

REQUEST FOR QUALIFICATIONS



On-Call Professional Consultant Services

Released: October 11, 2023

Due: November 1, 2023, no later than 2:00 pm

**City of Placerville
Engineering Department
3101 Center Street
Placerville, CA 95667**

REQUEST FOR QUALIFICATIONS FOR ON-CALL PROFESSIONAL CONSULTANT SERVICES

Table of Contents

| | | |
|-------|---|---|
| I. | INTRODUCTION | 3 |
| II. | BACKGROUND | 3 |
| III. | CONTACT | 3 |
| IV. | SUBMISSION OF STATEMENT OF QUALIFICATIONS (SOQ)..... | 3 |
| V. | GENERAL CONDITIONS | 4 |
| A. | Limitations | 4 |
| B. | Award | 5 |
| C. | RFQ Addendum | 5 |
| D. | Verbal Agreement or Conversation | 5 |
| E. | Pre-contractual Expense | 5 |
| F. | Signature | 5 |
| VI. | SOQ CONTENT AND ORGANIZATION | 6 |
| | Mandatory Submittal Layout | 6 |
| VII. | SOQ EVALUATION AND SELECTION | 8 |
| VIII. | SAMPLE CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT | 9 |
| IX. | CAPITAL IMPROVEMENT PROGRAM PROJECTS | 9 |

ATTACHMENT A: PROPOSAL LIST OF SERVICES

ATTACHMENT B: CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

REQUEST FOR QUALIFICATIONS FOR ON-CALL PROFESSIONAL CONSULTANT SERVICES CITY OF PLACERVILLE

I. INTRODUCTION

The City of Placerville (City) invites firms to submit a Statement of Qualifications to be considered for the list of prequalified firms to provide Professional Consultant Services in support of the City's Capital Improvement Program, Storm Water Pollution Prevention Program, and supplemental staff services to assist and support the City's role in oversight of projects, operations, and functions. It is the City's desire to create a comprehensive list of consultants that will be able to provide exemplary support for each of the aforementioned roles and programs.

II. BACKGROUND

The City of Placerville Engineering and Public Works Departments are responsible for the bulk of the City's maintenance of existing infrastructure, facilities, development review and oversight, as well as the delivery of Capital Improvement Projects (CIP) throughout the city. The Engineering and Public Works Departments do not have enough staff to address the volume of programmed projects and will, therefore, rely heavily on consultants for various professional consulting and engineering services.

III. CONTACT

The primary contact person for all inquiries and this selection process is Rebecca Neves. Her contact information is provided below:

Rebecca Neves, City Engineer
Engineering Department
3101 Center Street, 3rd Floor.
Placerville, CA 95667
(530) 642-5250
Email: rneves@cityofplacerville.org

IV. SUBMISSION OF STATEMENT OF QUALIFICATIONS (SOQ)

Firms must submit three (3) copies of the SOQs no later than 2:00 p.m. on Tuesday, November 1, 2023. If mail delivery is used, the Consultant should mail the proposal early enough to provide it for arrival by this deadline. Consultants that choose to use mail or courier service do so at their own risk. The City will not accept any proposals after the deadline date and time, regardless of the circumstances.

Firm shall submit SOQs to the Engineering Department, 3rd Floor, Attention:

Rebecca Neves, City Engineer
Engineering Department
3101 Center Street, 3rd Floor.
Placerville, CA 95667
(530) 642-5250
Email: rneves@cityofplacerville.org

Submittals shall be delivered marked:

STATEMENT OF QUALIFICATIONS FOR ON-CALL PROFESSIONAL CONSULTANT SERVICES

By submitting an SOQ, the Consultant certifies that his or her name, as well as subcontractors do not appear on the Controller General's list of ineligible contractors for federally assisted projects.

Until award of the contract, the City will hold SOQs in confidence and unavailable for public review. Upon award of a contract to the successful team, the City will consider all SOQs as public records. No SOQ will be returned after the date and time set for opening thereof.

Attachment A contains a list of requested services. The consultant is required to include this form in their proposal and indicate what services are being proposed on. Please provide a ½ page summary of experience and qualifications for each service type, affirming experience and competence. References should also be provided. A copy of this RFQ has also been posted on the City's website at:

<https://www.cityofplacerville.org/rfp-rfq-projects-out-to-bid>

V. GENERAL CONDITIONS

A. Limitations

This RFQ does not commit City to award a contract, to pay any costs incurred in the preparation of the contract in response to this request, to procure, or contract for services or supplies. City expressly reserves the right to reject any and all SOQs or to waive any irregularity or information in any SOQ or in the RFQ procedure and to be the sole judge of the responsibility of any proposer and of the suitability of the materials and/or services to be rendered. City reserves the right to withdraw this RFQ at any time without prior notice. Further, City reserves the right to modify the RFQ schedule described below.

Tentative Schedule:

- RFQ Released: October 11, 2023
- SOQs Due: November 1, 2023, no later than 2:00 pm
- City Council Acceptance of List: November 14, 2023

B. Award

The City may ask RFQ finalists to present oral briefings of their SOQs. All finalists may be required to participate in negotiations and submit such price, technical, or other revisions of their SOQs as may result from negotiations. The City also reserves the right to award a contract without discussion, based upon the initial SOQs.

C. RFQ Addendum

Any changes to the RFQ requirements will be made by written addenda by City and shall be considered part of the RFQ. Upon issuance, such addenda shall be incorporated in the agreement documents, and shall prevail over inconsistent provisions of earlier issued documentation.

D. Verbal Agreement or Conversation

No prior, current, or post award verbal conversations or agreement(s) with any officer, agent, or employee of City shall affect or modify any terms or obligations of the RFQ, or any contract resulting from this RFQ.

E. Pre-contractual Expense

Pre-contractual expenses are expenses incurred by proposers in:

- A. Preparing SOQs in response to this RFQ
- B. Submitting SOQs to the City
- C. Negotiations with the City on any matter related to SOQs.
- D. Other expenses incurred by a consultant or proposer prior to the date of award of any agreement.

In any event, City shall not be liable for any pre-contractual expenses incurred by any proposer or selected consultant. Consultants shall not include any such expenses as part of the price proposed in response to this RFQ. The city shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFQ.

F. Signature

The SOQ will also provide the following information: name, title, address and telephone number of the individual with authority to bind the company and also who may be contacted during the period of SOQ evaluation and be signed by this person.

VI. SOQ CONTENT AND ORGANIZATION

SOQs should be limited to specific discussion of the elements outlined in this RFQ. The intent of this RFQ is to encourage responses, which allow the City to understand your firm's experience and qualifications.

Mandatory Submittal Layout

The organization of the proposal shall follow the general outline below:

A. Transmittal Letter

The transmittal letter should include the name, title, address, phone number, and original signature of an individual with authority to negotiate on behalf of and to contractually bind the consulting firm, and who may be contacted during the period of SOQ evaluation.

B. Introduction (2 pages max.)

The proposer should demonstrate an overview of their firm's adequate experience of the variety of potential types of work that may be performed and an understanding of the role and relationships of your staff in the development of these potential projects.

C. Project Understanding and List of Services

This section should include a statement to show your experience and understanding of the potential projects, including key issues and experience that your firm has encountered on previous public projects that may set your firm apart.

The types of projects and public contracts that may require Engineering Services are as follows:

- 1) Capital Project Engineering Design Assistance
- 2) Planning and Feasibility Studies
- 3) Project Approvals/Government Liaison
- 4) Environmental Clearances, Issues, Documentation, and Permitting
- 5) Cultural, Biological, and other technical studies and assistance
- 6) Arborist services and reporting
- 7) Project Management
- 8) Engineering Plans, Specifications, Calculations, and Reports.
- 9) Hydrologic and Hydraulic Analysis and Reporting
- 10) Geotechnical Engineering
- 11) Structural Engineering (Buildings)
- 12) Structural Engineering (Structures Design and Review Assistance)
- 13) General Civil Engineering
- 14) Transportation Design

- 15) CCTV Inspections, Utility Assessments and Design
- 16) Right of Way Acquisition and Negotiation Services
- 17) Topographic Surveying and Mapping
- 18) Planning Services
- 19) Grant Writing Services and Management
- 20) Quality Assurance and Value Engineering Reviews
- 21) Labor Compliance
- 22) Resident Engineer and Inspection Services
- 23) Traffic Modeling, Analysis, and Reporting
- 24) Traffic Control Design and Compliance with certifications
- 25) Retaining Wall Design
- 26) Construction Management
- 27) Landscape and Irrigation Design
- 28) Electrical Design
- 29) Mechanical Design
- 30) Broadband Design
- 31) Wastewater Plant Design and Construction Support
- 32) Sewer Collection and Pump Station Design
- 33) Water System Modeling and Distribution Design
- 34) Pavement and Delineation Design
- 35) Parking Lot Design
- 36) ADA Compliance
- 37) Emergency/Planned Bridge Repair or Replacement
- 38) Streetlight and Traffic Signal Design, Installation, and Modifications
- 39) Development Review
- 40) General On-call Engineering and City Engineer Services
- 41) State permit support and compliance
- 42) Bid Support
- 43) Other Agency Coordination and Approvals

The minimum requirements for consultant proposals are as follows:

- If proposing under an engineering related service, a registered civil engineer in California is required and must be in good standing on services where engineering design work is proposed.
- Experience working as a design engineer, resident engineer, or structures representative on Caltrans construction projects or on local agency projects based on Caltrans standards.
- Ability to work and make appropriate decisions independently.
- Ability to manage more than one project at a time.
- For SRs, familiarity with construction of structures and the Caltrans Bridge Construction Records and Procedures Manual.
- Knowledge and Experience with the current Caltrans Standard Plans, Specifications, and Special Provisions.
- Experience documenting and managing projects using the Caltrans

Construction Manual Guidelines and Requirements.

- Exceptional writing and communication skills.

D. Consultant and Sub-consultant Staff

This section should describe the qualifications and experience of each professional who will participate in the project and identify the specific project team that the City will be working with. Provide an organizational chart(s) showing the project manager and project staff.

If a sub-consultant will be used for any of the services, the organizational chart should indicate their role.

The proposing consultant firm has the option and discretion to propose as part of a team, individually, or both. There is no limit to the amount of teams a consultant firm may be a part of.

E. Consultant Qualifications and References

This section should describe the nature and outcome of projects previously conducted by the consultant related to the work described within the RFQ and list of proposing services identified in Attachment A. Attachment A is required to be included in this section.

Descriptions for each proposing service is limited to ½ page and should include client contact names, address, phone numbers, descriptions and qualifications regarding the type of work performed, approximate dates on which the work was completed, and proposed team members who performed the work.

F. Team Resumes

Include a one-page (maximum) resume for each of the key project team members.

G. Fee Schedule

Include a typical 2023/2024 billing rate schedule for project team (one page).

VII. SOQ EVALUATION AND SELECTION

A technical review committee made up of City Staff will evaluate the SOQs. Proposers may be telephoned and asked for further information, if necessary, and may be expected to appear for oral interviews. Previous clients may also be called. The panel will make recommendations based on the SOQ, optional oral interview, and reference check. The city reserves the right to select a consultant based solely on written SOQ's and not convene oral interviews.

Upon receipt of the SOQs, the City will perform the technical evaluation and scoring of each proposal. The criteria to help evaluate the SOQs will include the following considerations:

- A. Recent relevant experience. (30 points)
- B. Understanding of the background and requirements of the potential project categories, proposed services, and overall implementation. (25 points)
- C. Qualifications and experience of the project team that will be assigned to City projects. (30 points)
- D. References. (15 points)

The City will pre-qualify no less than (5) firms to provide services. The City reserves the right to select more or fewer than the pre-qualified firms for these services. In the event the City judges multiple SOQs to be of equal value, interviews may be performed to further assess the proposals.

The selected firms will be placed on the pre-qualification list in their order of ranking and issued master contracts for services based on qualifications to create the City's Master On-Call Consultant List. The City will solicit task orders for services from the Master On-Call List, generally based on the order of ranking, as projects are developed. The City may also request services based on the unique qualifications of a firm for projects requiring such qualifications.

The City may choose to execute a contract with a selected firm in advance of a specific task in order to expedite services where there is an immediate need and create the Master On-Call Consultant List. The City will issue Task Authorizations or Contracts as professional service needs are identified. For federal and state funded projects, the City will utilize the process identified in the Caltrans Local Assistance Procedures Manual (LAPM) through the mini-RFP process identified in Chapter 10.

VIII. SAMPLE CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

The selected Consultant(s) will be required to enter into a Consultant and Professional Services Agreement with the City. A sample of the City's Agreement is provided as Attachment B. Unless stated otherwise, submission of a Statement of Qualifications indicates that the proposer accepts the terms of the City's standard Consultant and Professional Services Agreement.

IX. CAPITAL IMPROVEMENT PROGRAM PROJECTS

The City has successfully acquired a multitude of federal and state grants and is also

supported by two individual sales tax measures for infrastructure, Measure H and Measure L. Currently, the CIP Program is funded up to over \$53 million. These are the primary funding sources for Capital Projects and include scopes such as:

| | |
|---|---|
| Police and Fire Public Safety Building | Public Works Corporation Yard |
| City Wide Patch Paving (Various Roads) | Cedar Ravine Multimodal Study |
| Water Reclamation Facility Projects (Various) | Utility Assessments (Various Roads) |
| Trip to Green Permanent Infrastructure | Placerville Dr. Construction Management |

Adopted project descriptions are also available on the City of Placerville Website at the link below.

<https://www.cityofplacerville.org/capital-improvement-program-budget>

Attachment A: Proposal List of Services

| | Type of Professional Consulting Service | Name of Firm or Team Submitting (If you are not submitting on a service, please leave that row blank.) | Check here to verify a 1/2 page write up has been included in your proposal. |
|----|--|---|--|
| 1 | Capital Project Engineering Design Assistance | | |
| 2 | Planning and Feasibility Studies | | |
| 3 | Project Approvals/Government Liaison | | |
| 4 | Environmental Clearances, Issues, Documentation, and Permitting | | |
| 5 | Cultural, Biological, and other technical studies and assistance | | |
| 6 | Arborist services and reporting | | |
| 7 | Project Management | | |
| 8 | Engineering Plans, Specifications, Calculations, and Reports. | | |
| 9 | Hydrologic and Hydraulic Analysis and Reporting | | |
| 10 | Geotechnical Engineering | | |
| 11 | Structural Engineering (Buildings) | | |
| 12 | Structural Engineering (Structures Design and Review Assistance) | | |
| 13 | General Civil Engineering | | |
| 14 | Transportation Design | | |
| 15 | CCTV Inspections, Utility Assessments and Design | | |
| 16 | Right of Way Acquisition, Negotiation, and Real Estate Services | | |
| 17 | Topographic Surveying and Mapping | | |
| 18 | Planning Services | | |
| 19 | Grant Writing Services and Management | | |
| 20 | Quality Assurance and Value Engineering Reviews | | |
| 21 | Labor Compliance | | |
| 22 | Resident Engineer and Inspection Services | | |
| 23 | Traffic Modeling, Analysis, and Reporting | | |
| 24 | Traffic Control Design and Compliance with certifications | | |
| 25 | Retaining Wall Design | | |
| 26 | Construction Management | | |
| 27 | Landscape and Irrigation Design | | |

| | | | |
|----|--|--|--|
| 28 | Electrical Design | | |
| 29 | Mechanical Design | | |
| 30 | Broadband Design | | |
| 31 | Wastewater Plant Design and Construction Support | | |
| 32 | Sewer Collection and Pump Station Design | | |
| 33 | Water System Modeling and Distribution Design | | |
| 34 | Pavement and Delineation Design | | |
| 35 | Parking Lot Design | | |
| 36 | ADA Compliance | | |
| 37 | Emergency/Planned Bridge Repair or Replacement | | |
| 38 | Streetlight and Traffic Signal Design, Installation, and Modifications | | |
| 39 | Development Review | | |
| 40 | General On-call Engineering and City Engineer Services | | |
| 41 | State permit support and compliance | | |
| 42 | Bid Support | | |
| 43 | Other Agency Coordination and Approvals | | |

Attachment B

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

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 _____, a company duly qualified to conduct business in the State of California, whose principal place of business is _____, (hereinafter referred to as "CONSULTANT");

W I T N E S S E T H

WHEREAS, City has determined that it is necessary to obtain a consultant to provide consulting engineering services for the _____.

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 engineering design services to City as those services and deliverables are described in CONSULTANT'S Scope of Work 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. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by City and notification to proceed has been issued by City's Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.

The contract shall end on **DATE**, unless extended by an 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 contract is fully executed and approved by City Council and staff.

ARTICLE III – COSTS AND PAYMENTS

- A. The method of payment for this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article I Scope of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the

Attachment B

total lump sum compensation will be negotiated between CONSULTANT and City. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by City.

- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article I Scope of Services, City shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article IV Termination.
- C. CONSULTANT will be reimbursed within thirty (30) days upon receipt by City's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due City that include any equipment purchased under the provisions of Article IX Equipment Purchase. The final invoice must be submitted within sixty (60) calendar days after completion of CONSULTANT's work unless a later date is approved by the City. Invoices shall be mailed to City Contract Administrator at the following address:

City of Placerville
Engineering Department
Attn: Melissa McConnell
3101 Center Street
Placerville, California 95667
- D. The total amount payable by City shall not exceed \$TOTAL
- E. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by City's Contract Administrator. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.
- F. City is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the City as to the designation of tasks to be performed and the results to be accomplished.

ARTICLE IV – DEFAULT, TERMINATION AND CANCELLATION

- A. This AGREEMENT may be terminated by City, provided that City gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- B. City may temporarily suspend this AGREEMENT, at no additional cost City, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.

Attachment B

- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- E. 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.
- F. Bankruptcy: This Agreement, at the option of the City, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONSULTANT.
- G. 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.
- H. 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 AGREEMENT. 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 AGREEMENT or by any other means.

ARTICLE V – COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to CITY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.
- E. All subcontracts in excess of \$25,000 shall contain the above provisions.

Attachment B

ARTICLE VI – RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Government Code 8546.7; CONSULTANT, subconsultants, and City shall maintain and make available for inspection all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement, and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. The state, State Auditor, City, FHWA, or any duly authorized representative of the Federal Government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA that are pertinent to the Agreement for audit, examinations, workpaper review, 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 AGREEMENT 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 AGREEMENT.
- D. CONSULTANT and subconsultant contracts, including cost proposals and Indirect Cost Rates (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.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the City Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.
 - 1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution

Attachment B

of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, City will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
4. CONSULTANT may submit to CITY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of CITY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO CITY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between CITY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

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 AGREEMENT or otherwise, shall create any contractual relation between City and any subconsultant(s), and no subagreement 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.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this AGREEMENT shall be subcontracted without written authorization by City's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

Attachment B

- C. Any subcagreement entered into as a result of this AGREEMENT shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to CONSULTANT by City.
- E. Any substitution of subconsultant(s) must be approved in writing by City's Contract Administrator prior to the start of work by the substitute subconsultant(s).

F. Prompt Progress Payment

CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

G. Prompt Payment of Withheld Funds to Subconsultants

The City may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the City, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The City shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

No retainage will be held by the City from progress payments due to CONSULTANT. Any retaining kept by CONSULTANT or by a subconsultant must be paid in full to the earning subconsultant within 15 days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall be subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliant by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant.

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.

Attachment B

- 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 proposal must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following:
 - 1. 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.
 - 2. Regulation 2 CFR, Part 200 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. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at City construction sites, at City facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve City projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.
- D. Payroll Records
 - 1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll

Attachment B

record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- i. The information contained in the payroll record is true and correct.
 - ii. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by City representative's at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
 - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - ii. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of City, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - iii. The public shall not be given access to certified payroll record by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the City's Contract Administrator by both email and regular mail on the business day following receipt of the request.
 3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by City shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
 5. The CONSULTANT shall inform City of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to City, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by City from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the City Contract Administrator.

Attachment B

F. Penalty

1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the City a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - i. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - ii. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - iii. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - iv. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, City shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.

Attachment B

6. If City determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if City did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by City.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the City, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

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. During the term of this AGREEMENT, CONSULTANT shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this AGREEMENT, or any ensuing City construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT, or any ensuing City construction project, which will follow.
- B. CONSULTANT certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise City of any actual, apparent, or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements or economic interest if required by either City ordinance or State law.

Attachment B

- C. 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 AGREEMENT.
- D. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any AGREEMENT 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.
- 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.
- 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.

Attachment B

- 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.
- C. There shall be no change in the CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is part of this contract without prior written approval by the 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 in the performance of this AGREEMENT shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto.

CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.

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.

Notices to CONSULTANT shall be addressed as follows:

CONSULTANT
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

Attachment B

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 one million dollars (\$1,000,000) 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 AGREEMENT 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 AGREEMENT 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 an AGREEMENT or City shall withhold seven (7%) percent of each payment made to the CONSULTANT during term of the AGREEMENT. This requirement applies to any AGREEMENT 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.

Attachment B

ARTICLE XXIII – ADMINISTRATOR

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

ARTICLE XXIV – AUTHORIZED SIGNATURES

The parties to this AGREEMENT represent that the undersigned individuals executing this AGREEMENT 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 AGREEMENT 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. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, 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.

ARTICLE XXVII – DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

- A. CONSULTANT, subrecipient (CITY), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, The CITY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found here.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who

Attachment B

enter into a federally-funded agreement will assist the City in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this contract is 23%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Agreement. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: *DBE Information – Good Faith Efforts* to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. Contract Assurance

Under 49 CFR 26.13(b):

CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this Agreement or such other remedy as City deems appropriate, which may include but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages and/or;
- d. Disqualifying the CONSULTANT from future proposing as non-responsive.

E. Termination and Substitution of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the City's written consent. CONSULTANT shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the City. Unless the City's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid.

The City authorizes a request to use other forces or sources of materials if CONSULTANT shows any of the following justifications:

- a. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
- b. The City stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the City's bond requirements.
- c. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
- d. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).

Attachment B

- e. Listed DBE's work is unsatisfactory and not in compliance with the contract.
- f. Listed DBE is ineligible to work on the project because of suspension or debarment.
- g. Listed DBE becomes bankrupt or insolvent.
- h. Listed DBE voluntarily withdraws with written notice from the Contract
- i. Listed DBE is ineligible to receive credit for the type of work required.
- j. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
- k. The City determines other documented good cause.

CONSULTANT shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise CONSULTANT and the City of the reasons why the use of other forces or sources of materials should not occur.

CONSULTANT's request to use other forces or material sources must include:

- a. One or more of the reasons listed in the preceding paragraph.
- b. Notices from CONSULTANT to the DBE regarding the request.
- c. Notices from the DBEs to CONSULTANT regarding the request.

If a listed DBE is terminated or substituted, CONSULTANT must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

F. Commitment and Utilization

The City's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The City shall request CONSULTANT to:

- 1. Notify the City's contract administrator or designated representative of any changes to its anticipated DBE participation
- 2. Provide this notification before starting the affected work
- 3. Maintain records including:
 - a. Name and business address of each 1st-tier subconsultant
 - b. Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
 - c. Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date.

CONSULTANT shall submit the notifications to the City. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the City within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the City within 90 days of contract acceptance. The City will withhold \$10,000 until the form is submitted. The City will release the withhold upon submission of the completed form.

Attachment B

In the City's reports of DBE participation to Caltrans, the City must display both commitments and attainments.

- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to City's Contract Administrator within thirty (30) calendar days.
- L. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the Agency.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XXVIII – STATEMENT OF COMPLIANCE

- 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,

Attachment B

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.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. 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 administering the CITY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

Attachment B

ARTICLE XXIX – DEBARMENT AND SUSPENSION CERTIFICATION

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
 - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - 3. Does not have a proposed debarment pending; and
 - 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to City. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by the Federal Highway Administration.

ARTICLE XXX – FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to the City for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or the City's governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. City has the option to terminate the AGREEMENT pursuant to Article IV, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXXI – INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit the City, the state, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXXII – 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 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

Attachment B

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. City may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.
- F. 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 XXXIII – CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by City's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with City's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that City considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from City. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT
- C. Services of CONSULTANT's personnel in connection with City's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXXIV – 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.

Attachment B

- 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. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than City, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.
- F. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

ARTICLE XXXV – CONTINGENT FEE

CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, City has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXXVI – 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 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 XXXVII NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

Attachment B

ARTICLE XXXVIII EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by City. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

ARTICLE XXXIX PROMPT PAYMENT FROM THE CITY TO CONSULTANT

The City shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the City fails to pay promptly, the City shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the City shall act in accordance with both of the following:

1. Each payment request shall be reviewed by the City as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
2. Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

ARTICLE XXXX TITLE VI ASSURANCES

APPENDIX A

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

1. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
2. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub- agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.

Attachment B

5. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B - CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [,] and (3) that in the event of breach of any of the above- mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest

Attachment B

in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C - CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

1. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 - a) In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
3. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will thereupon revert to and vest in and become the absolute property of the recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D - CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the recipient pursuant to the provisions of Assurance 7(b):

1. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

Attachment B

2. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
3. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the “CONSULTANT”) agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to:

Pertinent Non-Discrimination Authorities:

4. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
5. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
6. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex.
7. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27.
8. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age).
9. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
10. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not).
11. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38.
12. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
13. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
14. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must

Attachment B

take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100).

15. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).

IN WITNESS WHEREOF, the two parties to this AGREEMENT, who are the before named CONSULTANT and the before named City, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

-- 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 of Services

Exhibit B: Consultant Cost Proposal