

CONTRACT FOR PROFESSIONAL SERVICES FOR FEDERAL-AID PROJECTS
(Revised February 2020)

THIS CONTRACT is made on _____, 20___, by and between the CITY OF WEST SACRAMENTO ("CITY"), and _____, incorporated in the State of _____ ("CONSULTANT").

WITNESSETH:

WHEREAS, the CITY [desires] _____;

WHEREAS, the work to be performed under this CONTRACT is described in Article II Statement of Work and the approved CONSULTANT's Cost Proposal is attached hereto (**Exhibit A**) and incorporated by reference. If there is any conflict between the approved Cost Proposal dated (insert date) and this CONTRACT, this CONTRACT shall take precedence.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless the CITY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this CONTRACT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of the CITY, as determined by a Court. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.
2. To the extent permitted by Civil Code section 2782.8, for all other claims unrelated to the provision of professional design services, the Consultant shall protect, hold free and harmless, defend and indemnify the City, its consultants, and each of their officers, employees and agents, from any and all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees and expenses of litigation, which arise out of or are in any way connected with the Consultant's, or its subcontractors' or suppliers', performance under this agreement or failure to comply with any of the obligations contained in the agreement. This indemnity shall imply no reciprocal right of the Consultant in any action on the agreement pursuant to California Civil Code section 1717 or section 1717.5. To the fullest extent legally permissible, this indemnity, defense and hold harmless agreement by the Consultant shall apply to any and all acts or omissions unrelated to the provision of professional design services, whether active or passive, on the part of the Consultant or its agents, employees, representatives, or subcontractor's agents, employees and representatives, resulting in claim or liability, irrespective of whether or not any acts or omissions of the parties to be indemnified hereunder may also have been a contributing factor to the liability, except

such loss or damage which was caused by the active negligence, the sole negligence, or the willful misconduct of the City.

3. CONSULTANT in the performance of this CONTRACT, 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 the City.
4. CITY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the CONTRACT, 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.
5. 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 the CITY harmless from any and all claims that may be made against the City based upon any contention by any third party that an employer-employee relationship exists by reason of this CONTRACT.
6. Except as expressly authorized herein, CONSULTANT's obligations under this CONTRACT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the CITY. However, claims for money due or which become due to CONSULTANT from the CITY under this CONTRACT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the CITY.
7. CONSULTANT shall be as fully responsible to the CITY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
8. No alteration or variation of the terms of this CONTRACT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or contractual language not incorporated herein, shall be binding on any of the parties hereto.
9. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE I CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall designate a project manager who at all times shall represent the Consultant before the CITY on all matters relating to this CONTRACT. The project manager shall continue in such capacity unless and until he or she is removed at the request of the CITY, is no longer employed by CONSULTANT, or is replaced with the written approval of the CITY, which approval shall not be unreasonably withheld.

- B. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for a CITY'S Contract Administrator to determine if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- C. CONSULTANT's Project Manager shall meet with CITY'S Contract Administrator, as needed, to discuss the project progress.

ARTICLE II STATEMENT OF WORK

(Insert Appropriate Statement of work including a Description of the Deliverables.)

- A. Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to completion of the services described in **[Exhibit "___"]** OR **[the Scope of Work, attached hereto and incorporated herein by this reference as Exhibit "___"]**.
- B. Consultant agrees and represents that it is qualified to properly provide the services set forth in **Exhibit "___"** in a manner which is consistent with the generally accepted standards of Consultant's profession.
- C. Consultant agrees and represents that the work performed under this Contract shall be in accordance with applicable federal, State and local law.
- D. Consultant shall provide corrective services without charge to the City for services which fail to meet the above professional and legal standards and which are reported to Consultant in writing within sixty (60) days of discovery. Should Consultant fail or refuse to perform promptly its obligations, the City may render or undertake performance thereof and the Consultant shall be liable for any expenses thereby incurred.
- E. In the case the scope of work includes environmental documents, environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion, a Caltrans Deputy District Director signs the findings of No Significant Impact, or the Caltrans District Director signs the Record of Decision.
- F. This CONTRACT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the CITY, State, and/or Federal Highway Administration ("FHWA"). Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting, shall be included in the fee.

ARTICLE III PERFORMANCE PERIOD

[A time must be set for beginning and ending the work under the CONTRACT. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the CONTRACT. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by CONSULTANT, they should be identified and incorporated into the CONTRACT.]

- A. This CONTRACT shall go into effect on (DATE), contingent upon approval by the CITY, and CONSULTANT shall commence work after notification to proceed by the CITY'S Contract Administrator. The CONTRACT shall end on (DATE), unless extended by a contract amendment.
- B. CONSULTANT is advised that any recommendation for CONTRACT award is not binding until the CONTRACT is fully executed and approved by the CITY.
- C. The City Manager or his or her designee may, by written instrument signed by the Parties, extend the duration of this Contract for [a period of _____] **OR** [a period equal to the original term of this Contract], provided that the extension does not require the payment of compensation in excess of the maximum compensation set forth in Section I, Article IV Allowable Costs and Payments.
- D. Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written CONTRACT between the parties hereto and shall be signed by the persons authorized to bind the parties hereto.
- E. Consultant may, for good cause, request extensions of time to perform the services required hereunder. Such extensions shall be authorized in advance by the City in writing and shall be incorporated in written amendments to this Contract.

ARTICLE IV ALLOWABLE COSTS AND PAYMENTS

A. The method of payment for this CONTRACT will be based on actual cost plus a fixed fee. CITY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by a contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds CITY's approved overhead rate set forth in the Cost Proposal. In the event, that CITY determines that a change to the work from that specified in the Cost Proposal and CONTRACT is required, the CONTRACT time or actual costs reimbursable by the CITY shall be adjusted by a contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I" of this Article shall not be exceeded, unless authorized by a contract amendment.

B. The indirect cost rate established for this CONTRACT is extended through the duration of this specific CONTRACT. CONSULTANT'S CONTRACT to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or CONTRACT award.

C. In addition to the allowable incurred costs, the CITY will pay CONSULTANT a fixed fee of \$(AMOUNT). The fixed fee is nonadjustable for the term of the CONTRACT, except in the event of a significant change in the scope of work and such adjustment is made by a contract amendment.

D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

E. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

F. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article II Statement of Work, the CITY shall have the right to delay payment or terminate this CONTRACT.

G. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this CONTRACT.

H. CONSULTANT will be reimbursed promptly according to California Regulations upon receipt by the 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 and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this CONTRACT number and project title. Final invoice must contain the final cost and all credits due CITY including any equipment purchased under the provisions of Article X Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to the CITY's Contract Administrator at the following address:

(CITY/NAME OF CONTRACT ADMINISTRATOR)
(ADDRESS)

I. The total amount payable by CITY including the fixed fee shall not exceed \$(Amount).

J. 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.

ARTICLE V TERMINATION

A. This CONTRACT may be terminated by the CITY, provided that the CITY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, the 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 CONTRACT, at no additional cost to the CITY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If the CITY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities

under this CONTRACT. A temporary suspension may be issued concurrent with the notice of termination.

- C. Notwithstanding any provisions of this CONTRACT, CONSULTANT shall not be relieved of liability to the CITY for damages sustained by the City by virtue of any breach of this CONTRACT by CONSULTANT, and the City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this CONTRACT. 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.

ARTICLE VI 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 the 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.

ARTICLE VII RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and the CITY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the CONTRACT including, but not limited to, the costs of administering the CONTRACT. 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 CONTRACT period and for three (3) years from the date of final payment under the CONTRACT. CITY, Caltrans Auditor, 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 the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the CONTRACT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

ARTICLE VIII AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this CONTRACT that is not disposed of by CONTRACT, shall be reviewed by the CITY'S Administrative Services Director.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by the CITY'S Administrative Services Director of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by CITY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this CONTRACT.
- D. CONSULTANT and subconsultant CONTRACTs, including cost proposals and Indirect Cost Rates (ICR), may be 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, the CITY, 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 the CITY's Contract Administrator 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 the CITY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, CITY 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 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, the 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 CONTRACT.
 4. CONSULTANT may submit to the 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 CONTRACT has been completed to the satisfaction of the CITY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO THE CITY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this CONTRACT and all other CONTRACTs executed between the CITY and CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE IX SUBCONTRACTING

- A. Nothing contained in this CONTRACT or otherwise, shall create any contractual relation between the CITY and any Subconsultants, and no subcontract shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the CITY for the acts and omissions of its Subconsultants 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 the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the CITY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the CITY's Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.

- C. Any subcontract entered into as a result of this CONTRACT, shall contain all the provisions stipulated in this entire CONTRACT 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 the CONSULTANT by the CITY.
- E. Any substitution of Subconsultants must be approved in writing by the CITY's Contract Administrator in advance of assigning work to a substitute Subconsultant.

ARTICLE X EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by the CITY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by the CITY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased with funds provided under the terms 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 five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, the 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 the 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 the established CITY's procedures; and credit the 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 the CITY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the CITY.
 - 2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

ARTICLE XI STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded a CONTRACT 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 CONTRACT, 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 CONTRACT 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 CONTRACT 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's construction sites, at CITY's 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's 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 record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. 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:
 - a. 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.
 - b. 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 the CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to the CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - c. The public shall not be given access to certified payroll records 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 the 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 the 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 the 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 the 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's Contract Administrator.
- 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 CONTRACT 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 CONTRACT.

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:
 - a. The CONTRACT 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.
 - b. 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.
 - c. 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.
 - d. 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.
 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 CONTRACT 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 the 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 CONTRACT 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 CONTRACT or the subcontract 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. CONSULTANT 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 CONTRACT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XII CONFLICT OF INTEREST

- A. During the term of this CONTRACT, the CONSULTANT shall disclose any financial, business, or other relationship with the CITY that may have an impact upon the outcome of this CONTRACT or any ensuing CITY's construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this CONTRACT or any ensuing CITY's construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to the CITY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this CONTRACT. CONSULTANT agrees to advise the CITY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this CONTRACT. CONSULTANT further agrees to complete any statements of economic interest if required by either CITY ordinance or State law.
- C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this CONTRACT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any CONTRACT to provide construction inspection for any construction project resulting from this CONTRACT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIII REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The 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 this CONTRACT without liability, to pay only for the value of the work actually performed, or to deduct

from this CONTRACT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XIV PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING

[Include this article in all CONTRACTs where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the CONTRACT; delete this article and re-number the subsequent articles.]

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
1. No State, Federal, or CITY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, 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 or making of this CONTRACT, or with the extension, continuation, renewal, amendment or modification of this CONTRACT.
 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this CONTRACT, the CONSULTANT shall complete and submit Standard Form-“Disclosure of Lobbying Activities” 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 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The 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 one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XV NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this CONTRACT, CONSULTANT and its subconsultants shall not deny the CONTRACT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because

of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by the CITY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, 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 the 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 CONTRACT.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this CONTRACT.
- G. The CONSULTANT, with regard to the work performed under this CONTRACT, 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.

ARTICLE XVI DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the 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 the 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 List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. This CONTRACT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTs who enter into a federally-funded CONTRACT 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 _____%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-01: Consultant Proposal DBE Commitment](#) , or in [Exhibit 10-02: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the CONTRACT. 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 CONTRACT goal, or by documenting adequate good faith efforts to meet the CONTRACT 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. DBEs and other small businesses, as defined in 49 CFR Part 26 are encouraged to participate in the performance of CONTRACTs financed in whole or in part with federal funds. The CITY, CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTLANT to carry out these requirements is a material breach of this CONTRACT, which may result in the termination of this CONTRACT or such other remedy as the CITY deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;

- (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the contractor from future bidding as non-responsible
- E. A DBE firm may be terminated only with prior written approval from the CITY and only for the reasons specified in 49 CFR §26.53(f). Prior to requesting CITY's consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR §26.53(f). 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.
- F. Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the CITY's Contract Administrator.
- G. A DBE is only eligible to be counted toward the CONTRACT goal if it performs a commercially useful function (CUF) on the CONTRACT. CUF must be evaluated on a contract by contract basis. A DBE performs a CUF when it is responsible for execution of the work of the CONTRACT 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 CONTRACT, 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 CONTRACT 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, contract, 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 CONTRACT with its own work force, or the DBE subcontracts a greater portion of the work of the CONTRACT 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 prime CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. Upon completion of the CONTRACT, a summary of these records shall be prepared and submitted on the form entitled, [Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise \(DBE\) First-Tier Subconsultants](#), certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to

CONSULTANT when a satisfactory “Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants” is submitted to the Contract Administrator.

- L. If a DBE subconsultant is decertified during the life of the CONTRACT, 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 CONTRACT, 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.
- M. Any subcontract entered into as a result of this CONTRACT shall contain all of the provisions of this section.

ARTICLE XVIII INSURANCE

A. Consultant shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of the CONTRACT, the policies of insurance specified in this Section. Such insurance must have the approval of CITY as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best’s rating of no less than A VII (an NR rating is acceptable for Worker’s Compensation insurance written with the State Compensation Insurance Fund of California).

B. Prior to execution of this CONTRACT and prior to commencement of any work, the CONSULTANT shall furnish the CITY with certificates of insurance and copies of endorsements providing evidence of coverage for all policies required by the CONTRACT as laid out below. The CONSULTANT and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the CONTRACT not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the CITY. The maintenance by CONSULTANT and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this CONTRACT. The failure of CONSULTANT or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the CITY as a material breach of this CONTRACT. Approval of the insurance by the CITY shall not relieve or decrease any liability of CONSULTANT.

- 1. Each Certificate of Insurance will provide:
 - a. That the insurer will not cancel the insured’s coverage without thirty (30) calendar days prior written notice to LOCAL AGENCY.
 - b. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
 - c. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.
- 2. Worker’s Compensation and Employer’s Liability Insurance
 - a. Worker’s Compensation - Insurance to protect the Consultant, its contractors and subcontractors from all claims under Worker’s Compensation and

Employer's Liability Acts, including Longshoremen's and Harbor Worker's Act ("Acts"), if applicable. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable state and Federal statutes and regulations. The Consultant shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in **Exhibit** ____.

b. Consultant shall provide a Waiver of Subrogation endorsement in favor of the City, its officers, officials, employees, agents and volunteers for losses arising from work performed by the Consultant.

2. Commercial General Liability Insurance

a. The insurance shall be provided on form CG0001, or it's equivalent, and shall include coverage for claims for bodily injury or property damage arising out of premises/operations, products/completed operations, contractual liability, and subconsultant's work and personal and advertising injury resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than **[\$1,000,000.00]** per occurrence and **[\$2,000,000]** general and products/completed operations aggregates.

b. The commercial general liability insurance shall also include the following:

i. Endorsement equivalent to CG 2010 0714 naming the City, its officers, officials, employees, agents, and volunteers as additional insureds. The endorsement shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

ii. Endorsement stating insurance provided to the City shall be primary as respects the City, its officers, officials, employees and any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss, or judgment.

iii. Provision or endorsement stating that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3. Commercial Automobile Insurance

a. The insurance shall include, but shall not be limited to, coverage for claims for bodily injury or property damage for owned, non-owned, and hired automobiles resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than **[\$1,000,000.00]** per accident.

b. The commercial automobile insurance shall include the same endorsements required for the commercial general liability policy (see Section 16.B.2.b).

4. Professional Liability. The Consultant and its contractors and subcontractors shall secure and maintain in full force, during the term of this Contract and for five years thereafter, professional liability insurance policies appropriate to the respective professions and the work to be performed as specified in this Contract. The limits of such professional liability insurance coverage shall not be less than **[\$1,000,000]** per claim.

C. In addition to any other remedy the City may have, if Consultant fails to maintain the insurance coverage as required in this Section, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due Consultant under this Contract.

D. No policy required by this Contract shall be suspended, cancelled, terminated by either party, or reduced in coverage or in limits unless Consultant has provided thirty (30) days prior written notice by certified mail, return receipt requested, to the City.

E. Any deductibles or self-insured retentions in excess of \$10,000 must be declared to, and approved by, the City.

F. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

ARTICLE XIX 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 CONTRACT is valid and enforceable only if sufficient funds are made available to the CITY for the purpose of this CONTRACT. In addition, this CONTRACT 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 CONTRACT in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this CONTRACT may be amended to reflect any reduction in funds.

D. CITY has the option to terminate the CONTRACT pursuant to Article V Termination, or by mutual CONTRACT to amend the CONTRACT to reflect any reduction of funds.

ARTICLE XX CHANGE IN TERMS

A. This CONTRACT may be amended or modified only by mutual written agreement of the parties hereto and shall be signed by the persons authorized to bind the parties hereto.

- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the CITY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this CONTRACT without prior written approval by the CITY's Contract Administrator.

ARTICLE XXI 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 a contract 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, the 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 XXII DISPUTES

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

- A. Any dispute, other than audit, concerning a question of fact arising under this CONTRACT that is not disposed of by CONTRACT shall be decided by a committee consisting of the CITY's Contract Administrator and Director of Capital Projects and Transportation Department, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by the CITY's Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this CONTRACT.

ARTICLE XXIII INSPECTION OF WORK

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

ARTICLE XXIV 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 the CITY's 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 Vehicle Code §591, the 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. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §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 (5) feet or deeper.

ARTICLE XXV OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this CONTRACT shall become the property of the City, and CONSULTANT shall have no property right there in whatsoever. Immediately upon termination, the City shall be entitled to, and CONSULTANT shall deliver to the 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 CONTRACT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to the 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 CONTRACT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an CONTRACT 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 the City without restriction or limitation upon its use or dissemination by the 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 the City for another project or project location shall be at the 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 CONTRACT products. If copyrights are permitted; the CONTRACT 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.

ARTICLE XXVI CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by the 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 the CITY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the 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 CONTRACT.
- 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 CONTRACT in order to resolve the construction claims.

ARTICLE XXVII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to CITY's operations, which are designated confidential by the 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 the CITY relating to the CONTRACT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the CONTRACT or CITY's actions on the same, except to CITY's staff, CONSULTANT's own personnel involved in the performance of this CONTRACT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this CONTRACT without prior review of the contents thereof by the 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 the 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, the 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.

ARTICLE XXVIII 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.

ARTICLE XXIX EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by the 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 CONTRACT record.

ARTICLE XXX RETENTION OF FUNDS

No retainage will be withheld by the CITY from progress payments due the CONSULTANT. Retainage by the CONSULTANT or subconsultants is prohibited, and no retainage will be held by the CONSULTANT from progress due subconsultants. Any violation of this provision shall subject the violating CONSULTANT or subconsultants to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.

ARTICLE XXXI MISCELLANEOUS PROVISIONS

A. Consultant shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, county and municipal laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work. At no time shall Consultant or any persons, firms or corporations employed by it or under its control commit no trespass on any public or private property in performing any of the work authorized by this Contract. It shall be City's responsibility to obtain all rights of way and easements to enable Consultant to perform its services hereunder. Consultant shall assist City in providing the same.

B. This Contract shall be interpreted and governed by the laws of the State of California.

C. Any action arising out of this Contract shall be brought and maintained in Yolo County California, regardless of where else venue may lie.

D. In any action brought by either party to enforce the terms of this Contract, each party shall bear responsibility for its attorney's fees and all costs regardless of whether one party is determined to be the prevailing party.

ARTICLE XXXII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this CONTRACT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

(CONSULTANT)

_____, Project Manager
(NAME)

(ADDRESS)

CITY:

(CITY)

_____, Contract Administrator
(NAME)

(ADDRESS)

ARTICLE XXXIII CONTRACT

The two parties to this CONTRACT, who are the before named CONSULTANT and the before named CITY, hereby agree that this CONTRACT constitutes the entire CONTRACT 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 CONTRACT as evidenced by the signatures below.

[Signatures on next page]

ARTICLE XXXIV SIGNATURES

CITY OF WEST SACRAMENTO

By: _____
Aaron Laurel, City Manager

ATTEST:

By: _____
Kryss Rankin, City Clerk

APPROVED AS TO FORM:

By: _____
Jeffrey Mitchell, City Attorney

CONSULTANT

By: _____
Name, Title

EXHIBIT A

Consultant Proposal/Scope of Work

EXHIBIT B

Schedule of Performance

EXHIBIT C
Schedule of Fees

EXHIBIT __

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700
[Labor Code § 1861]

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANTS

By: _____
[Title]

Consultant Questionnaire

Definition of a Consultant is found in Section 18702 of Regulations of the Fair Political Practices Commission, Title 2, division 6 of the California Code of Regulations.

Consultants, as defined by Section 18701, are required to file an Economic Interest Statement (Form 700) within 30 days of signing a Consultant CONTRACT with the City, on an annual basis thereafter if the contract is still in place, and within 30 days of completion of the contract.

Company Name _____ (CONTRACT Date)

Name of Consultant* _____ (First Name) (Middle Initial) (Last Name)

Company address _____ Phone _____

City, State, Zip _____

Contracting City Dept. _____

Estimated Date of Project Completion _____

A. Will consultant make governmental decision whether to

- 1. Approve a rate, rule, or regulation? Yes No
2. Adopt or enforce a law? Yes No
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement? Yes No
4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval? Yes No
5. Grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract? Yes No
6. Grant agency approval to a plan, design, report, study, or similar item? Yes No
7. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof? Yes No

B. Will the consultant serve in a staff capacity with the City and in that capacity perform the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code? Yes No

Will consultant manage public investments? Yes No

Name of Person Completing Questionnaire _____ Date _____

*If other individuals will be working on the contract, a form should be completed for each person to determine filing obligation

