

CITY OF PLACERVILLE
Engineering Department



REQUEST FOR PROPOSALS
FOR CONSULTING SERVICES

for the

**CITY OF PLACERVILLE
TRAFFIC IMPACT MITIGATION
FEE PROGRAM UPDATE
(CIP #41701)**

Release Date: March 2, 2022
Proposals due by: April 6, 2022 at 3:00 pm

A complete copy of the RFP and attachments can be found at:
www.cityofplacerville.org/rfp-rfq-projects-out-to-bid

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SECTION 1: PROJECT INFORMATION & PROPOSAL REQUIREMENTS

INTRODUCTION

The City of Placerville Engineering Department (City) is soliciting a request for proposals for professional services from consulting firms with the experience and expertise to assist the City with a major update to our Traffic Impact Mitigation (TIM) Fee Program. The successful Consultant (or Consultant Team) will have experience in conducting traffic analyses for TIM Fee Program updates, knowledge of Senate Bill (SB) 743, and travel demand modeling experience. In addition, the successful Consultant Team will need to have experience developing planning-level project design exhibits, estimating project costs, and completing Nexus Studies. In accordance with Government Code 66001, major updates to the TIM Fee Program are required every five years. The City's goal is to update the program, develop the new TIM fees, and develop a list of Capital Improvement Program (CIP) projects that will address future transportation infrastructure needs.

The selected Consultant Team will be highly qualified and experienced in developing and implementing similar programs, and must be successful in leading the project from initiation through to the Nexus Study and development of the new TIM Fees.

The tentative project schedule is as follows:

1. Award Contract for Consulting Services – April 2022
2. Project Kick-off – April 2022
3. Preliminary Traffic Analysis Results and CIP Project List – August 2022
4. Public Meeting – September 2022
5. Submit Final Traffic Study – October 2022
6. Submit Final CIP Project List, Exhibits, and Cost Estimates – December 2022
7. Submit Final Nexus Study – February 2022
8. End Contract – April 2023

BACKGROUND

The City of Placerville TIM Fee Program was originally established in 1989. In 1996, the fee methodology was updated and then adopted by the City Council in 1999. Placerville Municipal Code Section 8-15-8 requires that the adopted fee is adjusted every calendar year by a percentage equal to the inflation rate of construction costs for the prior year. From 1999 to 2006, the TIM fee was updated annually accounting for inflation. On November 28, 2006, City Council adopted an amendment to Chapter 15 of Title 8 of the City Code, which approved an interim TIM fee table that would remain in effect until a comprehensive permanent traffic impact fee program is adopted (City Code Section 8-15-5). From 2006 to 2022, the TIM fee has been updated annually to account for inflation, but a major TIM fee program update has not yet occurred.

SCOPE OF SERVICES

The services shall begin with preliminary data collection and project management, and conclude with submittal of the final reports, project list, and TIM fees. The City expects the Consultant to develop their own detailed scope of work and identify deliverables based on their understanding of the project. The scope of work, at a minimum, should include the tasks described below.

Task 1: Project Management

Task 1A: Project Management and Administration

The Consultant will provide project management services during the scoping and duration of the project. The following is a list of typical duties of the Consultant:

- Develop a project team and prepare detailed project scope of work, deliverables, schedule, and work plan. Provide clear definition of the work to be completed with corresponding task budget. Define key issues and goals and coordinate responsibilities of the project team members and subconsultants.
- Hold regular project team coordination and status meetings, including the project kick-off meeting. Prepare meeting agendas and meeting notes, and maintain a list of action items. Meetings should be held a minimum of once a month.
- Prepare invoices and monthly progress reports identifying deliverables submitted, challenges encountered, outstanding issues, milestone progress, etc.
- Provide and maintain a project schedule. Schedule updates should be provided to the City on a monthly basis and should include planned versus actual dates.

Deliverables:

1. Scope of Work
2. Project Schedule
3. Monthly Invoices and Progress Reports
4. Meeting Notes

Task 1B: Project Kick-off

The City will meet with the selected Consultant at the kick-off meeting to discuss the project approach in detail. The Consultant will also review all existing City documents prior to the kick-off meeting and make any recommendations that can be implemented. The El Dorado County Transportation Commission (EDCTC) recently developed a City of Placerville SB 743 Implementation Plan. The selected Consultant will need to review and familiarize with the City's Plan and obtain any additional information, as needed, from the City, EDCTC or El Dorado County. The Consultant will recommend to the City best methodology for updating the TIM Fee Program to ensure the City meets the requirements of SB 743 and applicable Government Code.

Deliverables:

1. Kick-off Meeting agenda and notes
2. Summary Memo of Recommendations

Task 1C: Public Outreach

The Consultant will organize and facilitate one public meeting and one presentation to Planning Commission to present preliminary traffic forecasting and modeling results as well as the resulting Capital Improvement Program project list. The public interest should be heard and the range of concerns considered in further development of the improvement project list and incorporation into the TIM Fee Program. The Consultant will be responsible

for providing all meeting handouts and presentation materials. The Public Meeting should be held after the completion of Task 2D.

Deliverables:

1. Two public outreach meetings
 - a. One Public Meeting in the community
 - b. One Planning Commission Meeting

Task 2: Traffic Analysis

Task 2A: Data Collection

The Consultant shall collect traffic count and land use data from the City for use in the traffic analysis. The Consultant will prepare a list of study roadways to be included in the traffic analysis, and provide it to the City for review. It is anticipated that 24-hour traffic counts will need to be collected on approximately 70 study roadway segments within City limits. Some of the streets located within the City of Placerville limits are under Caltrans jurisdiction, and the Consultant should anticipate the need to obtain a Caltrans Encroachment Permit in order to collect those counts.

Deliverables:

1. Study Roadway List
2. 24-hour traffic counts

Task 2B: Traffic Model

The traffic study will be based on land use growth projected in the City of Placerville from the Year 2020 to the Year 2040. The City of Placerville does not maintain our own Travel Demand Model, so the Consultant will coordinate with the County of El Dorado to obtain their most recent Travel Demand Model (TDM). The Consultant will need to gain an understanding from the County about the level of growth projected for the City of Placerville within the model, and make adjustments as necessary with input from City Engineering and Planning staff.

The roadway network in the County's model will need to be adjusted to the level of detail necessary for the analysis of City streets. The result will be a Placerville "sub-area" travel demand model that is consistent with the City's expectation for growth and include the necessary details of the Placerville roadway network.

Deliverables:

1. Summary table of the existing land uses in the Year 2020, and projected growth in the Year 2040
2. Technical Memo summarizing review of the El Dorado County TDM, revisions to City of Placerville data and validation of the model's use for the TIM Fee Program update.

Task 2C: Existing Conditions Analysis

The Consultant will perform an analysis of existing conditions based on the study roadway segments provided in Task 2B. It is anticipated that approximately 70 roadway segments will be studied within City of Placerville limits. TIM fees to fund new roadway improvements can only be charged to the extent that new development causes the need for improvement. The Consultant will work with the City to identify any existing roadway deficiencies using Level or Service (LOS) or another appropriate measure of performance (e.g., Vehicle Miles

Traveled). The Consultant will prepare a summary memo identifying the existing deficiencies for use in the nexus study and cost share determination.

Deliverables:

1. Summary table of Existing Conditions roadway segment daily traffic volumes and LOS
2. Summary memo identifying potential existing deficiencies

Task 2D: Travel Demand Model Runs and Transportation Facility Needs

The Consultant will conduct model runs for Year 2040 Conditions using the land use growth table and roadway network from Task 2B. The results of the model run will provide future Year 2040 conditions for the study roadway segments. Any deficiencies identified will be used to determine the future infrastructure project needs. City staff will coordinate with the Consultant to determine an initial list of Capital Improvement Program projects to be included in the future Year 2040 analysis. The initial project list is expected to include about 12 projects, mostly comprised of roadway improvement projects that were included in the previous versions of the TIM Fee Program. The Consultant will run model iterations to evaluate the proposed projects and determine if the improvements mitigate the traffic impacts to the satisfaction of the City. Projects may be added and subtracted from the list, or modified, as necessary.

Deliverables:

1. Technical Memo summary of the following:
 - a. Travel Demand Model output for the Year 2040 conditions and the mitigated Year 2040 conditions. The output should be presented in table format and will include the daily traffic volumes, LOS, and VMT for each roadway segment. The future deficiencies should be identified.
 - b. Total number of new trips generated by future development
 - c. Final list of transportation CIP projects to be included in the TIM Fee Program

Task 2E: Traffic Study

After holding a Public Meeting and considering public input, the Consultant will finalize the traffic model, transportation CIP project list, and study results. The Consultant will summarize the results of Task 2 in one comprehensive traffic study document.

Deliverables:

1. Draft and Final Traffic Study

Task 3: CIP Project List and Cost Estimates

Task 3A: Project Exhibits

The Consultant will be responsible for the preparation of planning-level design exhibits for each of the selected CIP projects to be included in the TIM Fee Program. The drawings should be prepared in AutoCAD/Civil 3D or another appropriate format and displayed to-scale on an aerial image.

Deliverables:

1. 11"x17" design exhibits for each CIP project

Task 3B: Preliminary Cost Estimates for the Proposed CIP Projects

The Consultant will be responsible for the preparation of planning-level cost estimate for each of the selected CIP projects to be included in the TIM Fee Program. These planning-level estimates will be used in the nexus study and development of the TIM fees. The cost estimates should include construction costs, land costs, and contingency or inflation assumptions with a total cost specified for each CIP project.

Deliverables:

1. Cost Estimate for each of the proposed CIP projects

Task 4: Economic Analysis

Task 4A: Research

The Consultant will research best practices and industry standards used by other agencies in developing their TIM Fee Programs. The existing TIM Fee Program structure will be evaluated by the Consultant, and the Consultant will discuss with the City any challenges with the current structure. The Consultant will review the fee categories and consider the financial implications of any changes to the structure.

Task 4B: TIM Fee Calculation

The Consultant will develop a methodology to create nexus and calculate the new TIM Fee table, according to the follow steps:

- The Consultant will develop a methodology that assigns financial responsibility for the CIP projects to new development in accordance with the framework established in the Mitigation Fee Act.
- The Consultant will identify specific funding sources (including Federal, State, and Local funds) for each of the Capital Improvement Program projects that would supplement the TIM Fee Program. Revenues from the previous TIM Fee Program will likely be considered part of the funding pool.
- The Consultant will determine the basis for allocating the project costs to new development, and will create the nexus between the projects and future development.
- As the Consultant develops the TIM Fee table, the Consultant should consider if the land use categories should be modified to more similarly match the new categories used in El Dorado County's TIM Fee Program. The final TIM Fee table will be compared to other similar or neighboring jurisdictions to ensure it is consistent and reasonable.
- Using the TIM Fee table, the Consultant will determine the approximate revenue yield of the TIM Fee Program over the study period.
- The final report will detail the assumptions, methodologies, and recommendations for the TIM Fee Program nexus.

Deliverables:

1. New TIM Fee Table
2. Draft and Final Nexus Study

Task 5: Environmental Document

The Consultant will provide the technical services and tasks that are required for the completion of an environmental document a needed for the TIM Fee Program update.

Deliverables:

1. Draft and Final Environmental Document

PROPOSAL REQUIREMENTS

Please submit four (4) hard copies and one (1) electronic copy (PDF) of the proposal. The proposal shall be limited to 20 double-sided pages in 8.5-inch by 11-inch format. Any charts, exhibits, or schedules may be included in 11-inch by 17-inch format and folded to fit in an 8.5-inch by 11-inch page, and will count as one (1) page. The page limit does not include the outside cover, section dividers, cover letters, resumes, subconsultant commitment memorandum, or scope of work (these can be included in appendices). Each response to this RFP shall include the information described in this section in the specified order (tabs and page numbers are required). Failure to meet the minimum requirements of the RFP shall be cause for rejection of the package. The City reserves the right to reject any or all proposals. The proposal must include the following items:

1. Cover Letter, including:
 - The title of this RFP
 - Contact person's name, address, email address, and telephone number
 - A statement that the submitting firm will perform the services and adhere to the requirements described in this RFP, including any addenda.
 - Signature of an officer empowered by the Consultant to sign such material and thereby commit the Consultant to the obligations contained in the RFP response. Signing and submission of a response shall indicate the intention of the proposer to adhere to the provisions described in this RFP and a commitment to enter a binding contract.
2. Capabilities of the Firm / Team:
 - Describe what makes your firm and/or team uniquely qualified to do this work.
 - Describe your firm's experience in developing and implementing similar programs, traffic analysis expertise, and your firm's travel demand modeling experience. Highlight any relevant local experience.
 - Provide a brief summary of your understanding of SB 743, and how your firm can best assist the City of Placerville in determining that the City's TIM Fee Program is compliant with these requirements.
3. Qualifications and Availability of Proposed Staff:
 - Identify specific staff members assigned to the project and a description of their workload and availability.
 - Provide a brief summary of the qualifications and relevant experience for each team member identified, including length of service with the firm.

- Resumes should be included in an appendix and should not be more than two (2) pages for key team members and one page or less for support staff.
- Provide an organizational chart for all staff members and subconsultants identified.
 - Include qualifications and experience of any subconsultant(s) to be used. Identify the services which would be completed by your firm's staff and those provided by subconsultant(s).
4. Project Understanding and Approach:
- Describe your firm's approach for successful implementation of the project and what you believe are the key constraints, project milestones, and approvals.
 - Provide your understanding of the project based on existing information available in the RFP, available documents, and applicable regulations or requirements.
 - Provide a detailed scope of work and proposed schedule to accomplish all of the required tasks within the desired timeline and list of deliverables (include timelines for submittal review and approval for the City and other stakeholders, as applicable).
5. A statement acknowledging that the Consultant has reviewed the language contained within the City's Agreement for Consulting Services (Attachment A) and that the consultant will enter into that agreement, or explain any objections or concerns.
6. A Cost Proposal as detailed below.

COST PROPOSAL REQUIREMENTS

In a separate, sealed envelope, Proposers must provide a total cost proposal for all services to be delivered, and a breakdown of costs delineated by tasks as described in the Scope of Services outline. The Cost Proposal must detail all costs to be paid by the City of Placerville under the Contract including, without limitation, staff hours and hourly rates for each team member proposed to complete the project. The Cost Proposal shall include compensation for wages, salary-related benefits, overhead, administration, materials, and all other direct costs, profit and a total "not-to-exceed" sum for this proposal. The Cost Proposal must match the proposed scope of work.

For consulting services on projects involving local, State, and/or Federal funds, the City requires that fee schedules must be consistent with applicable prevailing wage requirements.

REJECTION OF PROPOSALS

Prospective Consultants interested in being considered must submit a proposal in compliance with this notice. Failure to meet the minimum requirements of the Request for Proposals (RFP) shall be cause for rejection of the package. The City reserves the right to reject any or all proposals.

MODIFICATION OR WITHDRAWAL OF PROPOSAL

Any proposal received prior to the date and time specified for submittal may be withdrawn or modified by written request of the prospective Consultant.

EVALUATION AND CONTRACT AWARD

Selection of a consultant will not necessarily result in a project guarantee with the City of Placerville. Selection of consultant is a Staff recommendation and entering into a contract is only by action of the City Council and is not in force until fully executed by authorized personnel. The City has established the following criteria for the selection process:

- The selection process shall be fair, open, and competitive.
- Selection shall be based upon demonstrated competence, professional qualifications, relevant experience, and capabilities to perform the required services.
- The proposals will be reviewed and ranked, and a short list will be prepared by the selection panel.
- At the discretion of City staff, the short-listed firms may be interviewed. At the completion of the interviews, the firms would then be rated and ranked.
- Negotiations will commence with the top-ranked firm. If negotiations are unsuccessful, then the City will begin negotiations with the second-ranked firm. The City reserves the right to reject any and all proposals and to negotiate with any responsible, responsive firm. The City is under no obligation to issue contracts for the services described in this RFP.

Reference checks will be performed at the sole discretion of the selection committee.

INQUIRIES AND SUBMITTALS

All inquiries to this RFP should be submitted to:

City of Placerville
Engineering Department
Melissa McConnell, P.E.
City Project Manager
Email: mmcconnell@cityofplacerville.org
Phone: (530) 642-5250

The City of Placerville will accept written proposals at the following address:

City of Placerville
Engineering Department
3101 Center Street
Placerville, CA 95667
Attn: Melissa McConnell, P.E.
City Project Manager

Proposals shall be submitted in sealed envelopes or containers bearing the name and business address of the firm, and labeled as follows in the lower left hand corner of the envelope:

**Request for Proposals
TIM Fee Program Update
CIP #41701**

Proposals may be hand delivered or mailed via U.S. Post Office or overnight service. The City of Placerville will NOT accept proposals submitted via e-mail.

All proposals shall be received no later than **3:00 pm, April 6, 2022**. Late proposals will not be accepted.

SECTION 2: LEGAL NOTICES & CONTRACT PROVISIONS

I. THE CITY OF PLACERVILLE PROPOSAL AND CONSULTANT POLICIES

A. RFP AS THE BASIS FOR PROPOSALS

This RFP, including any addenda, will represent the most definitive statement the City of Placerville will make concerning information upon which Proposals are to be based. Any information, verbal or written, which is not contained in this RFP and addenda thereto, will not be considered by the City of Placerville in evaluating the Proposals.

B. AGENCY RIGHT TO WAIVE MINOR IRREGULARITIES

The City of Placerville reserves the right to waive minor irregularities in the proposal process or to modify the selection process and timeline as it deems necessary.

C. ROLE OF CONSULTANT

The division of work among the selected Consultant and any proposed sub-consultant is left to the selected Consultant to identify in assembling a project team. The selected Consultant will be responsible for management, design integration, scheduling, control, review and approval of all subcontract work and services for the total project. The selected Consultant will be responsible for the quality and timeliness of all sub-consultant work and must coordinate all sub-consultant activities. The selected Consultant must keep the City of Placerville apprised of any problems incurred and provide regular progress and budget reports. At The City of Placerville's direction, or as detailed in this RFP, the selected Consultant may be required to coordinate directly with other City of Placerville consultants and contractors.

The selected Consultant will be responsible for assuring that all subcontract work is in conformance with the project's policies, standards, and criteria. Use of any sub-consultants not identified in the Proposal will be subject to prior approval by The City of Placerville.

D. LIMITATION AND AWARD

The City of Placerville reserves the right to award multiple contracts. This RFP does not commit the City of Placerville to award a contract. The City of Placerville reserves the right to reject all Proposals. If The City of Placerville rejects all Proposals, the project may be abandoned, re-advertised, or performed in any manner authorized under City ordinance and applicable law.

The contents of the successful Consultant's Proposal will be incorporated into the resulting contract. The City of Placerville's Sample Contract is included in Attachment A of this RFP. The City of Placerville reserves the right to rescind the contract award if the selected Consultant is unable or unwilling to enter into a contract substantially identical to the sample contract within twenty (20) days from the date it is sent to the selected Consultant for execution.

A selection committee will evaluate the Proposals and establish a rank ordering of the qualified firms for the project. City staff will then negotiate with the highest-ranked

firm, and recommend award of the contract to the City Council. Proposals will be made available, upon request, for copying or inspection when a recommendation is made for award of the resulting contract.

E. DEBARRED PROPOSERS

Proposer, including any of its officers or holders of a controlling interest, is obligated to inform the City of Placerville whether or not it is or has been on any debarred proposers list maintained by the State of California or any federal agency. Should Proposer be included on such a list during the performance of this project, it must inform the City of Placerville. Failure to do so may result in rejection of the proposal.

F. DISCLOSURE OF PROPOSAL INFORMATION

Once submitted, Proposals become a matter of public record. Where a Proposer submits technical or business information that is claimed to be confidential, Proposer must so indicate by delineating each section of the Proposal with the heading "Confidential". The City of Placerville will give consideration to the claim of confidentiality. However, Proposers should understand that the City of Placerville has reservations as to whether any such information is exempt from disclosure under the California Public Records Act (Government Code Section 6250, et seq). The City of Placerville will notify a Proposer if it receives a request for release of information identified as confidential by Proposer. By submitting its Proposal, Proposer agrees that the City of Placerville will not be held liable for complying with the Public Records Act.

G. USE OF RFP IDEAS

The City of Placerville reserves the right to use any or all of Proposer's ideas as set forth in its Proposal. Selection or rejection of the Proposal does not affect this right.

H. FACILITIES AND RESOURCES

Proposer must furnish all equipment, facilities, labor, supervision, and any and all other required materials and services, except as otherwise specified in Consultant's Proposal. No City of Placerville resources in terms of personnel, facilities, or equipment will be provided unless agreed upon in writing.

II. CITY OF PLACERVILLE PROPOSAL PROTEST PROCEDURE

A. SCOPE OF PROTEST PROCEDURE

This Article specifies procedures for interested parties to protest the following City of Placerville staff actions:

- 1) A written recommendation to the City Council to disqualify a bidder, subcontractor, or proposer; and/or,
- 2) A written recommendation to the City Council to award a Contract to a particular bidder or proposer.

B. EFFECT OF PROTEST ON CONTRACT AWARD OR BID OPENING

When a protest has been properly filed prior to Contract award, the City Council will not award the Contract prior to issuance of a final decision on the protest. When a protest has been properly filed before the opening of bids, bids will not be opened prior to the City Council's decision on the protest.

C. RELEASE OF PROTEST INFORMATION

Materials submitted as a part of the protest resolution process will be available to the public except to the extent that:

- 1) The withholding of information is permitted or required by law or regulation; and
- 2) The information is designated proprietary by the person submitting the information to the City of Placerville. If the person submitting material to the City of Placerville indicates that the material contains proprietary material that should be withheld, a statement advising of this fact must be affixed to the front page of the material submitted, and the alleged proprietary information must be specifically identified in the body of the materials wherever it appears.

D. MAINTENANCE OF PROTEST RECORDS

The City Manager or his/her designee will maintain a written record of each step taken in every bid or proposal protest. The record will list dates of each event and photocopies of all correspondence sent and/or received by the City of Placerville pertaining to the protest. These records will be retained for at least three (3) years from the date each protest is resolved.

E. WHO MAY FILE A PROTEST

Protests may be filed only by interested parties. Interested parties are defined as actual or prospective bidders or proposers for a City of Placerville contract and subcontractors or suppliers at any tier whose direct economic interest would be affected by an award or failure to amend a Contract, a provision of the specifications, or a bid or proposal submitted to the City of Placerville by a prime Consultant, or by the interpretation of the provisions of such documents. Submission of a bid or sub-bid protest will be deemed a waiver of any protest to any provision of the specifications which is not the subject of the protest, and entitle the bidder/proposer or sub-bidder/sub-consultant only to protest any subsequent recommendations/decisions of the City of Placerville staff, the City Manager, or the City Council to disqualify the bidder/proposer, reject its bid/proposal, or award the Contract.

F. TIME FOR FILING A PROTEST

Protest to any particular provision of the specification must be received by the City of Placerville no later than five (5) working days prior to the date established in the RFP as the deadline for the submittal of bids, proposals or qualifications. Protests of staff's recommendation to the City Council pertaining to the award of a Contract or the list of qualified proposers responding to an RFP must be received by the City of Placerville no later than five (5) working days from the date of the letter providing notice of the staff recommendation.

G. FORM FOR FILING A PROTEST

Protests must be addressed to the Placerville City Manager, 3101 Center Street, Placerville, CA 95667. Protests must be in writing and contain a statement of the ground(s) for protest. At least ten (10) copies of the protest must be submitted by the protestor in the time and manner specified in this Article. The City Manager or his/her designee will provide notice, by telephone or by letter, to all bidders or proposers known to the City of Placerville for the Contract that is the subject of the protest. Such notice will state that a protest has been filed with the City of Placerville and identify the name of the protestor. The notice will be given not more than five (5) working days after receipt of a properly filed protest. The notice will state that interested parties will receive further information relative to the protest only if they submit a written request to the City Manager.

H. THE CITY OF PLACERVILLE'S PRELIMINARY RESPONSE TO A PROTEST

All City of Placerville responses to a protest will be issued in writing. The City Manager will designate a City staff person who, not more than ten (10) working days after receipt of a properly filed protest, will prepare and mail the following information to the protestor and all interested parties requesting such information:

- 1) A preliminary staff response to the protest including a brief explanation of the rationale supporting the response; and
- 2) The proposed time, date and place of the meeting at which the protestor and The City of Placerville staff will attempt to resolve the protest, if such a meeting is appropriate in the judgment of the City Manager.

Within five (5) working days after the meeting, or if no meeting is scheduled, within five (5) calendar days after the date the City of Placerville's response was mailed, the protestor must give the City Manager written notice that the protest is withdrawn or, alternatively, that the protestor requests further consideration of the protest.

If the protestor fails to deliver such notice to the office of the City Manager by the applicable deadline, the protest will be deemed withdrawn.

I. FURTHER INVESTIGATION OF PROTEST

If a protest is not withdrawn the City Manager or his/her designee will further investigate the protest. The City Manager may contract for third-party consulting services to investigate a protest, when necessary. The City Manager may negotiate with the protestor and other interested parties to share the cost of such consulting services. As part of the investigation, the City Manager or his/her designee will establish reasonable times when the City of Placerville, the protestor, and other interested parties will exchange all documents and arguments relevant to the protest.

Upon written request of the protestor, the City Manager may forward the protest and the City of Placerville's staff response to the City Council for decision without further investigation of the protest by the City Manager. If the City Manager elects to proceed without further investigation of the protest, the prior City of Placerville staff response

will be the recommendation of the City Manager and the City Manager will proceed as set out as follows in section J. City Manager's Recommendation or Decision.

J. CITY MANAGER'S RECOMMENDATION OR DECISION

Following investigation, the City Manager will distribute to the protestor, and all interested parties requesting such information, either a written decision, if the City Manager is awarding authority, or a written recommendation that the City Manager will submit to the City Council to resolve the protest, if the City Council is the awarding authority. The City Manager's written decision is final. Within five (5) working days after the date of the letter transmitting the City Manager's recommendation on the protest, the protestor must notify the City Manager in writing whether that the protest is withdrawn or that the protestor requests the protest continue to the City Council for decision. If the protestor fails to submit such a notice, the protest will be deemed to be withdrawn and all proceedings will cease.

K. SUBMITTAL OF PROTEST TO THE CITY COUNCIL

If the protest is continued to the City Council for resolution, the protestor, and all interested parties requesting such information, will be notified of the date, time and place of the City Council's hearing at which the protest will be considered; and the date that the protestor and other interested parties must submit written comments with respect to the recommendation. The date established by the City Manager for submittal of comments by the protestor and other persons will allow a reasonable period for rebuttal and may vary according to the complexity of the particular protest.

A copy of the agenda package sent to City Council members prior to a protest hearing will be sent to the protestor and sent or made available to any interested person at least five (5) working days before the hearing and will include the City Council's recommendation and all written comments received from the protestor and other persons within the submittal period. If the City Manager has revised his/her recommendation since its distribution, a written description of the new intended decision and the reason(s) for revision will be sent to the protestor and sent or otherwise made available to any interested person.

L. CITY COUNCIL'S DECISION

At the City Council meeting scheduled for the protest hearing, the City Council, in its discretion, may conduct the hearing and/or continue the hearing to a subsequent City Council meeting, or hire an impartial hearing officer to conduct a hearing and prepare a written recommended decision including findings of fact.

At the hearing, the Mayor may announce procedural rules, including those that are reasonably necessary to preclude repetitious or irrelevant testimony. The City of Placerville staff, the protestor, and any interested person may present evidence relating to the protest. If either party arranges for the use of a court reporter to transcribe the hearing, the other party must share the cost of transcribing the hearing if it requests a copy of the transcript.

If an impartial hearing officer conducts the hearing, the City will provide written notice to the protestor, and all interested parties requesting such information, of the

date, time and place of the City Council meeting at which the hearing officer's recommendation will be considered for adoption, and the date that the protestor must provide written comments for submittal to the City Council. A copy of the documents pertaining to the protest that is provided to the City Council with its meeting agenda will be sent to the protestor at least five (5) days before the meeting.

In rendering its decision on the protest, the City Council, in its discretion, may adopt the decision recommended by the City Manager, adopt the written recommendation and findings of fact prepared by a hearing officer, or adopt a separate decision. The protestor and all interested parties will be notified in writing of the final decision of the City Council within thirty (30) calendar days from the date of the City Council meeting.

M. WAIVER OF DAMAGES

By submitting a bid/proposal or sub-bid/sub-proposal, each bidder/proposer and sub-bidder/sub-proposer agrees that in the event that it submits any protest to the terms of the specifications or to any subsequent decision of the City of Placerville staff, City Manager or City Council. The City of Placerville retains the discretion to reject all bids/proposals or to make no decision whatsoever. If the City of Placerville City Manager or City Council rejects all bids/proposals for any reason, or overrules any protest and awards the Contract, the protesting entity waives all claims, rights and causes of action for loss of anticipated profits from the Contract or any subcontract, regardless of whether the City of Placerville's decision is subsequently invalidated by a court of law. The City of Placerville will be deemed to have relied to its detriment on such waiver in deciding either to reject all bids/proposals or to award the Contract. Any attempted reservation of rights waived herein will be grounds to reject a bid as nonresponsive.

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SAMPLE AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT made and entered by and between the City of Placerville, a political subdivision of the State of California (hereinafter referred to as "City") and **CONSULTANT**, a company duly qualified to conduct business in the State of California, whose principal place of business is **ADDRESS**, (hereinafter referred to as "CONSULTANT");

WITNESSETH

WHEREAS, City has determined that it is necessary to obtain a consultant to provide consulting services for the Traffic Impact Mitigation Fee Program Update (CIP #41701).

WHEREAS, CONSULTANT has represented to City that it is specially trained, experienced, expert, and competent to perform the special services required hereunder and City has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws.

NOW, THEREFORE, City and CONSULTANT mutually agree as follows:

ARTICLE I – SCOPE OF SERVICES

CONSULTANT agrees to provide consulting services to City as those services are described in CONSULTANT’S Scope of Work in Exhibit “A”, incorporated herein and made by reference a part hereof.

ARTICLE II – TERM/PERFORMANCE PERIOD

This Agreement shall go into effect on **DATE**, contingent upon approval by City Council, and CONSULTANT shall commence work after notification to proceed by City’s Contract Administrator. The Agreement shall end on **DATE**, unless extended by contract amendment if mutually agreed by both parties hereto, in writing not less than thirty (30) days prior to the expiration of this Agreement.

CONSULTANT is advised that any recommendation by City staff for contract award is not binding on City until the Agreement is fully executed and approved by City Council and staff.

ARTICLE III – COSTS AND PAYMENTS

- A. For services provided herein, City agrees to pay CONSULTANT in accordance with the rates and charges identified in Exhibit ‘A’, incorporated herein and made by reference a part hereof. Payment shall be made within thirty (30) days following City receipt and approval of itemized invoice(s) detailing services rendered.
- B. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by City’s Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than 30 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone as applicable. The final invoice

ATTACHMENT A

should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be mailed to the City's Contract Administrator at the following address:

City of Placerville
Attn: Melissa McConnell
3101 Center St.
Placerville, CA 95667

- C. The total amount payable by City shall not exceed \$**FEE**.

ARTICLE IV – DEFAULT, TERMINATION AND CANCELLATION

- A. Default: upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice.
1. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.
 2. Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.
- B. Bankruptcy: This Agreement, at the option of the City, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONSULTANT.
- C. Ceasing Performance: City may terminate this Agreement in the event CONSULTANT ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: City may terminate this Agreement in whole or in part thirty (30) calendar days upon written notice by City for any reason. If such prior termination is effected, City will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to CONSULTANT, and for such other services, which City may agree to in writing as necessary for contract resolution. In no event, however, shall City be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, CONSULTANT shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, City reserves the right to take over and complete the work by contract or by any other means.

ARTICLE V – COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to City.

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- D. All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE VI – RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and City shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, City, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

ARTICLE VII – AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by City's Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by City's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by City will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.
- D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by City contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by City at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

ARTICLE VIII – SUBCONTRACTING

CONSULTANT is engaged by City for its unique qualifications and skills as well as those of its personnel.

- A. Nothing contained in this contract or otherwise, shall create any contractual relation between City and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to City for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from City's obligation to make payments to the CONSULTANT.

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- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by City's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by City.
- D. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by City's Contract Administrator prior to the start of work by the subconsultant(s).

ARTICLE IX – EQUIPMENT PURCHASE

- A. Prior authorization in writing, by City's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by City's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, City shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit City in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by City and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by City." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.
- D. All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE X – STATE PREVAILING WAGE RATES

- A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

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ARTICLE XI – CONFLICT OF INTEREST

No official or employee of City who exercises any functions or responsibilities in review or approval of services to be provided by CONSULTANT under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership or association in which he/she is directly or indirectly interested; nor shall any such official or employee of City have any interest, direct or indirect, in this Agreement or the proceeds thereof.

- A. CONSULTANT shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this contract, or any ensuing City construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing City construction project, which will follow.
- B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- C. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- D. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.
- E. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XII – REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XIII – PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
 - 1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
 - 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XIV – CHANGES TO AGREEMENT

- A. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by City’s Contract Administrator.

ARTICLE XV – CONSULTANT TO CITY

It is understood that the services provided under this Agreement shall be prepared in and with cooperation from City and its staff. It is further agreed that in all matters pertaining to this Agreement, CONSULTANT shall act as CONSULTANT only to the City and shall not act as CONSULTANT to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with CONSULTANT’s responsibilities to the City during term hereof.

ARTICLE XVI – INDEPENDENT CONSULTANT

CONSULTANT is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement.

CONSULTANT exclusively assumes responsibility for acts of its employees, associates and subconsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

CONSULTANT shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. City shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to CONSULTANT or its employees.

ARTICLE XVII – NOTICE TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to City shall be in duplicate and addressed as follows:

City of Placerville
Engineering Department
3101 Center Street
Placerville, California 95667
ATTN: Melissa McConnell, City Project Manager

Or to such other location as the City directs.

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Notices to CONSULTANT shall be addressed as follows:

ADDRESS
ATTN:

Or to such other location as the CONSULTANT directs.

ARTICLE XVIII – INDEMNITY

CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless City, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of City, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.

Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

ARTICLE XIX – INSURANCE

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish City a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than two million dollars (\$2,000,000) of professional liability and auto insurance per occurrence.
- B. The Certificate of Insurance will provide:
 - 1. That the insurer will not cancel the insured's coverage without 30 days prior written notice to City.
 - 2. That City, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this contract are concerned.
 - 3. That City will not be responsible for any premiums or assessments on the policy.
- C. CONSULTANT agrees that the liability insurance herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of City. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, City may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

ARTICLE XX – CALIFORNIA RESIDENCY

All independent consultants providing services to the City must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certify that they have a permanent place of business in California. The CONSULTANT will be required to submit a Form 590 prior to execution of a contract or City shall withhold seven (7%) percent of each payment made to the

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CONSULTANT during term of the contract. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XXI – TAXPAYER IDENTIFICATION NUMBER

All independent Consultants or Corporations providing services to the City must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XXII – CITY BUSINESS LICENSE

To conduct business within the City of Placerville CONSULTANT must be in possession of a valid City Business License.

ARTICLE XXIII – ADMINISTRATOR

The City Officer or employee with responsibility for administering this contract is the City Engineer, or successor.

ARTICLE XXIX – AUTHORIZED SIGNATURES

The parties to this contract represent that the undersigned individuals executing this contract on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXV – PARTIAL INVALIDITY

If any provision of this contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXVI – DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the City's Contract Administrator, City Engineer and City Manager, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than 30 days after completion of all work, CONSULTANT may request review by the City Manager of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this contract.

ARTICLE XXVII – AGREEMENT DEFINITION

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

ARTICLE XXVIII – OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may

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have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.

- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts for federal-aid contracts).
- E. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXIX – CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to City's operations, which are designated confidential by City and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by City relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or City's actions on the same, except to City's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by City, and receipt of City's written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.
- F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than City.

ARTICLE XXX – SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by City Safety Officer and other City representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, City has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle

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Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

ARTICLE XXXI – COMPLIANCE

- A. A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the CITY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or CITY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

ATTACHMENT A

H. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

-- C I T Y O F P L A C E R V I L L E --

-- C O N S U L T A N T --

Date: _____

Date: _____

M. Cleve Morris, City Manager

Authorized Representative

Print Name

Attachments:

Exhibit A: Consultant Scope, Rate Schedule, and Cost Proposal