

**CONTRACT FOR CONSULTANT SERVICES BETWEEN
THE CITY OF WATSONVILLE AND ES ENGINEERING**

THIS CONTRACT, is made and entered into this _____, by and between the **City of Watsonville**, a municipal corporation, hereinafter called "City," and **ES Engineering Services, LLC.**, 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.

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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 NOVEMBER 1, 2021 to OCTOBER 31, 2024, 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.

Consultant has the expertise and experience necessary to perform the services and duties agreed to be performed by Consultant under this Contract, and City is relying upon the skill and knowledge of Consultant to perform said services and duties. Consultant shall defend, indemnify and hold harmless City, its officers and employees,

against any loss or liability to the extent caused by and arising out of and resulting in any way from work performed under this Contract due to the willful or negligent acts (active or passive) or errors or omissions by Consultant or Consultant's officers, employees or agents. In no event shall Consultant be responsible for any indirect, consequential, special or punitive damages arising out of, in connection with, or as a result of this Agreement. Consultant's aggregate liability to City shall not exceed an amount equal to one-and-a-half times the total fees paid to Contractor under this Agreement.

SECTION 9. 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 \$1,000,000.00 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 \$1,000,000.00 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 provided, however, that Consultant shall not have a duty of confidentiality for information which (a) is or becomes generally available to the public or within the industry to which such information relates other than as a result of a breach of this Agreement, (b) is already known by Consultant at the time of disclosure, (c) becomes available to Consultant on a non-confidential basis from a source that is entitled to disclose it on a non-confidential basis, (d) is independently developed by Consultant or its associates without the aid, application or use of the information exchanged pursuant to this Agreement or (e) is required to be disclosed by law, provided, however, that prior to making any such legally required disclosure, Consultant give City as much prior notice of the requirement for and contents of such disclosure as is permitted by law and is reasonably practicable under the circumstances..

SECTION 16. 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 17. 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 18. WAIVER.

Each party agrees that waiver by the other party 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 19. 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 20. 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 21. 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
275 Main Street, Suite 400
Watsonville, CA 95076
(831) 768-3040

CONSULTANT

ES Engineering Services, LLC
1 Park Plaza, Suite 1000
Irvine, CA 92614
With a copy to:
Montrose Environmental Group, Inc
1 Park Plaza, Suite 1000
Irvine, CA 92614
Attn: Legal Department

SECTION 22. EXHIBITS:

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

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

CITY

CONSULTANT

CITY OF WATSONVILLE

ES Engineering Services, LLC

BY _____
Matthew D. Huffaker, City Manager

BY  _____
Farideh V. Kia, Senior Project Manager

ATTEST:

BY _____
Beatriz Vázquez Flores, City Clerk

APPROVED AS TO FORM:

BY _____
Alan J. Smith, City Attorney

EXHIBIT “A”

SCOPE OF SERVICES

ES Engineering Services, LLC, will provide labor and material to conduct the following tasks:

- Integrated and Instantaneous Surface Emission Monitoring (SEM) on a quarterly basis.
- Review and Evaluation of the SEM data and submittal to the City and the Monterey Bay Unified Air Pollution Control District (MBUAPCD).
- Preparation of Annual Surface Emission Monitoring Report for submittal to the MBUAPCD.
- Site data review, calculations, and preparation of annual Greenhouse Gas reports and submittal to the United States Environmental Protection Agency (EPA).
- Review of groundwater data, preparation of groundwater contours, and preparation of Semi-annual and Annual Groundwater reports for submittal to the California Regional Water Quality Board (CRWQCB).
- Regulatory compliance response and preparation of the reports such as PFAS for submittal to the CRWQCB.
- Preparation of the Joint Technical Document, Closure/ Post Closure Maintenance Plan, Closure and Post Closure Cost estimates, and all related required documents for submittal to CalRecycle.
- Preparation of Non-water Release Corrective Action Plan and Cost Estimates for submittal to the CRWQCB.
- Provide Landfill gas consulting and engineering design services for all landfill related issues/ need.
- Provide engineering design drawings for installation of additional wells in Phase III landfill.
- Prepare drawings and specifications related to the upcoming closure of Phase III.
- Assist the City with contractor selection and provide Construction Quality Assurance Services.

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:

Task	Frequency	Regulatory Agency
Surface Emission Monitoring (SEM)	Quarterly	MBUAPCD
SEM Report	Annually	MBUAPCD
Greenhouse Gas Reporting	Annually	EPA
Groundwater Monitoring Report	Semi-Annually; Annually	CRWQCB
Preparation of JTD	Every 5 Years	CRWQCB, CalRecycle
Preparation of CPMC	Every 5 Years	CRWQCB, CalRecycle
Preparation of Non-water Release Corrective Action Plan	Every 5 Years	CRWQCB, CalRecycle
Closure/ Post Closure Cost Estimates	Every 5 Years	CRWQCB, CalRecycle
Engineering and CQA for System upgrade	As-needed	
Data/ documents review and consulting	As-needed	
Prepare drawings and specification for Phase III closure	As-needed	
Assist City with contractor selection	As-needed	
Perform CQA	As-needed	
Assist the City with compliance issues and requirements by the regulatory agencies	As-needed	

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 [not] include payment for reimbursable expenses:

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. Payment to Consultant by City shall be made within thirty (30) days of City's receipt of Consultant's invoice.