related to certified payroll compliance requests, as requested by City. Information provided shall be redacted of personal information prior to sharing with public record request.
- Maintain all project records for a period of three (3) years after project completion.

EXHIBIT “B”

SCHEDULE OF PERFORMANCE

Services shall commence immediately upon execution of this Contract. All services performed under the provisions of this Contract shall be completed in accordance with the following schedule:

Work shall be on an on-call and as-needed basis from July 1, 2024 to June 30, 2027

EXHIBIT "C"

COMPENSATION

a. Total Compensation. The total obligation of City under this Contract shall not exceed \$300,000.

b. Basis for Payment. Payment(s) to Consultant for services performed under this Contract shall be made as follows and shall include payment for reimbursable expenses: See attached Fee schedule provided by Consultant.

c. Payment Request. Consultant shall submit a request for payment for services on a monthly basis by letter to Director, or said Director's designated representative. Such request for payment shall cover the preceding monthly period during the term hereof, shall note the City's purchase order number for this Contract, shall contain a detailed listing of the total number of items or tasks or hours for which payment is requested, the individual dates on which such services were rendered, and invoices for reimbursable expenses, if any. Upon receipt in the Office of Director of said payment request, Director shall cause payment to be initiated to Consultant for appropriate compensation.