The City of Hanford

CALIFORNIA

City Council Meeting
Agenda

April 6, 2021
7:00 PM – Regular Meeting
Council Chambers
400 N. Douty St.

Council Members will meet in-person in the Council Chambers. Due to social distancing restrictions, there will be a limited number of audience seats. The meeting will also be lived streamed on the City's website: http://livestream.hanford.city/

4:00 PM CALL TO ORDER STUDY SESSION :

ROLL CALL:

PUBLIC COMMENT:

Comments from the public are limited to items on the agenda (GC 54954.3a). A maximum of ***three minutes*** *is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

STUDY SESSION:

A. Main Street Hanford Annual Report Presentation

B. Public Works overview of the Wastewater Operation for the City Council

C. Review the Community Development Block Grant (CDBG) proposed 2021 Action Plan, CDBG activities and receive direction from the Council

D. Presentation of the Hemp Ordinance for review and direction from the Council

CALL TO ORDER REGULAR SESSION:

ROLL CALL:

INVOCATION:

FLAG SALUTE:

RECOGNITIONS/PROCLAMATIONS:

Arbor Day Proclamation

STAFF COMMUNICATIONS:

COUNCIL REPORTS/COMMENTS:

PUBLIC COMMENT:

This is the time for citizens to comment on subject matters not on the agenda and that are within the jurisdiction of the Hanford City Council. This is also the public's opportunity to request an item from the Consent Calendar be pulled for discussion purposes or to comment on any item on the agenda. Comments related to Public Hearing items will be heard at the time the item is discussed. A maximum of ***three minutes*** *is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

CONSENT CALENDAR:

Consent Calendar items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made and then the item will be removed from the Consent Calendar to be discussed and voted upon by a separate motion.

A. PROCEDURAL WAIVER: Waive reading in full of resolutions and ordinances and approval and adoption of same by reading title the only.

B. City Clerk: Approval of the Minutes of the December 3, 2020 Special Meeting

C. City Clerk: Approval of the Minutes of the January 19, 2021 Meeting

D. City Clerk: Approval of the Minutes of the February 2, 2021 Meeting

E. City Clerk: Denial of a claim for damages and authorization for the City Clerk to send out notification of such to Jennifer Brown.

F. Administration: Reject Notice of Government Claim

G. Administration: Approval of a Letter of Opposition, on behalf of the City of Hanford, regarding S.B. 556, Wireless Broadband Infrastructure Removal of Local Authority of Public Rights-of-Way.

H. City Attorney: Approval of Second Amendment to Tower Lease with Option and Memorandum of Second Amendment to Tower Lease with Option

I. Information Technology: Approval of a Change to the contract with Tyler Technologies for the upgrade and implementation of the EnerGov software in the amount of $81,400.00 and Appropriation of the funding from the Computer Replacement Reserve to cover the additional cost.

J. Public Works: Approval of the Notice of Completion for the Stonecrest Basin Pump Equipment Installation Project, and authorization for the Mayor to execute and the City Clerk to attest and file said Notice with the Kings County Recorder's Office.

GENERAL BUSINESS:

A. City Attorney: Adoption of Resolution 21-12-R declaring four (4) City-owned, undeveloped residential lots located on Idlewood Way, west of Greenbrier Drive, as surplus property

B. Parks and Community Services: Approval of the contract with Park Planet for the Centennial Park Playground Renovation and appropriation of $263,660.49 from the Accumulated Capital Outlay fund to fund the project.

C. Public Works: Approval of seven (7) On-Call Architectural and Engineering Consultant Services Agreements

COUNCIL FUTURE AGENDA ITEMS:

A. Council Future Agenda Items

Upcoming Dates

April 9: Arbor Day Celebration – Civic Park 11:00 am
April 13, 20, 27 (every Tuesday) Food Truck takeover Court Street in Civic Park 11:00 am–2:00 pm.
April 20: City Council Meeting
May 4: City Council Meeting
May 16: City Council Meeting
May 31: Memorial Day - City offices closed

ADJOURNMENT:

Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available to public inspection in the City Clerk's Office located at 319 N. Douty Street, Hanford, California 93230, during normal business hours. Such agendas are also available at the city's website, www.cityofhanfordca.com subject to staff's ability to post the agenda before the meeting.

If you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the City Clerk's office, 559-585-2515, 319 N. Douty Street, Hanford, California 93230, at least 2 days prior to the meeting {28 CFR 35.102.35.104 ADA Title II}

AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** D

SUBJECT:
Presentation of the Hemp Ordinance for review and direction from the Council

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RECOMMENDATION:
That the City Council review the draft Hemp Ordinance, receive the staff report, and provide feedback regarding:

A. Zone district allowances for hemp-related activities, including:

1. Cultivation Facilities;
2. Distribution;
3. Manufacturing;
4. Testing Labs; and
5. Store Front and Retail Facilities

B. General Operating Requirements;

See the draft Hemp Ordinance, attached.

FISCAL IMPACT:

ATTACHMENTS:
DRAFT Hemp Ordinance for Study Session 03.19.2021

AN ORDINANCE ADDING CHAPTER 5.64 TO TITLE 5 OF THE HANFORD MUNICIPAL CODE TO ESTABLISH STANDARDS AND REGULATIONS FOR COMMERCIAL HEMP ACTIVITY

***The City Council of the City of Hanford does ordain as follows*:**

Section 1. Chapter 5.64 of Title 5 is added to the Hanford Municipal Code, to read as follows:

CHAPTER 5.64

STANDARDS AND REGULATIONS FOR COMMERCIAL HEMP ACTIVITY

5.64.010 Purpose and Intent

5.64.020. Legal Authority

5.64.030 Hemp Cultivation and Commercial Hemp Activities Prohibited Unless Specifically Authorized by this Chapter.

5.64.040 Compliance with Federal, State and Local Laws.

5.64.050 Definitions.

5.64.060 Commercial Hemp Business Permit Required to Engage in a Commercial Hemp Business.

5.64.070 Personnel Prohibited from Holding a Permit.

5.64.080 Maximum Number and Type of Authorized Commercial Hemp Businesses Permitted.

5.64.090 Initial Application Procedure.

5.64.100 Permittee Selection Process.

5.64.110 Expiration of Commercial Hemp Business Permits.

5.56.020 Renewal of Hemp Business Permits.

5.56.030 Suspension and Revocation of Permits.

5.56.040 Effect of State License Suspension, Revocation, or Termination.

5.56.050 Appeals.

5.56.060 Written Request for Appeal.

5.56.070 Appeal Hearing Process.

5.56.080 Change in Location and Other Amendments to Permits.

5.56.090 Transfer of Hemp Business Permit.

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Attachment: DRAFT Hemp Ordinance for Study Session 03.19.2021 (CD: Hemp Study Session)

5.56.100 **City Business License.**
5.56.110 **Building Permits and Inspection.**
5.56.120 **Certification from the Community Development Director.**
5.56.130 **Right to Occupy and to Use Property.**
5.56.140 **Location and Design of Hemp Businesses.**
5.56.150 **Limitations on City's Liability.**
5.56.160 **Records and Recordkeeping.**
5.56.170 **Security Requirements.**
5.56.180 **Fees and Charges.**
5.56.190 **General Operating Requirements.**
5.56.200 **Amendments to General Operating Requirements.**
5.56.210 **Operating Requirements for Store Front/Retail Facilities.**
5.56.220 **Operating Requirements for a Cultivation Facility Operation.**
5.56.230 **Operating Requirements for Distributors.**
5.56.240 **Operating Requirements for Testing Labs.**
5.56.250 **Operating Requirements for Hemp Manufacturing: Edibles and Other Hemp Products; Sale or Distribution of Edible and Other Hemp Products.**
5.56.260 **Promulgation of Regulations, Standards and Other Legal Duties.**
5.56.270 **Community Relations.**
5.56.280 **Fees Deemed Debt to the City of Hanford.**
5.56.290 **Permit Holder Responsible for Violations.**
5.56.300 **Inspection and Enforcement.**
5.56.310 **Violations declared a public nuisance.**
5.56.320 **Each violation a separate offense.**
5.56.330 **Criminal Penalties.**
5.56.340 **Administrative Remedies and Costs.**
5.56.350 **Remedies cumulative and not exclusive.**

5.64.010. **Purpose and Intent.**

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A. It is the purpose and intent of this Chapter to implement the provisions of Senate Bill 531, the Industrial Hemp Act of 2019, which brings California into conformity with the Federal Agricultural Improvement Act of 2018 (Public Law 115-334), also known as the 2018 Federal Farm Bill. The 2018 Federal Farm Bill ended decades of restrictive federal law with respect to hemp by removing it from the list of federally prohibited Schedule 1 substances and transferring federal oversight of hemp production from the U.S. Drug Enforcement Agency to the Agricultural Marketing Service within the U.S. Department of Agriculture.

B. With the Industrial Hemp Act of 2019, the California Legislature signaled its intent to allow large-scale industrial production of hemp by directing the Secretary of the California Department of Food and Agriculture to craft a state plan for such production, in consultation with the Governor and the Attorney General, and to submit that plan to the U.S. Secretary of Agriculture by May of 2020. At a minimum this plan will include a scheme for licensing and registration of industrial hemp businesses within the State of California. The purpose of this Chapter is to complement the state plan by establishing a local regulatory scheme to work in concert with that to be established at the state level.

C. Hemp, a close genetic relative to cannabis, is indistinguishable in appearance from cannabis and produces an identical odor, although it contains significantly lower concentrations of the psychotropic substance THC and therefore is of little value as a recreational drug. The odor of hemp triggers nuisance concerns, however, and nuisance prevention and abatement are within the purview of local governments.

D. In addition, there is strong and growing commercial interest in the industrial production of CBD oil from the hemp plant, intended for human consumption. The intent of this Chapter is to provide a scheme for local regulation to address potential nuisance conditions that may arise from hemp cultivation and other commercial activities, and to protect public health and safety by creating a local regulatory scheme to enforce state law with respect to hemp products manufactured for human consumption.

E. It is the further purpose of intent of this Chapter to require all commercial hemp operators to obtain and renew annually a business permit to operate within the City of Hanford (City), and to provide proof of any additional licensure as may be required by state law. The provisions of this Chapter are in addition to any other permits, licenses and approvals which may be required to conduct business in the City, and are in addition to any permits, licenses and approval required under federal, state, City, or other laws.

5.64.020. Legal Authority.

Pursuant to Sections 5 and 7 of Article XI of the California Constitution, and the Industrial Hemp Act of 2019, as well as any subsequent state legislation and/or regulations implementing same, the City is authorized to adopt ordinances that establish standards, requirements and regulations for the licensing and permitting of commercial hemp activity. Any standards, requirements, and

Attachment: DRAFT Hemp Ordinance for Study Session 03.19.2021 (CD: Hemp Study Session)

regulations regarding health and safety, security, and worker protections established by the State of California, or any of its departments or divisions, and incorporated herein by reference and shall be the minimum standards applicable in the City to all commercial hemp activity.

5.64.030. Hemp Cultivation and Commercial Hemp Activities Prohibited Unless Specifically Authorized by this Chapter.

Except as specifically authorized in this Chapter, the commercial cultivation, manufacturing, processing, storing, laboratory testing, labeling, sale, delivery, distribution and transportation of hemp or hemp product and any other hemp-related operations are expressly prohibited in the City.

5.64.040. Compliance with Federal, State and Local Laws.

Owners and operators of commercial hemp businesses shall operate in a manner compliant with all applicable federal, state and local laws, and any regulations promulgated thereunder. Nothing in this Chapter shall be construed as authorizing any actions that violate federal, state, or local law with respect to the operation of a commercial hemp business.

5.64.050. Definitions.

A. For purposes of this Chapter, the following terms have the following meanings:

1. "Approved state plan" means a state plan for California that is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334)) and in effect.

2. "Board" means the California Industrial Hemp Advisory Board or its successor.

3. "CBD" means cannabidiol. Cannabidiol is a chemical in the Cannabis sativa L. plant. Over eighty (80) chemicals, known as cannabinoids, have been identified in the Cannabis sativa L. plant. While THC (defined below) is the major active ingredient in marijuana (also known as cannabis), cannabidiol is obtained from hemp (defined below), which contains only very small amounts of THC.

4. "Commercial hemp business" means any business or operation which engages in commercial hemp activity.

5. "Commercial hemp business permit" means a regulatory permit issued by the City pursuant to this Chapter to a commercial hemp business and is required before any commercial hemp activity may be conducted in the City. The initial permit and annual renewal of a commercial hemp business permit is made expressly contingent upon the business's ongoing compliance with all of the requirements of this Chapter and any regulations adopted by the City governing the commercial hemp activity at issue.

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6. “Community Development Director” means the Community Development Director of the City of Hanford.

7. “Cultivar” means a variety of industrial hemp.

8. “Distributor” means a commercial business engaged in the distribution of hemp and hemp products.

9. “Hemp breeder” means an individual or a public or private institution or organization that is registered with the Kings County Agricultural Commissioner to develop cultivars intended for sale or research.

10. “Hemp goods” are any products for commercial sales that are made from or derived from hemp, including oil extracted from the hemp plant.

11. “Hemp” or “industrial hemp” has the same meaning as that contained in Health and Safety Code Section 11018.5, i.e. a crop that is limited to types of the plant Cannabis sativa L. having no more than three-tenths of one percent (0.3%) of THC contained in: (i) the dried flowering tops, whether growing or not; (ii) the seeds of the plant; (iii) the resin extracted from any part of the plant; and (iv) every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin produced therefrom.

12. “Key participant” means a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner, a partner in a partnership, a shareholder in a corporation, or a member in a limited liability company. A key participant also includes: (i) a person in a corporate entity at executive levels including directors and officers; and (ii) officers and managers of a limited liability company. This term does not, however, include other employee management positions such as farm, field, or shift managers.

13. “Manufactured hemp” means raw hemp that has undergone a process whereby the raw agricultural product has been transformed into either a textile product (paper, fabric or rope) or a concentrate, compound, blend, infusion, extraction or other hemp derivative or hemp product.

14. “Operator” and “person” mean any business entity, including, without limitation, sole proprietor, partnership, limited liability company, corporation, joint venture, firm, association, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and the subsidiaries, affiliates, partners, employees, agents and contractors thereof.

15. “Premises” means any physical location or facility within the City’s boundaries at which a locally authorized hemp business shall operate.

16. “Processing” means activities limited to the trimming, drying, curing, grading, packaging, or labeling of hemp and non-manufactured hemp products.

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17. "Retailer" means a business engaged in retail sales, which may include delivery of hemp or hemp products to customers, in which five percent (5%) or more of its business or gross receipts are derived from the sale of hemp or hemp products intended for sale to consumers as CBD products.

18. "State license" means a permit or license issued by the State of California, or one of its departments or divisions, pursuant to state law governing industrial production of commercial hemp. A state license alone will not authorize the holder to operate a hemp business, as state law also requires a permit or other authorization issued by the City.

19. "THC" means delta-9 tetrahydrocannabinol. THC is a psychotropic substance and the major active ingredient in marijuana, containing intoxicating and other properties. It is also present in hemp in small amounts.

20. "Youth center" means any public or private facility that has a primary purpose of hosting recreation or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or amusement parks. It shall also include a park, playground or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, softball, soccer, or basketball or any similar facility located on a public or private school grounds, or on city, county or state parks. This definition shall not include any private martial arts, yoga, ballet, music or similar studio of this nature nor shall it include any private athletic training facility, restaurant, dentist office or doctor's office serving children. "Youth center" shall not include any facility at which youth recreational activities are merely ancillary to the facility's primary purpose.

5.64.060. Commercial Hemp Business Permit Required to Engage in Commercial Hemp Business.

A. No person may engage in any commercial hemp business or in any commercial hemp activity within the City, including cultivation, labeling, manufacturing, packaging, processing, laboratory testing, transporting, retail sales, distribution, or sale of hemp or a hemp product unless the person: (1) obtains and maintains a valid commercial hemp business permit from the City; (2) has a valid State of California Seller's Permit, if applicable; (3) is currently in compliance with all applicable state and local laws and regulations pertaining to the commercial hemp business and the commercial hemp activities, including the duty to obtain any required state licenses; and (4) satisfies other City and State of California requirements for the operation of a business, including, without limitation, obtaining and maintaining a City-issued business license and payment of applicable business license taxes.

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B. No permit shall be issued pursuant to this Chapter for outdoor hemp cultivation, which is prohibited. It is a violation of this Chapter for any person to engage in any outdoor hemp cultivation of any kind.

5.64.070. Personnel Prohibited from Holding a Permit.

A. Any person who is subject to any of the following conditions shall be prohibited from holding a commercial hemp business permit or from employment with a commercial hemp business in the City:

1. Evidence that the applicant is delinquent in payment of federal, state or local taxes and/or fees;

2. The applicant was conducting commercial hemp business activity in the City of Hanford in violation of local and state law as of the date on which this Chapter becomes effective.

3. The applicant or a key participant of an applicant was convicted of a felony related to a controlled substance under state or federal law on or after the enactment of the 2018 federal Farm Bill, in which case, the applicant or key participant shall be ineligible for a commercial hemp business permit for a period of ten (10) years from conviction. This provision shall not, however, apply to a person who was lawfully growing hemp under the 2014 federal Farm Bill before December 20, 2018 and whose conviction occurred before that date.

5.64.080. Maximum Number and Type of Authorized Commercial Hemp Businesses Permitted.

A. The number of each type of commercial hemp business that shall be permitted to operate in the City shall be established by resolution by the City Council.

B. This section is only intended to establish the City Council's authority to limit the number of commercial hemp businesses that may be issued permits to operate in the City under each category. Nothing in this Chapter creates a mandate that the City issue commercial hemp business permits up to the maximum number if: (i) it is determined that the applicants do not meet the standards which are established in the application requirements or further amendments to the application process; or (ii) the City Council determines that the issuance of any or all commercial hemp business permits will detrimentally impact the public safety, welfare or other policy concerns.

5.64.090. Initial Application Procedure.

A. The Community Development Director shall develop procedures governing the application and registration process and the manner in which the decision will ultimately be made regarding the issuance of any commercial hemp business permit(s), which shall include or

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require the Community Development Director or his/her designee to prepare the necessary forms, adopt any necessary requirements for the application and registration process and ensure the applicant meets all the requirements before the issuance of a permit. In addition to routine information that will be required through the forms developed by the Community Development Director, the City further reserves the right to request and obtain additional information from any candidate submitting an application.

B. At the time of filing, each applicant shall pay an application fee established by resolution of the City Council, to cover all costs incurred by the City in the application process.

C. After eligibility has been confirmed, which includes verifying compliance with all applicable state, federal and City hemp regulations, along with all planning and building requirements, the Community Development Director or his/her designee(s) will review the recommendations made pursuant to Section 5.64.100.B and decide whether to conditionally approve an applicant's permit.

D. The application procedure process shall include a community benefits component. Any community benefits that a commercial hemp business agrees to provide shall be incorporated into the terms and conditions under which the commercial hemp business will operate, if and when a commercial hemp business permit is issued. Such terms and conditions shall be in addition to the requirements of this Chapter. Community benefits shall include, but are not be limited to: in-kind donations; sponsorship of community events; support, financial or otherwise, for special community events such as fairs; afterschool programs; youth centers; Boys and Girls Clubs; local schools, whether public or private; school athletic programs; school clubs; community centers, senior centers and senior living facilities, and parks and recreation facilities and programs. The community benefits requirement will also be subject to Section 5.64.290.C of this Chapter.

E. The City's Reservation of Rights.

The City reserves the right to reject any or all applications. Prior to permit issuance, the City may also modify, postpone, or cancel any request for applications, or the entire program under this Chapter, at any time without liability, obligation, or commitment to any party, firm, or organization, to the extent permitted under California state law. Persons submitting applications assume the risk that all or any part of the program, or any particular category of permit authorized under this Chapter, may be cancelled at any time prior to permit issuance. In addition to a failure to comply with other requirements in this Chapter, an application RISKS BEING REJECTED for any of the following reasons:

1. The application was received after the designated deadline. Submission deadlines will be posted on the City's website at least thirty (30) days in advance of the deadline.

2. The application did not contain the required elements or exhibits, or was not organized in the required format.

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3. The application was not fully responsive to the requirements of the permit application, i.e. was substantially incomplete after the applicant was notified that additional information was required and failed to respond within the required time frame.

4. If the application was submitted before the Section 5.64.090.E.1 notice was posted, the application shall be considered not filed timely unless a waiver is provided by the Community Development Director or his/her designee certifying that the application submittal was exempt from this deadline requirement. Waivers may be granted at the discretion of the Community Development Director or his/her designee in unusual circumstances that are beyond an applicant's control and which prevent the timely submission of an application.

5. An applicant was previously awarded a permit that is suspended at the time an application for a new permit is submitted to the City or an applicant's previously awarded permit was revoked by the City. For purposes of this subsection, an applicant's key participants and their prior permit history shall be considered when determining permit eligibility.

5.64.100. Permittee Selection Process.

A. The Community Development Director shall develop procedures and review criteria by which the applicants for a commercial hemp business permit shall be evaluated.

B. Applications shall be vetted by the Community Development Director or his/her designee and a committee of his/her choice or his/her designee's choice, consistent with Section 5.64.090.C. At the conclusion of the vetting process, the committee shall prepare a report ranking the applications and submit that report for consideration to the Community Development Director. The recommendations shall include a summary of the concerns which need to be mitigated by the applicant prior to the issuance of the permit.

C. Following the vetting process, a commercial hemp business permit(s) may be conditionally approved by the Community Development Director, and issuance shall be contingent upon the prevailing candidate(s) obtaining all required land use approvals and entitlements. Following the Community Development Director's selection, the prevailing candidate(s) shall apply to the City's Community Development Department to obtain any required land use approvals and entitlements for the permittee's location, if any. Land use and entitlement approvals shall include compliance with all applicable provisions of the California Environmental Quality Act (CEQA). The Community Development Director or his/her designee(s) shall formally issue the commercial hemp business permit(s) once the Community Development Director or his/her designee(s) affirms that all of the required land use approvals entitlements have been obtained.

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D. The Community Development Director shall either deny or conditionally approve each commercial hemp business application. The Community Development Director's decision shall be subject to appeal as described herein.

E. Conditional approval of a commercial hemp business permit does not create or ensure the approval of a land use entitlement. Furthermore, no permittee may begin operations, notwithstanding the issuance of a permit, unless all of the state and local laws and regulations, including, but not limited to, the requirements of this Chapter and of the permit have been satisfied and a state license is available and obtained by the permitted operator as set forth in Section 5.64.060.

G. Notwithstanding anything in this Chapter to the contrary, the Community Development Director may reject any or all applications if he/she determines that it would be in the best interest of the City, taking into account any health, safety and welfare impacts on the community. Applicants shall have no right to engage in any commercial hemp business operations until a permit is issued by the City, and then only for the duration of the permit's term. An applicant will gain no vested rights upon the conditional approval of a commercial hemp business permit, and each applicant assumes the risk that, at any time prior to the issuance of a permit, the City Council may terminate or delay the program created under this Chapter.

H. If an application is denied, a new application shall be required and will be subject to Section 5.64.090 requirements. If an application is rejected, a person may file a new application pursuant to this Chapter no sooner than one (1) year from the date of the rejection.

I. Each person granted a commercial hemp business permit shall be required to pay the permit fee established by resolution of the City Council, to cover the costs of administering the commercial hemp business permit program created in this Chapter.

5.64.110. Expiration of Commercial Hemp Business Permits.

Each commercial hemp business permit issued pursuant to this Chapter shall automatically expire twelve (12) months after the date of its issuance but may be modified to conform to changes in state law that may establish a longer period between required renewals. Commercial hemp permits may be renewed as provided in Section 5.64.130.

5.64.120. Renewal of Hemp Business Permits.

A. An application for renewal of a commercial hemp business permit shall be filed at least sixty (60) calendar days prior to the expiration date of the current permit. Failure to file a renewal application by the deadline will preclude renewal and will result in the automatic expiration of the commercial hemp business permit at the end of the then-current term.

B. The renewal application shall contain all the information required for new applications.

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C. The applicant shall pay a fee in an amount set by the City Council to cover the costs of processing the renewal permit application, together with any costs incurred by the City to administer the program created under this Chapter.

D. An application for renewal of a commercial hemp business permit shall be rejected if any of the following exists:

1. The application is filed less than sixty (60) days before its expiration.

2. The commercial hemp business permit is suspended or revoked at the time of the application.

3. The commercial hemp business has not been in regular and continuous operation in the four (4) months prior to the renewal application.

4. The commercial hemp business has failed to conform to the requirements of its commercial hemp business permit.

5. The permittee fails or is unable to renew its State of California license.

6. If the City or state has determined, based on substantial evidence, that the permittee or applicant is in violation of the requirements of this Chapter or of any City or state rules and regulations, and the City or state has determined that the violation is grounds for suspension or revocation of the commercial hemp business permit.

E. The Community Development Director or his/her designee(s) is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the Community Development Director or his/her designee(s) is authorized to impose additional conditions to a renewal permit, which shall supplement the original conditions of the permit, if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare. Appeal of the decision of the Community Development Director or his/her designee(s) shall occur in accordance with Sections 5.64.160 through 5.64.180.

F. If a renewal application is rejected, a person may file an application for a new commercial hemp business permit pursuant to this Chapter no sooner than one (1) year from the date of the rejection.

5.64.130. Suspension and Revocation of Permits.

A. Commercial hemp business permits may be suspended or revoked by the Community Development Director or his/her designee for any violation of any relevant law and/or any rule, regulation or standard applicable to commercial hemp businesses. The suspension of a commercial hemp business permit may be appealed in accordance with Sections 5.64.160

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through 5.64.180. A commercial hemp business permit will be revoked only after a hearing that occurs in accordance with Section 5.64.170.

B. The sale of hemp products for human consumption that are certified by a state-authorized testing lab as containing an amount of tetrahydrocannabidiol (THC) equal to or in excess of four and one-half tenths of one percent (0.45%), may be grounds for suspension or revocation of a commercial hemp business permit.

5.64.140. Effect of State License Suspension, Revocation, or Termination.

Suspension of a license issued by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of a commercial hemp business to operate within the City, until the State of California, or its respective department or division, reinstates or reissues the state license. Should the State of California, or any of its departments or divisions, revoke or terminate the license of a commercial hemp business, such revocation or termination shall also prohibit the commercial hemp business from operating within the City. The commercial hemp business shall re-apply for a commercial hemp business permit at such time as it can demonstrate that the grounds for suspension or revocation of the license by the state no longer exist or that the underlying deficiency has otherwise been cured.

5.64.150. Appeals.

Unless specifically provided elsewhere to the contrary, whenever an appeal is provided for in this Chapter, the appeal shall be conducted as prescribed hereinafter.

5.64.160. Written Request for Appeal.

A. Within ten (10) calendar days after the date of a decision of a City official occurring pursuant to this Chapter, including Community Development Director and his/her designee's actions, including, without limitation, a decision to revoke, suspend or deny a permit, or to add conditions to a permit, an aggrieved party may appeal such action by filing a written appeal with the City Clerk setting forth the reasons why the decision was not proper.

B. At the time of filing, the appellant shall pay the designated appeal fee, established by resolution of the City Council from time to time.

Section 5.64.170. Appeal Hearing Process.

A. Upon receipt of the written appeal, the City Clerk shall set the matter for a hearing before the City Council or its designee. The City Council or its designee shall hear the matter de novo and shall conduct the hearing pursuant to the procedures set forth by the City.

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B. The appeal shall be held within a reasonable time after date of filing, but in no event later than ninety (90) days from the date on which the appeal is filed. The City shall notify the appellant of the time and location at least ten (10) days prior to the date of the hearing.

C. At the hearing, the appellant may present any information they deem relevant to the decision appealed. The formal rules of evidence and procedure applicable in a court of law shall not apply to the hearing.

D. The failure of any recipient of an administrative citation to appear at the appeal hearing shall constitute a forfeiture of the fine and a failure to exhaust his/her/its/their administrative remedies.

E. If the decision of the City Council or its designee is to uphold the appeal and conditionally approves the applicant's commercial hemp business permit, then the applicant may move forward to the land use and entitlement approval phase.

F. Following the appeal hearing, an aggrieved party may seek judicial review of the City Council's or its designee's appeal decision by filing a complaint with the Superior Court of Kings County, California during the period identified by California Code of Civil Procedure Section 1094.6, as may be amended.

5.64.180. Change in Location and Other Amendments to Permits.

A. At least thirty (30) calendar days prior to a commercial hemp business's desired change of location, the applicant shall submit an application to the Community Development Director or his/her designee(s). The new location shall satisfy the requirements of Sections 5.64.220 and 5.64.250 and will be subject to the same review and approval process that applies to a business's initial application. The review and registration process shall be subject to the fees established by the City Council by resolution.

B. Within fifteen (15) calendar days of any other change in the information for a commercial hemp business or any change in status of compliance with the provisions of this Chapter, including, without limitation, any change in the key participants of the commercial hemp business, the applicant shall submit such information to the Community Development Director or his/her designee(s) for review and approval along with an amendment fee, as set forth in Sections 5.64.200.D and 5.64.270.

C. In reviewing changes to an existing commercial hemp business permit, the Community Development Director or his/her designee may establish new conditions that protect and promote the public health, safety and welfare**.**

5.64.190. Transfer of Hemp Business Permit.

A. The holder of a commercial hemp business permit shall not transfer ownership or control of the permit to another person unless and until an application to amend the permit is submitted

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to and approved by the Community Development Director or his/her designee. The review, and approval process applicable to permit applications outlined in Sections 5.64.090 and 5.64.100 above shall apply to amendment applications. The amendment application shall be accompanied by a processing fee in an amount set by resolution of the City Council (or if not set, shall be the same amount as the permit application fee).

B. The Community Development Director or his/her designee shall determine whether the transferee passed the background check required for permittees and met all other requirements of this Chapter.

C. Commercial hemp business permits amended to allow for transfer shall continue in effect through the remainder of the permit's then-current term. Before the transferee's permit expires, the transferee shall apply for a renewal permit in the manner required by this Chapter.

D. Substantial change in a key participant of a permittee business entity must be approved by the Community Development Director or his/her designee through the amendment process described in this section. A "substantial change" shall be deemed to have occurred if a change in majority ownership occurs. Failure to comply with this provision is grounds for permit revocation.

E. A permittee may change the form of business entity and may transfer the existing permit without applying to the Community Development Director or his/her designee for transfer approval, provided that:

1. The ownership of the new business entity is substantially similar to the original permit holder business entity (majority ownership is identical);

2. There are no changes in key participants; and

3. The permit holder notifies the Community Development Director in writing of the change within ten (10) days of the change. Failure to comply with this provision is grounds for permit suspension or revocation.

If ownership of the new business entity is not substantially similar to the original permit holder or if the key participants in the new business entity are not the same original permit holder's key participants, the transfer will require approval in accordance with subsection A. above.

F. No commercial hemp business permit may be transferred when the Community Development Director or his/her designee has notified the permittee that the permit has been or may be suspended or revoked.

G. Any attempt to transfer a commercial hemp business permit either directly or indirectly in violation of this section is hereby declared void, and such a purported transfer shall be deemed a ground for suspension or revocation of the permit.

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5.64.210. City Business License.

Prior to commencing operations, a commercial hemp business shall obtain a City of Hanford business license and shall maintain a business license as long as operations occur within the City.

5.64.220. Building Permits and Inspection.

Prior to commencing operations, a commercial hemp business shall be subject to a mandatory building inspection and must obtain all required permits and approvals which would otherwise be required for any business of the same size and intensity operating in that zone. This includes, but is not limited to, obtaining any required building permit(s), Hanford Fire Department approvals, Kings County Health Department approvals and other zoning and land use permit(s) and approvals.

5.64.230. Certification from the Community Development Director.

Prior to commencing operations, a commercial hemp business must obtain a certification from the Community Development Director or his/her designee(s) certifying that the business is located on a site that meets all of the requirements of this Chapter.

5.64.240. Right to Occupy and to Use Property.

As a condition precedent to the City 's issuance of a commercial hemp business permit pursuant to this Chapter, any person intending to open and to operate a commercial hemp business shall provide sufficient evidence of the legal right to occupy and to use the proposed location. In the event the proposed location will be leased from the property owner, the applicant shall be required to provide a signed and notarized statement from the owner of the property, acknowledging that the property owner has read this Chapter and consents to the operation of the commercial hemp business on the owner's property. A permittee will be required to submit evidence of lease renewal, as applicable, to evidence its continuing right to utilize the leased premises identified in its commercial hemp business permit application.

5.64.250. Location and Design of Hemp Businesses.

Hemp businesses permitted to engage in operations in the City are subject to the following zoning and locational requirements:

A. Cultivation, Distribution, Manufacturing and Retail Sales must be zoned in the following: C-2 (General Commercial), C-3 (Highway Commercial), C-M (Commercial Industrial), M-1 (Light Industrial) and M-2 (Heavy Industrial) and must meet all of the requirements for development in these zones. The hemp businesses must also meet all of the following distance requirements:

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1. It shall be no closer than six hundred (600) feet from any parcel in the City on which a use that is designated by Business and Professions Code 26054(b) as a sensitive use or any of the following uses:

a. A school providing instruction in kindergarten or any grades 1 through 12, (whether public, private, or charter, including pre-school, transitional kindergarten, and K-12);

b. A commercial daycare center licensed by the State, County or City or that is in existence at the time the license is issued, unless the State licensing authority specifies a different radius.

c. A youth center.

The distance measured shall be the distance measured in a straight line from the parcel on which the sensitive use exists to the closest property line of the lot on which the hemp business is will be. The existence of nearby uses shall be determined at the time a commercial hemp business permit application is submitted to the City.

2. It shall be no closer than two hundred fifty (250) feet of any residentially zoned parcel in the City, including any legal non-conforming residential uses as of the date the hemp business permit is issued. The distance between the hemp business and the residential parcel shall be measured in a straight line from the residential parcel to the closest property line of the lot on which the hemp business is will be.

B. Each proposed commercial hemp business shall:

1. Conform with the City ’s general plan, any applicable specific plans, master plans, and design requirements.

2. Comply with all applicable zoning and related development standards.

3. Be constructed in a manner consistent with the requirements of Section 5.64.300.J that minimizes odors to surrounding uses, and promotes quality design and construction, and consistency with the surrounding properties.

4. Be adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and all items required for the development under applicable legal authority.

5. Be served by streets adequate in width and improved as necessary to carry the kind and quantity of traffic such use will generate.

6. Be provided with adequate electricity, sewerage, disposal, water, fire protection and storm drainage facilities for the intended purpose.

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5.64.260. Limitations on City's Liability.

To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to having issued a commercial hemp business permit pursuant to this Chapter or otherwise approving the operation of any commercial hemp business. As a condition to the approval of any commercial hemp business permit, the applicant shall be required to meet all of the following conditions before they can receive the commercial hemp business permit:

A. Execute an agreement, in a form approved by the City Attorney, agreeing to indemnify, defend (at applicant's sole cost and expense), and hold the City and its officers, officials, employees, representatives, and agents, harmless, from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City's conditional approval or issuance of the commercial hemp business permit, the City's decision to approve the operation of the commercial hemp business or activity, the process used by the City in making its decision, or the alleged violation of any federal, state or local laws by the commercial hemp business or any of its key participants, employees or agents.

B. Maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time by the City.

C. The City may elect to defend itself, with counsel of its choice, in legal proceedings involving the approval or issuance of a commercial hemp business permit. In such case, the applicant will, upon demand, reimburse the City for all costs and expenses, including but not limited to legal fees and costs and court costs, which the City may pay as a result of the legal challenge related to the City's approval or issuance of the applicant's commercial hemp business permit, or related to the City 's approval of a commercial hemp activity. If the City elects to have the applicant defend the City in litigation, the City may, at its sole discretion, participate, at its own expense, in the defense of any such action, but such participation shall not relieve any of the obligations imposed hereunder.

5.64.270. Records and Recordkeeping.

A. Each owner and operator of a commercial hemp business shall maintain current separate registers of the names and the contact information (including the name, address, and telephone number) of: (i) key participants; and (ii) employees, agents and volunteers employed or otherwise engaged by the commercial hemp business. The registers required by this subsection shall be provided to the Community Development Director or his/her designee(s) upon a reasonable request.

B. Each commercial hemp business shall allow the City's officials to have access to the business's books, records, accounts, together with any other data or documents relevant to its permitted commercial hemp activities, for the purpose of conducting a compliance inspection or

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investigation. Books, records, accounts, and any and all relevant data or documents will be produced no later than twenty-four (24) hours after receipt of the City's request, unless otherwise stipulated by the City. The City may require the materials to be submitted in an electronic format that is compatible with the City 's software and hardware.

5.64.280. Security Requirements.

A. A permitted commercial hemp business shall submit to the City a security plan that is subject to the approval of the Chief of Police or his/her designee.

B. At a minimum, the security plan shall include sufficient security measures to deter and prevent the unauthorized entrance into areas containing hemp or hemp products, and to deter and prevent the theft of hemp or hemp products at the commercial hemp business. Except as may otherwise be determined by the Chief of Police or his/her designee(s), these security measures shall include all of the following:

1. Alarm systems including perimeter, fire alarms and Panic buttons/silent alarms are required and shall be approved by the Chief of Police.

2. Remote monitoring of alarm systems by licensed security professionals.

3. Perimeter lighting systems (including motion sensors) for after-hours security.

4. Professionally installed 24-hour security surveillance cameras of at least HD-quality to monitor all entrances and exits to and from the premises, all interior spaces within the commercial hemp business which are open and accessible to the public, all interior spaces where hemp, cash or currency is being stored for any period of time on a regular basis and all interior spaces where diversion of hemp could reasonably occur. All cameras shall record in color. All exterior cameras shall be in weather-proof enclosures, shall be located so as to minimize the possibility of vandalism, and shall have the capability to automatically switch to black and white in low light conditions. The commercial hemp business shall maintain video recordings for a minimum of forty-five (45) days and shall be made available to the Chief of Police or his/her designee(s) upon request. Video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the site of the commercial hemp business and shall be capable of enlargement via projection or other means. Internet Protocol address information shall be provided to the Hanford Police Department by the commercial hemp business to facilitate remote monitoring of security cameras by the Department or its designee. The surveillance system shall have network security protocols that are certified by Underwriters Laboratories.

5. Professionally installed, maintained, and monitored real-time alarm system by a security company licensed by the State of California Bureau of Security and Investigative Services.

6. The premises shall have the ability to remain secure during a power outage.

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7. Any bars installed on the windows or doors of the premises shall be installed only on the interior of the building.

C. As part of the application and permitting process, each commercial hemp business shall have a storage and transportation plan, which describes in detail the procedures for safely and securely storing and transporting all hemp, hemp products, and hazardous materials that may be used by the business.

D. Compliance with the foregoing requirements shall be verified by the Chief of Police or his/her designee prior to commencing business operations. The Chief of Police or his/her designee may supplement these security requirements once operations begin if necessary to protect public safety and welfare.

5.64.290. Fees and Charges.

A. No person may commence or continue any commercial hemp activity in the City without timely paying in full all fees and charges required for the operation of a commercial hemp activity. Fees and charges associated with the operation of a commercial hemp activity shall be established by resolution of the City Council which may be amended from time to time.

B. All commercial hemp businesses authorized to operate under this Chapter shall pay all sales, use, business and other applicable taxes, and all license, registration, and other fees required under federal, state and local law. Each commercial hemp business shall cooperate with City with respect to any reasonable request to audit the commercial hemp business' books and records for the purpose of verifying compliance with this section, including but not limited to a verification of the amount of taxes required to be paid during any period.

C. Prior to operating in the City and as a condition of issuance of a commercial hemp business permit, the operator of each hemp business shall enter into an operational or community benefit agreement with the City setting forth the terms and conditions under which the hemp business will operate that are in addition to the requirements of this chapter, including, but not limited to, public outreach and education, community service, payment of fees and other charges as mutually agreed, and such other terms and conditions that will protect and promote the public health, safety and welfare.

5.64.300. General Operating Requirements.

A. Commercial hemp businesses may operate only during the hours specified in the commercial hemp business permit issued by the City.

B. No hemp or hemp products or graphics depicting hemp or hemp products shall be visible from the exterior of any property issued a commercial hemp business permit, or on any of the vehicles owned or used as part of the commercial hemp business. No outdoor storage of hemp or hemp products is permitted at any time.

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C. Reporting and tracking of product and of gross sales. Each commercial hemp business shall have in place a point-of-sale or management inventory tracking system to track and report on all aspects of the commercial hemp business, including, but not limited to, hemp tracking, inventory data, gross sales (by weight and by sale) and other information which may be deemed necessary by the City. The commercial hemp business shall ensure that such information is compatible with the City's record-keeping systems. In addition, the system must have the capability to produce historical transactional data for review. Furthermore, any system selected must be approved and authorized by the Community Development Director or his/her designee(s) prior to being used by the permittee.

D. All hemp and hemp products sold, distributed or manufactured shall be cultivated, manufactured, and transported by licensed facilities that maintain operations in full conformance with state and local regulations.

E. Hemp material and testing. All hemp processed at a commercial hemp business within the City shall be sourced from a lawful source in compliance with federal and state regulations. In addition, all hemp shall be tested for compliance with federal THC potency restrictions. Testing shall occur in a manner consistent with requirements established by the state.

F. Waste. All hemp waste will be properly disposed of in compliance with applicable laws. Any hemp, hemp extracts, or hemp products that exceed the threshold of THC concentration under the definition of hemp will follow a separate waste stream in compliance with state laws.

G. Emergency Contact. Each commercial hemp business shall provide the Hanford Police Department with the name, telephone number (both land line and mobile, if available) of at least two on-site employees or key participants to whom emergency notice can be provided at any hour of the day.

H. Employees. It shall be unlawful and a violation of this Chapter for any commercial hemp business to employ any person, including employment as a delivery driver, who is not at least twenty-one (21) years of age.

I. Minors. Persons under the age of eighteen (18) years shall not be allowed on the premises of a commercial hemp business. The entrance to the commercial hemp business shall be clearly and legibly posted with a notice that no person under the age of eighteen (18) years of age is permitted to enter upon the premises of the commercial hemp business.

J. Odor Control. Odor control devices and techniques shall be incorporated in all commercial hemp businesses to ensure that odors from hemp are not detectable off-site. Commercial hemp businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the commercial hemp business that is distinctive to its operation is not detected outside of the facility, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any

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other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the commercial hemp business. As such, commercial hemp businesses must install and maintain the following equipment, or any other equipment which the Community Development Director or his/her designee(s) determine is a more effective method or technology:

1. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; and

2. An air system that creates negative air pressure between the commercial hemp business's interior and exterior, so that the odors generated inside the commercial hemp business are not detectable on the outside of the commercial hemp business.

K. Display of Permit and City Business License. The original copy of the commercial hemp business permit issued by the City pursuant to this Chapter and the City issued business license shall be posted inside the commercial hemp business in a location readily visible to the public.

L. Background Check. Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), local governments are authorized to access state and local summary criminal history information for employment, licensing, or certification purposes; they are further authorized to access to federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation. Every key participant, as defined in this Chapter and under the Federal Agricultural Improvement Act of 2018, must submit fingerprints and other information deemed necessary by the Chief of Police or his/her designee(s) for a background check by the City of Hanford Police Department. Should any subsequent state law requirement be adopted that contradicts this requirement, then this Section shall be interpreted and enforced in a manner that conforms to state law and regulations. Furthermore, pursuant to California Penal Sections 11105(b)(11) and 13300(b)(11), which require that there be a requirement or exclusion from employment, licensing or certification based on specific criminal conduct on the part of the subject of the record, no person shall be issued a commercial hemp business permit unless the key participants, employees, agents, and volunteers have first cleared the background check, as determined by the Chief of Police or his/her designee(s), as required by this section. A fee for the cost of the background investigation, which shall be the actual cost to the City to conduct the background investigation as it deems necessary and appropriate, shall be paid at the time the application for a commercial hemp business permit is submitted.

M. Bond and Insurance. Each commercial hemp business shall be bonded and insured at a minimum level established by the City.

5.64.310. Amendments to General Operating Requirements.

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The Community Development Director or his/her designee may develop other commercial hemp business operational requirements or regulations as are determined to be necessary to protect the public health, safety and welfare.

5.64.320. Operating Requirements for Store Front/Retail Facilities.

A. No more than the approved number of hemp retailers, which shall be established by resolution of the City Council, may hold commercial hemp business permits at any one time. All retailers are required to obtain a business license issued by the City.

B. Hemp retailers are expressly prohibited from accepting, selling, providing, storing or transporting any cannabis or cannabis products. Furthermore, no person shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on or about the premises of a hemp retailer.

C. Prior to beginning operations, retailers must apply for and obtain a Seller's Permit from the State of California.

5.64.330. Operating Requirements for a Cultivation Facility Operation.

A. Outdoor hemp cultivation is prohibited.

B. In no case shall hemp plants be visible from a public or private road, sidewalk, park, any common public viewing area, or adjacent property.

C. Hemp cultivation shall be conducted in accordance with federal, state and local laws related to land use, grading, electricity, water usage, water quality, habitat protection, agricultural discharges, and similar matters.

D. Pesticides and fertilizers shall be properly labeled and stored to avoid contamination through erosion, leakage or inadvertent damage from all causes, including pests and rodents.

E. The cultivation of hemp shall, at all times, occur in such a way as to: (i) ensure the health, safety, and welfare of the public, the employees working at the commercial hemp business, visitors to the area, neighboring properties, and the end users of the hemp being cultivated; (ii) protect the environment; (iii) ensure the security of the hemp being cultivated; and (iv) safeguard against the diversion of hemp.

F. All applicants for a commercial hemp business permit for cultivation shall submit the following in addition to the information generally otherwise required for a commercial hemp business:

1. A description of a legal water source, and projected water use.

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2. Identification of the source of electrical power, projected electricity usage, and plan for compliance with applicable Building Codes and related codes.

3. Plan for addressing odor and other potential public nuisances that may derive from the cultivation site.

5.64.340. Operating Requirements for Distributors.

A. A distributor shall not store non-hemp goods or non-hemp accessories that are to be sold to another party on any licensed premises. Additionally, a distributor shall not distribute non-hemp goods or non-hemp accessories at a licensed premise. For the purposes of this section, non-hemp goods are any goods that are not derived from hemp.

B. A distributor shall ensure that all hemp goods batches are stored separately and distinctly from other hemp goods batches on the distributor's premises.

C. After taking physical possession of a hemp goods batch, the distributor shall contact a testing laboratory and arrange for a laboratory employee to come to the distributor's licensed premises to select a representative sample for laboratory testing. A key participant or an employee of the commercial hemp business shall be physically present to observe the laboratory employee obtain the sample of hemp goods for testing and shall ensure that the increments are taken from throughout the batch. The distributor shall ensure that the batch size from which the sample is taken meets the requirements of state law, specifically the testing provisions within Section 81006, et seq., of the Food and Agriculture Code.

D. A distributor shall not transport hemp or hemp products to a licensed retail facility until and unless it has verified that the hemp or hemp products have been tested and certified by a testing lab as being in compliance with state health and safety requirements pursuant to Section 81006, et seq., of the Food and Agriculture Code.

5.64.350. Operating Requirements for Testing Labs.

A. Testing labs shall be required to conduct all testing in a manner compliant with state law, and as state law may be subsequently amended by the state plan for industrial hemp production.

B. Testing labs shall conduct all testing in a manner consistent with general requirements for the competence of testing and calibrations activities, including sampling using verified methods.

C. Testing labs shall destroy any harvest batch whose testing sample indicates non-compliance with state health and safety standards required by the Bureau of Cannabis Control

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unless remedial measures can bring the hemp or hemp products into compliance with quality standards as specified by law.

D. Except as provided by state law, a testing laboratory shall not acquire or receive hemp or hemp products except from a licensee in accordance with state law, and shall not distribute, sell, or dispense hemp, or hemp products, from its location or from the licensed premises from which the hemp or hemp products were acquired or received. All transfer or transportation shall be performed pursuant to the State specified chain of custody protocol.

5.64.360. Operating Requirements for Hemp Manufacturing: Edibles and Other Hemp Products; Sale or Distribution of Edible and Other Hemp Products.

A. Hemp manufacturing shall only be permitted pursuant to Sections 5.64.020 and 5.64.060 of this code and any subsequently created manufacturing state license, and may be permitted to operate only within those zone districts as defined in Section 5.64.250.

B. Any compressed gases used in the manufacturing process shall not be stored on any property within the City in containers that exceeds the amount, including number of tanks, approved by the City's Fire Chief or his/her designee and authorized in the commercial hemp business permit.

C. Hemp manufacturing facilities may use heat, screens, presses, steam distillation, ice water, ethanol and other methods approved by the City to create manufactured hemp products. Except as expressly allowed by this Chapter, the use of solvents or gases in the manufacturing process is prohibited.

D. If an extraction process uses a professional grade closed loop CO_2 gas extraction system (that has been approved by the City of Hanford Fire Chief), every vessel must be certified by the manufacturer for its safe use as referenced in Section 5.64.360.F. Closed loop systems for compressed gas extraction systems must be commercially manufactured and bear a permanently affixed and visible serial number.

E. Certification from an mechanical engineer licensed by the State of California, or by a certified industrial hygienist, must be provided to the Community Development Department for a professional grade closed loop system used by any commercial hemp manufacturer confirming that the system was commercially manufactured, is safe for its intended use, and was built to codes of recognized and generally accepted good engineering practices, including but not limited to:

1. The American Society of Mechanical Engineers (ASME);

2. American National Standards Institute (ANSI);

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3. Underwriters Laboratories (UL); or

4. The American Society for Testing and Materials (ASTM)

F. Professional closed loop systems and any other equipment and facilities used for the extraction operation must be approved for their use by the City and meet any required fire, safety, and building code requirements specified in the California Building and Fire Codes.

G. Hemp manufacturing facilities may use food grade glycerin, ethanol, and propylene glycol solvents to create or refine extracts. Ethanol shall be removed from the extract in a manner to recapture it and ensure that it is not vented into the atmosphere.

H. Hemp manufacturing facilities creating hemp extracts must develop and obtain the City's approval of standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace.

I. Any person using solvents or gases in a closed looped system to create hemp extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets, and must handle and store the solvents and gases safely.

J. Solvent and gas concentrations in finished extract cannot exceed state standards when quality assurance tested.

5.64.370. Promulgation of Regulations, Standards and Other Legal Duties.

A. In addition to any regulations adopted by the City Council, the Community Development Director or his/her designee is authorized to establish any additional rules, regulations and standards governing the issuance, denial or renewal of commercial hemp business permits, the ongoing operation of commercial hemp businesses and the City's oversight, or concerning any other subject determined to be necessary to carry out the purposes of this Chapter.

B. Regulations shall be published on the City's website.

C. Regulations promulgated by the Community Development Director or his/her designee shall become effective upon date of publication.

D. Cultivation, manufacturing, retail, testing labs, distribution facilities, and retail delivery services and special events allowed by the City shall be subject to state law, as may be amended.

5.64.380. Community Relations.

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A. Each commercial hemp business shall provide the name, telephone number, and email address of a community relations contact to whom notice of problems associated with the commercial hemp business can be provided. Each commercial hemp business shall also provide the above information to all businesses and residences located within one hundred (100) feet of the commercial hemp business.

B. During a commercial hemp business's first year of operation pursuant to this Chapter, the owner, manager, and community relations representative from the business shall attend meetings with the Community Development Director or his/her designee(s), and other interested parties as deemed appropriate by the Community Development Director or his/her designee(s), to discuss costs, benefits, and other community issues arising as a result of implementation of this Chapter. After the first year of operation, the owner, manager, and community relations representative from each such commercial hemp business shall meet with the City Manager or his/her designee(s) when and as requested by the Community Development Director or his/her designee(s).

5.64.390. Fees Deemed Debt to the City of Hanford.

The amount of any fee, cost, charge, or penalty imposed pursuant to this Chapter shall be deemed a debt to the City that is recoverable via an authorized administrative process authorized by the City Council or proceedings pursued through any court of competent jurisdiction.

5.64.400. Permit Holder Responsible for Violations.

The person to whom a permit is issued pursuant to this Chapter shall be responsible for all violations of the laws of the State of California and of the regulations and/or the ordinances of the City, whether committed by the permittee or any employee or agent of the permittee, which violations occur in or about the premises of the commercial hemp business or in the conduct of the commercial hemp business' operations, and whether or not said violations occur within the permit holder's presence.

5.64.410. Inspection and Enforcement.

A. Subject to applicable state and federal laws, the City Manager or his/her designee(s) charged with enforcing the provisions of the Hanford Municipal Code, or any provision thereof, may enter the location of a commercial hemp business at any time, without notice, and inspect the location of any commercial hemp business as well as any recordings and records required to be maintained pursuant to this Chapter or under applicable provisions of state law.

B. It is unlawful for any person having responsibility over the operation of a commercial hemp business, to impede, obstruct, interfere with, or otherwise not to allow, the City to conduct an inspection, review or copy records, recordings or other documents required to be maintained by a commercial hemp business under this Chapter or under state or local law. It is also unlawful

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for a person to conceal, destroy, deface, damage, or falsify any records, recordings or other documents required to be maintained by a commercial hemp business under this Chapter or under state or local law.

C. Subject to applicable state and federal laws the City Manager or his/her designee(s) charged with enforcing the provisions of this Chapter may enter the location of a commercial hemp business at any time during the hours of operation and without notice to obtain samples of the hemp to test for public safety purposes. Any samples obtained by the City of Hanford shall be logged, recorded, and maintained in accordance with procedures established by the state and the City.

5.64.420. Violations declared a public nuisance.

Each and every violation of the provisions of this Chapter is hereby deemed unlawful and a public nuisance. The nuisance abatement remedies and procedures identified in Chapter 17.94, which is incorporated herein by reference, shall apply to nuisances existing under this Chapter 5.64.

5.64.430. Each violation a separate offense.

Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the City of Hanford. Each day a violation is committed or permitted to continue shall constitute a separate violation. Additionally, as a nuisance per se: (i) any violation of this Chapter shall be subject to injunctive relief; (ii) any permit issued pursuant to this Chapter shall be subject to suspension and/or revocation; and (iii) the City will be entitled to disgorgement of any monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. The City may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the commercial hemp business or persons related to, or associated with, the commercial hemp activity. Additionally, when there is determined to be an threat to public health, safety or welfare, the City Manager, or his/her designee(s), may take immediate action to suspend a commercial hemp business permit issued by the City, subject to the appeal rights described in this Chapter.

5.64.440. Criminal Penalties.

Each and every violation of the provisions of this Chapter may, in the discretion of the District Attorney, be prosecuted as a misdemeanor and upon conviction be subject to a fine not to exceed one thousand dollars ($1,000) or imprisonment in the County jail for a period of not more than twelve (12) months, or by both such fine and imprisonment.

5.64.450. Administrative Remedies and Costs.

DRAFT

Attachment: DRAFT Hemp Ordinance for Study Session 03.19.2021 (CD: Hemp Study Session)

In addition to any other remedy available at law, an administrative citation may be issued to any person or entity who violates this Chapter.

A. Issuance of Citation.

1. Whenever the Chief of Police, his/her designee, or a City code enforcement officer determines that a violation of this Chapter has occurred, the Chief of Police, his/her designee, or a City code enforcement officer shall have the authority to issue an administrative citation to any person or entity responsible for the violation.

2. Each administrative citation shall contain the following information:

a. The date of the violation or, if the date of the violation is unknown, then the date the violation is identified;

b. The address or a definite description of the location where the violation occurred;

c. The section of this Chapter that was violated and a description of the violation;

d. The amount of the fine for the violation;

e. A description of the fine payment process, including a description of the time within which and the place at which the fine shall be paid;

f. An order prohibiting the continuation or repeated occurrence of the code violation described in the administrative citation;

g. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and

h. The name and signature of the individual issuing the citation.

B. Amount of Fines.

1. The amounts of the administrative citation fines for violations of this Chapter shall be set forth in a schedule of fines established by resolution of the City Council.

2. The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person or entity.

C. Payment of Fines.

Attachment: DRAFT Hemp Ordinance for Study Session 03.19.2021 (CD: Hemp Study Session)

1. Fines shall be paid to the City within thirty (30) days from the date of the administrative citation.

2. Any administrative citation fine paid shall be refunded if it is determined, after an appeal hearing, that a person or entity charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the citation.

3. Payment of a fine under this Chapter shall not excuse, discharge, or permit any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

D. Hearing Request.

1. Any recipient of an administrative citation may appeal the citation by submitting a written request for hearing to the City Clerk or designee within thirty (30) days from the date of the administrative citation, together with an advance deposit of the fine.

2. If the Chief of Police, his/her designee, or a code enforcement officer submits an additional written report concerning the administrative citation to the hearing body, then a copy of such report shall be served on the person requesting the hearing at least five (5) days prior to the date of the hearing.

G. Hearing Procedure.

1. The appeal procedures described in Section 5.64.180 shall apply to appeals involving administrative citations.

2. No hearing to contest an administrative citation shall be held unless the fine has been deposited with the city in advance.

3. At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.

4. The administrative citation and any additional report submitted by the Chief of Police, his/her designee, or a code enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents.

5. The hearing body may continue the hearing and request additional information from the Chief of Police, his/her designee, code enforcement officer, or the recipient of the administrative citation prior to issuing a written decision.

H. Hearing Body's Decision.

Attachment: DRAFT Hemp Ordinance for Study Session 03.19.2021 (CD: Hemp Study Session)

1. After considering all of the testimony and evidence submitted at the hearing, the hearing body shall issue a written decision to uphold, modify, or cancel the administrative citation and shall list in the decision the reasons for the decision. The decision of the hearing body shall be final.

2. If the hearing body determines that the administrative citation should be upheld, then the fine amount on deposit with the City shall be retained by the City.

3. If the hearing body determines that the administrative citation should be canceled, then the City shall promptly refund the amount of the deposited fine.

4. If the hearing body determines that the fine levied under the administrative citation should be adjusted, then the City will promptly refund the amount of the deposited fine that exceeds the amount fixed by the hearing body or the recipient of the administrative citation will promptly pay to the City an additional amount fixed by the hearing body if the body finds that the fine assessed under the administrative citation to be insufficient.

5. The recipient of the administrative citation shall be served with a copy of the hearing body's written decision.

I. Late Payment Charges. Any person or entity who fails to pay to the City any fine imposed or amount owed pursuant to the provisions of this Chapter on or before the date that the fine or amount is due shall also be liable for a late payment charge equal to ten percent (10%) of the unpaid amount, and interest shall accrue thereafter at a rate of one and one-half percent (1.5%) per month on the unpaid fine; provided however, the additional penalty and/or interest shall not apply if collection of the same by the City would violate state law.

J. Recovery of Administrative Citation Fines and Costs. Any person or entity who violates this Chapter shall be responsible for the enforcement costs incurred by the City with respect to such violation. The City may collect any past due administrative citation fines, enforcement and collection costs, and late payment charges by use of all available legal means, including, without limitation, the lien procedures identified in Sections 17.94.180 and 17.94.190 of this Code, which are incorporated herein by reference. Collection costs shall be in addition to any interest and/or late charges imposed upon the delinquent obligation and shall be added to and become a part of the underlying obligation. Any partial payment of an obligation, when a partial payment is permitted, will be applied first to the principal amount of the underlying obligation, then to any penalties, and then to interest.

K. Right to Judicial Review. Any person or entity aggrieved by a decision of the hearing body on an administrative citation may obtain review of the decision by filing a petition for review with the Superior Court for Kings County, California in accordance with the timelines and provisions set forth in California Government Code Section 53069.4, as may be amended.

L. Notices. The administrative citation and all notices required to be given by this Chapter shall be served by personal delivery thereof to the person or entity to be notified or by

Attachment: DRAFT Hemp Ordinance for Study Session 03.19.2021 (CD: Hemp Study Session)

deposit in the United States mail, certified mail with return receipt requested, addressed to such person to be notified at his/her/its last-known address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the mail

5.64.460. Remedies cumulative and not exclusive.

The remedies provided herein are not to be construed as exclusive remedies. The City is authorized to pursue any proceedings or remedies provided in law or equity.

Section 2: This Ordinance shall become operative as of the date on which a state plan for California is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agricultural Improvement Act of 2018 (Public Law 115-334); provided however, this Ordinance shall become effective no earlier than thirty (30) calendar days from the date on which it is adopted by the Hanford City Council. This Ordinance shall be published once in the Hanford Sentinel within fifteen (15) days after its passage or a summary of this ordinance shall be published in the Hanford Sentinel in a manner consistent with the requirements of the California Government Code.

THEREFORE, BE IT FURTHER RESOLVED, that based on the above and incorporated findings, the City Council approves Ordinance 20-___.

PASSED, ADOPTED AND APPROVED this _____ day of _____, 202__ by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

_____

_____

MAYOR of the City of Hanford

Attest:

_____

NATALIE ORTEGA
CITY CLERK

DRAFT

Attachment: DRAFT Hemp Ordinance for Study Session 03.19.2021 (CD: Hemp Study Session)

STATE OF CALIFORNIA)
COUNTY OF KINGS) ss
CITY OF HANFORD)

I, Natalie Ortega, Acting City Clerk of the City of Hanford, do hereby certify the foregoing Ordinance was duly passed and adopted at a regular meeting of the City Council of the City of Hanford held on the _____ day of _____, 202__.

Date: _____ _____
City Clerk

DRAFT

Attachment: DRAFT Hemp Ordinance for Study Session 03.19.2021 (CD: Hemp Study Session)

AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** B

SUBJECT:
City Clerk: Approval of the Minutes of the December 3, 2020 Special Meeting

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Recommendation:

Approve the minutes of the December 3, 2020 Special Meeting.

FISCAL IMPACT:

ATTACHMENTS:
12.3.2020 sm

The City of Hanford
CALIFORNIA

CITY COUNCIL MEETING
MINUTES
December 3, 2020 4:30 PM
Council Chambers
400 N. Douty St.

CALL TO ORDER SPECIAL SESSION:

Mayor Draxler called the Special Meeting to order at 4:30 p.m.

ROLL CALL BY THE CITY CLERK:

Attendee Name	Title	Status	Arrived
John Draxler	Mayor	Present	4:20 PM
Martin Devine	Council Member	Present	4:20 PM
Sue Sorensen	Council Member	Present	4:25 PM
Art Brieno	Council Member	Present	4:15 PM
Francisco Ramirez	Vice Mayor	Present	4:20 PM

FLAG SALUTE:

The flag salute was led by Mayor Draxler.

PUBLIC COMMENT:

*Comments from the public are limited to items listed on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

Bob Ramos questioned why the warrant register are included on the regular agendas.

CONSENT CALENDAR :

Consent Calendar items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made and then the item will be removed from the Consent Calendar to be discussed and voted upon by a separate motion.

A. Public Works: Approval of the Final Map and Subdivision Agreement for Tract No. 922, Unit II and accept all easements and dedications offered for public use, and adopt Resolution 20-37-R restructuring properties within Assessment District No. 15-01 (District Restructure No. 15-01-B) (Southeast corner of 13th Avenue & Devon Street)

Public Works Director John Doyel briefly discussed the Final Map and Subdivision for Tract No. 922 Unit II and answered questions from the Council.

Attachment: 12.3.2020 sm (Clerk: 12.3.2020 Minutes)

Motion to adopt Resolution 20-37-R.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Martin Devine, Council Member
SECONDER:	Francisco Ramirez, Vice Mayor
AYES:	Draxler, Devine, Sorensen, Brieno, Ramirez

COURTHOUSE IMPROVEMENTS:

A. Courthouse Tour

Building Superintendent, Randy Shaw, led the Courthouse tour at 4:39 p.m.

B. Courthouse Presentation

The meeting reconvened from the tour at 5:53 p.m.

Parks and Community Services Director Brad Albert discussed the history and the current status of Courthouse. He also presented 4 scenarios for Councils review and consideration.

Scenarios:

- Scenario #1 - Take no action and continue to incur a loss of -$138,151.
- Scenario #2 - Secure a 20-year loan with a 100% occupancy and $1.1 million shortfall.
- Scenario #3- Secure a 20-year loan with an 80% occupancy and a $2.1 million shortfall.
- Scenario #4- Sell the property with an unknown outcome.

Mayor Draxler invited comments from the public. Jack Schwartz questioned the current maintenance costs and expressed his concerns about choosing the right option for the community. Bob Ramos suggested that the Courthouse be used for city offices. Building Superintendent, Randy Shaw stated that the Courthouse is not fully occupied due to internal issues. Council Member Brieno spoke in favor of scenario 3. He also commented on the potential revenue of renting out the third floor. Council Member Sorensen spoke in favor of scenarios 2 and 3. Council Member Devine spoke in favor of scenarios 2 and 3, and he was not opposed to selling the Courthouse. Council Member Devine also liked the idea of using the Courthouse for city offices. Mayor Draxler spoke in favor of scenarios 2 or 3 and expressed his concerns about selling the Courthouse to the right buyer. Interim Finance Director, Eric Frost, answered questions from the Council and discussed loan options. Dir. Frost also discussed the pros and cons of using City funds for the Courthouse improvements.

It was a consensus of the Council to direct staff to move forward with scenario 2 or 3 and bring back funding and grant options with the projected repair costs for the Courthouse. The Council also agreed that selling the Courthouse is still a possible option.

ADJOURNMENT:

Mayor Draxler adjourned the meeting at 6:27 p.m.

Respectfully submitted,

Natalie Corral
City Clerk

Attachment: 12.3.2020 sm (Clerk: 12.3.2020 Minutes)

AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** C

SUBJECT:
City Clerk: Approval of the Minutes of the January 19, 2021 Meeting

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Recommendation:

Approve the minutes of the January 19, 2021 Meeting.

FISCAL IMPACT:

ATTACHMENTS:
1.19.2021 mins.

The City of Hanford
CALIFORNIA

CITY COUNCIL MEETING
MINUTES
January 19, 2021 7:00 PM
Hanford Civic Auditorium
400 N. Douty St

4:30 PM CALL TO ORDER STUDY AND CLOSED SESSION :

Mayor Ramirez called the Study and Closed Session to order at 4:31 p.m.

ROLL CALL BY THE CITY CLERK :

Present: Francisco Ramirez, Kalish Morrow, Diane Sharp, John Draxler, Art Brieno

PUBLIC COMMENT :

This is the time for citizens to comment on subject matters not on the agenda within the jurisdiction of the Hanford City Council. This is also the public's opportunity to request an item from the Consent Calendar be pulled for discussion purposes or to comment on any item on the agenda. Comments related to Public Hearing items will be heard at the time the item is discussed.

*A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

None.

STUDY SESSION:

A. FIRE: Presentation of the CA-OES Engine for Council viewing

Fire Chief Steve Pendergrass presented the CA OES Fire Engine for the Council to view and tour.

B. Presentation from the Kings County Association of Government (KCAG) regarding current projects and the Commission's activities

Terri King, Executive Director of Kings County Association of Government (KCAG) provided an overview of the organization. She discussed the history of the agency, commission activities, funding sources, projects, and budgets. Ms. King also discussed the preparation of the 20-year Regional Transportation Plan, other major functions and services that KCAG provides to other agencies and the City of Hanford. With no further discussion, Mayor Ramirez thanked Ms. King for the presentation.

C. Finance: Presentation regarding the City of Hanford's California Public Employee Retirement System (CalPERS) pension obligations and projected cost.

Attachment: 1.19.2021 mins. (Clerk: 1.19.2021 Minutes)

Interim Finance Director Eric Frost discussed CalPERS pension obligations, the projected cost and an overview of the city's pension plans. Dir. Frost answered questions from the Council. Mayor Ramirez thanked Dir. Frost for his presentation and adjourned to closed session 5:54 p.m.

CLOSED SESSION FOR DISCUSSION OF THE FOLLOWING:

A. Conference with Legal Counsel-Real Property Negotiation (GC 54956.8)

Property: 109 E. Eighth
Agency Negotiators: Mario Cifuentez, Ty Mizote
Negotiating Party: Carnegie Museum of Kings County

CLOSED SESSION ACTION REPORT:

No action reported.

CALL TO ORDER REGULAR SESSION:

Mayor Ramirez called the meeting to order at 7:00 p.m.

ROLL CALL:

Attendee Name	Title	Status	Arrived
John Draxler	Council Member	Present	4:12 PM
Diane Sharp	Vice Mayor	Present	4:09 PM
Art Brieno	Council Member	Present	4:10 PM
Kalish Morrow	Council Member	Present	4:12 PM
Francisco Ramirez	Mayor	Present	4:08 PM

IX. INVOCATION:

The invocation was led by Pastor Mike Weatherly.

FLAG SALUTE:

Vice Mayor Sharp led the Flag salute.

STAFF COMMUNICATIONS:

City Manager Mario Cifuentez provided a COVID-19 vaccine update. He recognized the Chamber of Commerce as a good resource for the recent new business inquires that the City has received. He also announced the upcoming date for the City Councils Goals and Objectives meeting.

COUNCIL REPORTS/COMMENTS:

Vice Mayor Sharp attended orientation meetings with the city's department heads, she also attended online training and several community events.

Council Member Brieno had nothing to report.

Council Member Morrow attended orientations with the city's department heads and the grand opening for Caliva.

Council Member Draxler attended the grand opening for Caliva. He also participated in Griswold LaSalle's on-line training.

Attachment: 1.19.2021 mins. (Clerk: 1.19.2021 Minutes)

Mayor Ramirez attended the grand opening for Caliva, and he announced the monthly Hanford Chamber of Commerce event that he will be participating in.

PUBLIC COMMENT:

This is the time for citizens to comment on subject matters not on the agenda within the jurisdiction of the Hanford City Council. This is also the public's opportunity to request an item from the Consent Calendar be pulled for discussion purposes or to comment on any item on the agenda. Comments related to Public Hearing items will be heard at the time the item is discussed.

*A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

Bob Ramos congratulated the new Council Members and Mayor Ramirez. He also commented on the warrant register.

CONSENT CALENDAR:

Consent Calendar items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made and then the item will be removed from the Consent Calendar to be discussed and voted upon by a separate motion.

Council Member Brieno requested to pull Item E *[Local Early Action Planning (LEAP) Grant for Housing]*.

Motion to approve the Consent Calendar except for the items pulled for separate consideration.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Art Brieno, Council Member
SECONDER:	John Draxler, Council Member
AYES:	Draxler, Sharp, Brieno, Morrow, Ramirez

A. PROCEDURAL WAIVER: Waive reading in full of resolution and ordinances and approval and adoption of same by reading title only.

B. City Clerk: Approval of the Minutes of the October 20, 2020 Meeting

C. City Clerk: Approval of the Minutes of the November 3, 2020 Meeting

D. City Clerk: Denial of a claim for damages and authorization for the City Clerk to send out notification of such to Jaime Cleaves

E. Police: Second Reading of Ordinance No. 20-15 approving the addition to Section 12.20 to Title 12 of the Municipal Code, thereby adding Rules for City Parks and City Properties to govern acceptable use of these properties by the public.

F. Public Works: Approval of a Notice of Completion for the Well 41/38 Improvement Project, and authorization for the Mayor to execute and the City Clerk to attest and file said Notice with the Kings County Recorder's Office.

G. Finance: Acceptance of the Monthly Investment Transaction Report for December 2020

Attachment: 1.19.2021 mins. (Clerk: 1.19.2021 Minutes)

Items pulled from consent:

1. Community Development: Resolution 21-02-R supporting an Application for Funding from the State of California Department of Housing and Community Development (HCD) Local Early Action Planning (LEAP) Program.

[Item E] Pulled by Council Member Brieno.

Senior Planner Gabrielle Myers discussed the funding application for a non-competitive grant to assist with planning initiatives and projects.

Motion to adopt Resolution 21-02-R.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Art Brieno, Council Member
SECONDER:	Diane Sharp, Vice Mayor
AYES:	Draxler, Sharp, Brieno, Morrow, Ramirez

GENERAL BUSINESS:

A. Parks and Community Services: Award of a contract to Bush Engineering, Inc., of Hanford, CA for the Base Bid amount of $171,152.00 for the Civic Park Playground Site Improvements and Approval of an additional appropriation of $53,909.00 from the Parks Impact Fund and an additional $47,717.00 from the Accumulated Capital Outlay Fund to fully fund the project

Parks and Community Services Director Brad Albert presented the Civic Park Playground Site Improvements and clarified that the presentation is for the improvements for the approved playground structure at Civic Park. He also provided the Council with an updated budget. Vice Mayor Sharp would like to visit the area of the park before deciding. Council Member Brieno questioned the budget and he expressed his concerns regarding the new budget. Council Member Brieno recommended that the item be tabled or rejected. He also expressed his concerns regarding existing parks that need improvements. Council Member Morrow agreed with Council Member Brieno. Council Member Draxler commented on the bid process, and he expressed concerns regarding rejecting the bid. Public Works Director John Doyel discussed the background of the project and explained that through the process, the budget has significantly increased due to the specific design of the playground. Dir. Doyel also shared his insight into similar projects. With no further discussion, Mayor Ramirez invited a motion for the Council.

Motion to deny the award of contract was introduced by Council Member Brieno. Motion not seconded; motion failed.

Motion to approve the recommendation as presented was introduced by Council Member Draxler. Motion not seconded; motion failed.

Motion to table the item until February 2, 2021, was introduced by Vice Mayor Sharp. Motion seconded by Council Member Morrow.

Attachment: 1.19.2021 mins. (Clerk: 1.19.2021 Minutes)

RESULT:	**TABLED [4 TO 1]**
MOVER:	Diane Sharp, Vice Mayor
SECONDER:	Kalish Morrow, Council Member
AYES:	Sharp, Brieno, Morrow, Ramirez
NAYS:	Draxler

B. Parks and Community Services: Rejection of all bids for Citywide Maintenance of Landscape Assessment Districts, Approval of a month-to-month contract extension with Clean Cut Landscaping to continue landscape maintenance within Quadrants 1-4, and approval of a Sole Source Contract with Willdan Financial for services to analyze and make recommendations for LAD's.

Parks and Community Services Director Brad Albert Presented the Land Assessment District strategy with 39 Landscape Assessment Districts throughout the City limits, that are organized into four quadrants. Dir. Albert discussed the phases, the cost, and benefits of the proposed services by Willdan Financial Services. The Council discussed the cost of living in the districts and the fund deficit. Vice Mayor Sharp and Council Member Draxler spoke in favor of the presented recommendations. Both Council Members Morrow and Brieno expressed their concerns regarding the cost to contract Willdan Financial, and they would like to see the item brought back to the Council in the future for review and consideration.

Motion to approve and be funded by the Landscape Assessment Districts.

RESULT:	**APPROVED [3 TO 2]**
MOVER:	John Draxler, Council Member
SECONDER:	Diane Sharp, Vice Mayor
AYES:	Draxler, Sharp, Ramirez
NAYS:	Brieno, Morrow

C. Public Works: Appropriation of $72,409.52 from the Water Capital Reserve Fund for the advance of funding to purchase and install new well equipment from Valley Pump & Dairy Systems, Inc of Armona with the expectation that the funds will be reimbursed by SCE through the SCE Incentive Grant and Loan programs.

Public Works Director John Doyel briefly discussed the appropriation from the Water Capital Fund for the advance funding to purchase and install the new well equipment with the expectation that it will be recovered from the SCE Incentive Grant and Loan Program after the project is complete.

Motion to approve.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Art Brieno, Council Member
SECONDER:	Kalish Morrow, Council Member
AYES:	Draxler, Sharp, Brieno, Morrow, Ramirez

D. Finance: Review and Approval of Annual Report for Development Impact Fees Pertaining to City of Hanford Impact Fees for Parks, Transportation, Fire Protection, Police Protection, Storm Water System, Water System, Wastewater System, and Refuse & Recycling.

Interim Finance Director Eric Frost presented the Annual Impact Fee Report for review and consideration. Dir. Frost invited questions from the Council.

Attachment: 1.19.2021 mins. (Clerk: 1.19.2021 Minutes)

Motion to approve the Annual Report for Development Impact Fees.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Diane Sharp, Vice Mayor
SECONDER:	Art Brieno, Council Member
AYES:	Draxler, Sharp, Brieno, Morrow, Ramirez

E. Council: Receive and discuss the list of committees and boards that have City Council representation directly appointed by the Council and make Appointments as appropriate.

Mayor Ramirez made the following appointments of Council representatives:

Parks and Recreation
Francisco Ramirez
Kalish Morrow (alternate)

Parking and Traffic Commission
John Draxler
Francisco Ramirez (alternate)

Planning Commission
Kalish Morrow
Francisco Ramirez (alternate)

League of California Cities
John Draxler
Francisco Ramirez (alternate)

Kings Economic Development Corporation
Kalish Morrow
Francisco Ramirez (alternate)

Kings County Association of Governments
Diane Sharp
Francisco Ramirez (alternate)

Kings County Area Public Transit Agency (KART)
Diane Sharp
Francisco Ramirez (alternate)

Kings County Abandoned Vehicle Authority
Diane Sharp
Francisco Ramirez (alternate)

Kings Community Action Organization (KCAO)
Francisco Ramirez
Diane Sharp (alternate)

Kings Waste and Recycling Authority (KWRA)
John Draxler
Francisco Ramirez (alternate)

Cross Valley Rail Joint Powers Authority
Diane Sharp
Kalish Morrow (alternate)

Attachment: 1.19.2021 mins. (Clerk: 1.19.2021 Minutes)

Special City Selection Committee
Diane Sharp

City County Coordination Task Force
Francisco Ramirez
Sharp (alternate)

Kings County Area Disaster Council
Francisco Ramirez
Diane Sharp (alternate)

Kings County Commission On Aging
Francisco Ramirez

Kings Mosquito Abatement District Board
Bill Gundacker

San Joaquin Valley Task Force Steering Com.
The appointment is to be made by Kings County

San Joaquin Joint Powers Authority
Kalish Morrow

Mid-Kings River Groundwater Sustainability Agency
Diane Sharp

Kings County Homeless Commission
John Draxler

RESULT:	**CONSENSUS**

CONVENE AS SUCCESSOR AGENCY:

Mayor Ramirez convened the meeting for the Successors Agency at 8:11 p.m.

PUBLIC COMMENT-SUCCESSOR AGENCY :

Any person may directly address the Board at this time on any item on the agenda, or on any item that is within the subject matter jurisdiction of the Board. A maximum of three minutes is allowed for each speaker.

None.

SUCCESSOR AGENCY FOR THE DISCUSSION OF THE FOLLOWING:

A. Finance: Review and approval of the Recognized Obligation Payment Schedule (ROPS 20-21) for the period July 1, 2021 to June 30, 2022.

Interim Finance Director Eric Frost discussed the history of the Successor Agency and the annual obligation to prepare a Recognized Obligation Payment Schedule (ROPS) and submit the ROPS to the State Department of Finance (DOF).

Motion to approve the Recognized Obligation Payment Schedule for the period July 1, 2021 to June 30, 2022.

Attachment: 1.19.2021 mins. (Clerk: 1.19.2021 Minutes)

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	John Draxler, Council Member
SECONDER:	Diane Sharp, Vice Mayor
AYES:	Draxler, Sharp, Brieno, Morrow, Ramirez

ADJOURN AS THE SUCCESSOR AGENCY:

Mayor Ramirez adjourned the Successor Agency and reconvened the regular City Council Meeting at 8:15 p.m.

COUNCIL FUTURE AGENDA ITEMS:

A. Council Future Agenda Items

It was a consensus of the Council to meet with staff at the proposed park site and discuss the placement of the Civic Park Playground Project.

ADJOURNMENT:

Mayor Ramirez adjourned the meeting at 8:15 p.m.

Respectfully submitted,

Natalie Corral
City Clerk

Attachment: 1.19.2021 mins. (Clerk: 1.19.2021 Minutes)

AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** D

SUBJECT:
City Clerk: Approval of the Minutes of the February 2, 2021 Meeting

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RECOMMENDATION:

Approve the minutes of the February 2, 2021 Meeting.

FISCAL IMPACT:

ATTACHMENTS:
2.2.2021 minutes

The City of Hanford
CALIFORNIA

CITY COUNCIL MEETING
MINUTES
February 2, 2021 7:00 PM
Council Chambers
400 N. Douty St.

Video Teleconference via Zoom. Council Members attended remotely.

4:00 PM CALL TO ORDER STUDY AND CLOSED SESSION:

Mayor Ramirez called the Study and Closed Session to order at 4:00 p.m.

ROLL CALL BY CITY CLERK:

Present: Ramirez, Sharp, Draxler, Morrow

PUBLIC COMMENT:

Comments from the public are limited to items on the agenda (GC 54954.3a). A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.

None.

STUDY SESSION:

A. Presentation by the Kings County Area Public Transit Agency on the Joint Development Project for the new Downtown KART Transit Center

Kings County Area Public Transit Agency (KART), Executive Director Angie Dow presented the KART Transit Center Joint Development Project Narrative and addressed questions and concerns from the Council. With no further discussion, Mayor Ramirez thanked Ms. Dow for her presentation.

B. Public Works: Informational discussion of Assembly Bill (AB) 1383 Mandated Organic Waste Recycling requirements

Deputy Public Works Director Jim Ross presented an overview of SB 1383's Organic Waste Reduction Requirements and how it will impact the refuse department. He also discussed the roles and responsibilities of local governments. Public Works Director Doyel discussed enforcement and compliance with the States regulations. Dir Doyel and Deputy Dir. Ross addressed questions and concerns from the Council.

C. Parks and Community Services: Presentation and Council discussion of the New Park Concept Drawing to be funded through an application for the Proposition 68 Funding

Parks and Community Services Director Brad Albert presented the New Park Concept Drawing project with ranking results, community feedback, and the next steps for the Proposition 68 Funding application. Dir. Albert also discussed the process of naming the new park. Vice Mayor Sharp spoke in favor of naming the park Veterans Park or Memorial Park. Council Member Draxler suggested including the community in the park

Attachment: 2.2.2021 minutes (Clerk: 2.2.2021 Minutes)

naming process. He also expressed his concerns regarding a utilizable grass area. Council Member Morrow complemented the park design and she would like to see the city partner with local artists in the future. She also suggested adding more basketball courts. Mayor Ramirez concurred with the Council's comments and suggestions. The Council directed staff to include the community in the process of naming the park. With no further discussion, Mayor Ramirez adjourned to closed session at 5:24 p.m.

CLOSED SESSION FOR DISCUSSION OF THE FOLLOWING::

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION (GC 54956.9(d)(2)):

A. Employment related claim received on January 6, 2021.

B. Settlement demand received on January 21, 2021 for excessive force and wrongful arrest of Nathan Rodriguez.

CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION (GC 54956.9(d)(1)):

Helena v. City of Hanford
Kings County Case No. 17C0102

Cesar Pimentel v. Mark Carrillo and Alfred Rivera
Eastern District Case No.: 1:19-cv-1088

Montreal Hemphill v. Officer Farr, Officer Medeiros
Eastern District Case No.: 1:19-cv-1119

Mercury Insurance v. City of Hanford
Kings County Case No.: 20C0713

Ronald Austin v. City of Hanford
Kings County Case No.: 20C0353

CONFERENCE WITH LEGAL COUNSEL-REAL PROPERTY NEGOTIATIONS (GC 54956.8):

Property: 109 E. Eighth St.
Agency Negotiators: Mario Cifuentez, Ty Mizote
Negotiating Agency: Carnegie Museum of Kings County

PUBLIC EMPLOYMENT (GC 54957 (b)):

Title: Finance Director

CALL TO ORDER REGULAR SESSION:

Mayor Ramirez called the Regular Session to order at 7:00 p.m.

ROLL CALL:

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Attendee Name	Title	Status	Arrived
John Draxler	Council Member	Present	3:55 PM
Diane Sharp	Vice Mayor	Present	3:50 PM
Art Brieno	Council Member	Absent	
Kalish Morrow	Council Member	Present	3:50 PM
Francisco Ramirez	Mayor	Present	3:22 PM

CLOSED SESSION ACTION REPORT :

No action reported.

INVOCATION:

The invocation was led Sylvia Gaston.

FLAG SALUTE:

The flag salute was led by Mayor Ramirez.

STAFF COMMUNICATIONS:

City Manager Cifuentez provided a COVID-19 update from the Public Health Department and announced that restaurants can go back to outdoor dining. He also announced the Mayor's Business Roundtable event, hosted by the Hanford Chamber of Commerce.

COUNCIL REPORTS/COMMENTS:

Vice Mayor Sharp attended the New Mayors and New Council Members Virtual Academy, the KART meeting, the KGAG meeting, and the Kings Abandoned Vehicle Authority meeting. She also attended several community events.

Council Member Morrow attended the League of Cities New Mayors and New Council Members Virtual Academy.

Council Member Draxler attended the Kings Waste and Recycling Authority meeting.

Mayor Ramirez discussed Kings Community Action Organization's (KCAO) food distribution program.

PUBLIC COMMENT:

This is the time for citizens to comment on subject matters not on the agenda within the jurisdiction of the Hanford City Council. This is also the public's opportunity to request an item from the Consent Calendar be pulled for discussion purposes or to comment on any item on the agenda. Comments related to Public Hearing items will be heard at the time the item is discussed.

*A maximum of **three minutes** is allowed for each speaker. Please begin your comments by stating your name and providing your city of residence.*

Mark Pratter commented on the Proposed New Park and Hidden Valley Park. He also commented on Art Brieno's resignation.

Paul Massey commented on the resignation of Art Brieno and spoke in favor of appointing Cheyne Strawn to the City Council vacancy. She also spoke in favor of the Proposed New Park to be located at 9 ¼ Ave.

Martin Devine spoke in favor of the Proposed New Park to be located at 9 ¼ Ave.

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Cassandra Ramirez Sanchez spoke in favor of appointing Cheyne Strawn to the City Council vacancy.

Carolyn Hudgins spoke in favor of appointing Cheyne Strawn to the City Council vacancy and expressed her concerns regarding the cost of a special election.

Emily Burniss spoke in favor of appointing Cheyne Strawn to the City Council vacancy and expressed her concerns regarding the cost of a special election. She also spoke in favor of the Proposed New Park to be located at 9 ¼ Ave.

The Chamber of Commerce Director, Amory Marple provided an update of the organizations' events and the opening of a new position.

Dave Brown, a Lemoore resident, spoke in favor of appointing Cheyne Strawn to the City Council vacancy and thanked the Council members for their services to the community.

Bob Ramos expressed his concerns regarding the closed Council Chambers during a City Council Meeting. He also commented on Proposed New Park and the Civic Park playground structure.

CONSENT CALENDAR:

Consent Calendar items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made and then the item will be removed from the Consent Calendar to be discussed and voted upon by a separate motion.

Council Member Morrow requested to pull item C *[General overview of the waiver of interest]*.

Motion to approve to the Consent Calendar except for the items pulled for separate consideration.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	John Draxler, Council Member
SECONDER:	Diane Sharp, Vice Mayor
AYES:	Draxler, Sharp, Morrow, Ramirez
ABSENT:	Brieno

A. PROCEDURAL WAIVER: Waive reading in full of resolution and ordinances and approval and adoption of same by reading title only.

B. City Clerk: Approval of the Minutes of the November 17, 2020 Meeting

Items pulled from consent:

1. Finance: Approval of a Waiver of interest and penalties for City of Hanford utility accounts that qualify for CDBG utility payment assistance

[Item C] Pulled by Council Member Morrow.

Interim Finance Director Eric Frost briefly discussed waiving the interest and penalties for the City of Hanford utility accounts that qualify for the CDBG utility payment assistance program.

Motion to approve.

Attachment: 2.2.2021 minutes (Clerk: 2.2.2021 Minutes)

GENERAL BUSINESS:

A. Finance: Presentation and adoption of Resolution 21-04-R, Adopting a Final Budget for the City of Hanford for Fiscal Year July 1, 2020 to June 30, 2021 in the amount of $66,602,025.

Interim Finance Director Eric Frost presented the budget for FY 20/21. Due to the former Finance Director leaving the agency, the budget was not finalized for the fiscal year. Dir. Frost answered questions from the Council.

Motion to adopt Resolution 21-04-R.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	John Draxler, Council Member
SECONDER:	Diane Sharp, Vice Mayor
AYES:	Draxler, Sharp, Morrow, Ramirez
ABSENT:	Brieno

B. Parks and Community Services: Discussion and approval of the Park Resource Officer Pilot Program

Parks and Community Services Director Brad Albert presented the Park Resource Officer Pilot Program. The position will be funded through the Hanford Police Departments' operating budget for the initial six-month pilot program. After the pilot period ends, the funding will be allocated 50% from the Police Departments' operating budget and 50% from the Parks Division operating budget. The Officer will have a dedicated truck funded by the Parks and Community Service Department. Dir. Albert addressed questions and concerns from the Council.

Motion to approve the pilot program for the creation of a Park Resource Officer for a six-month period.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Diane Sharp, Vice Mayor
SECONDER:	John Draxler, Council Member
AYES:	Draxler, Sharp, Morrow, Ramirez
ABSENT:	Brieno

C. Parks and Community Services: Discussion of Site Improvements for the proposed Civic Park Playground and possible alternatives

Director Brad Albert provided a background of the site improvements for the proposed Civic Park Playground. He also provided 3 alternative sites for the Council's review and consideration. The Council discussed the budget for the new park structure and the alternate locations. Mayor Ramirez and Council Members Draxler and Morrow spoke in favor of Alternate Site #3: replacement of the play structure at Centennial Park. Vice Mayor Sharp spoke in favor of Alternate Site #1: NE corner of Civic Park (in front of the Teen Center). Staff addressed questions and concerns from the Council.

Motion to relocate the proposed Civic Park playground to the NE corner of Civic Park was introduced by Vice Mayor Sharp. Motion was not seconded; motion failed.

Motion to relocate the proposed Civic Park Playground to Centennial Park and replace the existing playground structure.

The Council directed staff to prepare preliminary cost estimates for relocating the new park structure to Centennial Park and bring it back to the Council at a future meeting for review and consideration.

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RESULT:	**APPROVED [3 TO 1]**
MOVER:	John Draxler, Council Member
SECONDER:	Kalish Morrow, Council Member
AYES:	Draxler, Morrow, Ramirez
NAYS:	Sharp
ABSENT:	Brieno

D. FIRE: Update from Hanford Fire Department on the development of departmental Guiding Documents

Fire Chief Steve Pendergrass provided the background and an update on the development of the departmental Guiding Documents and answered questions from the Council.

COUNCIL FUTURE AGENDA ITEMS:

The Council directed staff to bring back some options to fill the vacancy on the City Council.

ADJOURNMENT:

Mayor Ramirez adjourned the meeting at 8:45 p.m.

Respectfully submitted,

Natalie Corral
City Clerk

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AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** E

SUBJECT:
City Clerk: Denial of a claim for damages and authorization for the City Clerk to send out notification of such to Jennifer Brown.

RECOMMENDATION:
That the City Council, by motion, approve the denial of the claim and authorize the City Clerk to send out notification of such to the claimant.

BACKGROUND:
A claim for damages against the City was received by the following claimant: Jennifer Brown.

After review by the Third Party Administrator, it was determined that the original claim form was insufficient and no amended claim form has been received. Accordingly, it is the City Manager's decision to act in accordance with the recommendation of the Administrator to deny the claim.

FISCAL IMPACT:

ATTACHMENTS:

AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** F

SUBJECT:
Administration: Reject Notice of Government Claim

RECOMMENDATION:
The Council, by motion, reject the claim from Alyssa Carrillo, and direct the City Attorney's office and staff to send a notice of rejection of the claim.

ATTACHMENTS:
Government claim.

FISCAL IMPACT:

ATTACHMENTS:
Demand Letter - Alyssa Carrillo

E-JUSTICE PROJECT

5042 WILSHIRE BOULEVARD #46049
LOS ANGELES, CA 90036
(866) 357-4529

A LABOR & EMPLOYMENT LAW FIRM

Sarah Cardoza, Human Resources Manager
City of Hanford, California
315 North Douty Street
Hanford, California, 93230

March 12, 2021

Dear Ms. Cardoza,
E-Justice Project, APC represents Alyssa Carrillo. E-Justice Project is a Labor and Employment law firm dedicated to advocating for the rights of California workers. Our client, Ms. Carrillo, was employed with the **City of Hanford, California ("City of Hanford")** from approximately March 16, 2018 to December 18, 2020 as a Records Assistant.

Ms. Carrillo asserts claims against the City of Hanford, arising from her employment with the City of Hanford as described below:

- **DISABILITY DISCRIMINATION, FAILURE TO ACCOMMODATE, AND FAILURE TO ENGAGE IN AN INTERACTIVE PROCESS:** Ms. Carrillo informed City of Hanford that she had a disability and requested accommodations. City of Hanford failed to accommodate and failed to engage in an interactive process. As such, City of Hanford is liable for damages including attorney's fees and cost incurred by Ms. Carrillo in enforcing these rights.

- **RETALIATION AND WRONGFUL TERMINATION:** Ms. Carrillo was retaliated against after requesting accommodations and filing a formal complaint regarding a hostile work environment. Ms. Carrillo endured discrimination and retaliation as she was ultimately terminated because of her membership in a protected class and engagement in multiple protected activities. As such, City of

Hanford is liable to Mr. Carrillo for discrimination, retaliation, and wrongful termination. Therefore, employer owes Ms. Carrillo for damages including attorney's fees and costs incurred by employee in enforcing these rights.

- **UNPAID OFF-THE-CLOCK OVERTIME:** Throughout the course of her employment, Ms. Carrillo was suffered and permitted to perform work while off the clock. City of Hanford failed to compensate Ms. Carrillo at the applicable overtime and/or double time rate for hours worked off the clock in excess of 8 hours per day or 40 hours per week. As such, Ms. Carrillo is entitled to recover wages for unpaid overtime pursuant to California Labor Code §§ 510 and 1198 as well as attorney's fees incurred by employee in enforcing these rights.

- **MEAL AND REST BREAK VIOLATIONS:** City of Hanford failed to provide legally compliant meal and rest breaks throughout the course of Ms. Carrillo's employment with City of Hanford. Consequently, City of Hanford is liable to Ms. Carrillo for the break premiums it was required but failed to pay pursuant California Labor Code §§ 226.7 and 512.

- **UNREIMBURSED BUSINESS EXPENSES:** During the course of her employment, Ms. Carrillo was required to use her own money to purchase items in order to do her job. Thus, Ms. Carrillo is entitled to be reimbursed by City of Hanford for these business expenses under Labor Code § 2802 as well as attorney's fees incurred by employee in enforcing these rights.

- **UNIFORM MAINTENANCE COMPENSATION:** City of Hanford required Ms. Carrillo to wear a uniform. City of Hanford failed to compensate Ms. Carrillo for the time and costs of maintaining said uniform in violation of the wage orders. As such, City of Hanford owes to Ms. Carrillo unpaid wages and reimbursements.

- **NON-COMPLIANT WAGE STATEMENT VIOLATIONS:** City of Hanford failed to provide Ms. Carrillo fully compliant wage statements throughout the course of her employment. Therefore, Ms. Carrillo is entitled to recover the statutory penalty for non-compliant wage statements under California Labor Code § 226.

- **WAITING TIME PENALTIES:** By not providing the full amount of wages owed to Ms. Carrillo (in the form of unpaid off the clock time, unpaid overtime, and reimbursements) immediately upon her termination, City of Hanford has incurred waiting time penalties pursuant to California Labor Code § 203.

The claims enumerated above constitute serious violations of the California Labor Code, the Fair Labor Standards Act, IWC Wage Orders and other important laws enacted to protect the rights of California Workers.

Additionally, Ms. Carrillo asserts serious violations of the Fair Employment and Housing Act (FEHA), Americans with Disabilities Act (ADA), and myriad laws designed to protect the civil rights of workers.

STATEMENT OF FACTS

Ms. Carrillo was employed with the City of Hanford for approximately three (3) years. Ms. Carrillo was a hardworking and diligent employee, receiving multiple promotions over the course of her employment. During her employment, Ms. Carrillo began to experience what she believed to be illegal bullying and harassment at the hands of her immediate supervisor and fellow co-workers. As a result of such conduct, Ms. Carrillo began experiencing a serious health condition and subsequently, requested medical leave beginning September 3, 2020. Ms. Carrillo promptly provided a doctor's note regarding her medical condition to her employer.

From September to the end of November, Ms. Carrillo provided subsequent notes to City of Hanford, placing her out on leave for approximately two (2) week increments at a time. While out on leave, Ms. Carrillo received multiple emails and phone calls from Human Resources, to which she consistently responded to in a timely manner. On or about October 21, 2020, Ms. Carrillo had a conversation with Human Resources representative Stephanie Jones who requested Ms. Carrillo clarify her need for accommodations with her doctor, which Ms. Carrillo did. After conferring with her doctor, Ms. Carrillo provided another doctor's note to her supervisor, which placed her off work until December 1, 2020.

On or about October 27, 2020, Ms. Carrillo filed an official complaint with the City of Hanford regarding what she perceived to be illegal bullying and harassment that took place prior to her taking leave. Ms. Carrillo emailed her human resources contact, Stephanie Jones, regarding what she reasonably believed was harassment by her coworkers and attached a summary of incidents supporting her assertion. Ms. Jones forwarded the information to the human resources manager, Sarah Cardoza, who informed Ms. Carrillo that there would be an investigation and scheduled an interview between Ms. Carrillo and a City Attorney to discuss the matter. In or about November 2020, Ms. Carrillo met with City Attorney Megan Doss regarding the matter. On or about December 9, 2020, Ms. Carrillo received an email notifying her that the investigation had been completed and her allegations not sustained.

That same day, Ms. Carrillo received a certified letter in the mail informing her that she needed to request an extension of leave, resign, or return to work by December 8, 2020 or she would be terminated, despite the fact that she had submitted a doctor's note extending her need for leave until January 4, 2021, nearly a month before. As she did not receive the letter until after the December 8, 2021 deadline, Ms. Jones, via email, told Ms. Carrillo she could have a one (1) day extension. Ms. Carrillo promptly replied to Ms. Jones' email requesting an extension of her leave, referring Ms. Jones to the doctor's note she previously submitted which extended her leave to January 4, 2021. On or about December 18, 2021, Ms. Carrillo received a certified letter, notifying her that she had exhausted her twelve (12) weeks of FMLA leave, that her request for accommodation had been denied, and that her employment had been terminated effective December 18, 2020.

Disability Discrimination – Failure to Accommodate and Failure to Engage in Interactive Process

This case serves as a classic example of failure to accommodate an employee's disability and disability discrimination in violation of the FEHA. See Cal. Gov. Code § 12940 et seq. Pursuant to Fair Employment and Housing Council Regulations, Employers are required to provide employees with disabilities with

reasonable accommodations. Government Code § 12940(n); FEHC Regulations § 7924.0. Employers may have to provide a 'reasonable accommodation' to enable an individual with a disability to perform the essential functions of her position. A reasonable accommodation is any change in the work environment or in the way things are customarily done that enables an employee with a disability to enjoy equal employment opportunities. An employee generally has to request accommodation but does not have to use the term 'reasonable accommodation,' or even 'accommodation,' to put the employer on notice. Rather, an employee only has to say that she requires the employer to provide her with an adjustment or change at work due to a medical condition. See Cal. Gov. Code § 12940 et seq.; Title 1 of ADA.

Moreover, it is important to understand how the FEHA and ADA relate to the FMLA. Under the FMLA, an employee is entitled to 12 weeks of job-protected leave when dealing with her own serious medical condition or that of a family member. The FEHA and ADA prohibit employers from discriminating against employees with disabilities – it also requires them to make reasonable accommodations to allow employees with disabilities to work. Although distinct, the laws work in tandem on occasions. For instance, even after an employee has exhausted their 12-weeks of protected FMLA leave, additional leave may be required as an accommodation under the FEHA and ADA. See 42 U.S.C. § 12112; Govt. Code § 12940. The employer must again engage in the interactive process to determine if reasonable accommodations can be made that allow the employee additional time away from work. An employer must consider providing leave as a reasonable accommodation if the employee requires it, and so long as it does not create an undue hardship for the employer. *Id.* Additionally, California courts have found that a leave of absence can constitute a reasonable accommodation "where is appears likely that the employee will be able to return to an existing position at some time in the foreseeable future." *Jensen v. Wells Fargo Bank*, 85 Cal. App. 4th 245, 263 (2000). When evaluating reasonableness, courts often consider whether the accommodation was finite or indefinite. See *Atkins v. City of Los Angeles*, 8 Cal. App. 5th 696, 721-22 (finding that FEHA may require as a reasonable accommodation, a finite leave of absence – one which has a definite return to work date).

As the facts outline above, Ms. Carrillo suffers from a serious medical condition which necessitated her to exercise her right to take leave from September to January 2021. City of Hanford failed to accommodate Ms. Carrillo's request for leave when they denied her request to continue her leave until on or about January 4, 2021, despite her having provided a doctor's note. Here, City of Hanford notified Ms. Carrillo in her termination letter, that she had exhausted her twelve (12) weeks of FMLA leave, and due to its inability to reasonably accommodate her, that Ms. Carrillo was terminated. City of Hanford was nonetheless obligated to accommodate Ms. Carrillo's reasonable request for extended leave under the ADA. Ms. Carrillo's request for this extended leave was reasonable – she requested a brief extension of leave with a specified date of return a few weeks from the time of request. Moreover, City of Hanford offers nothing to support its contention that it could not reasonably accommodate Ms. Carrillo – providing no indication of any undue hardship such extension of leave would create. Without any evidence of undue hardship, City of Hanford had a duty to accommodate Ms. Carrillo's request for leave.

Additionally, employers are also required to engage in a timely, good faith interactive process when needed to identify or implement an effective, reasonable accommodation for an employee with a known physical disability or medical condition. FEHC Regulations §§ 7293.6(j) and 7294.0. Under the ADA, an employer and employee must communicate with each other about the precise nature of the problem that is generating an accommodation request, analyze the particular job involved and determine its purpose and essential

functions, and identify the barriers that exist to the employee's performance of the job. The employer should identify possible accommodations that would allow the employee to perform the job effectively and engage in further dialogue and an assessment of the effectiveness of each accommodation in enabling the employee to successfully perform the job. *Barnett v. U.S. Air, Inc*., 228 F.3d 1105 (9th Cir. 2000) (employer did not engage in the interactive process in good faith because it rejected the employee's proposed accommodation and failed to offer any practical alternatives).

Therefore, City of Hanford had an obligation to engage in an interactive process with Ms. Carrillo to assess whether the extended leave (beyond the 12-weeks she was entitled to under FMLA) caused an undue hardship for City of Hanford. City of Hanford ultimately failed in its continual obligation to engage in an interactive process as required under the law, because it failed to communicate with her the effectiveness of such an accommodation and discuss alternatives if the accommodation was not feasible. After requesting said extension of leave, no one attempted to engage in an interactive process with Ms. Carrillo – she did not hear from or have the opportunity to speak to City of Hanford regarding her request. Rather, City of Hanford, terminated Ms. Carrillo's employment wrongfully, as she was entitled to leave under the ADA.

In view of the facts, it is clear that City of Hanford failed to reasonably accommodate Ms. Carrillo's disability and failed to engage in a timely, good faith interactive process. Even seemingly trivial failures to accommodate an employee's disability trigger damages for emotional distress and attorney's fees as well as the potential for punitive damages. See *A.M. v. Albertsons, 178 Cal.App.4th 455 (2009)* (single failure to allow a bathroom break for disabled employee supports $200,000 award). Moreover, City of Hanford, California ("City of Hanford") terminated Mr. Carrillo after becoming made aware of her serious medical condition. Thus, City of Hanford, California ("City of Hanford") is liable for damages resulting from its unlawful conduct, including back pay and benefits, actual damages, emotional distress damages, front pay, and punitive damages. Aggrieved employees are also entitled to recover their attorney's fees and costs. See Cal. Gov. Code § 12965(b).

Ms. Carrillo has suffered emotional distress due to City of Hanford's conduct, which subjects City of Hanford to significant liability. See *Bihun v. AT&T, 13 Cal.App.4th 976, 977 (1993) (*affirming $662,000 emotional distress award in FEHA case as 'well within the range of awards in similar cases').

City of Hanford's wrongful termination of Ms. Carrillo caused her to suffer financial hardship. Our client has been unsuccessful in procuring comparable employment since the wrongful termination. Based on her regular hourly rate of $20.14 per hour, and the facts as set forth above, we conservatively calculate **$6,976.50** back pay that is owed.

Our client is also entitled to front pay, which may be awarded whenever reinstatement is not an option, such as when, as here, the antagonism between employee and employer is such that it would be inappropriate to expect her to return to work. See *Kucia v. Southeast Ark. Community Action Corp.*, 284 F3d 944, 948 (2002). Our experts will testify to a monetary equivalent of reinstatement of approximately **$41,859**.

Therefore, we will be seeking a minimum of **$52,323.75** in back pay and front pay, as well as emotional distress damages and statutory penalties associated with these claims.

Retaliation and Wrongful Termination.

This case is also a clear demonstration of retaliation and wrongful termination in violation of the California Fair Employment and Housing Act (FEHA). See Cal. Govt. Code §§12900-12996. In California, employment is of course generally 'at will.' See Cal. Lab. Code § 2922. However, California courts have also held that an employer's general right to terminate an 'at-will' employee is 'subject to limits imposed by public policy.' *Collier v. Superior Court*, 228 Cal.App.3d 1117, 1121 (1991), citing *Foley v. Interactive Data Corp.*, 47 Cal.3d 654, 655 (1988) (wrongful termination in violation of public policy). Thus, an exception to the general at-will employment presumption is made where an employer's termination of an employee violates a fundamental public policy. *Gantt v. Sentry Insurance*, 1 Cal.4th 1083, 1090 (1992); *Green v. Ralee Engineering Co*. 19 Cal.4th 66, 79-80 (1998) (same).

As the facts outline above, Ms. Carrillo was engaged in multiple protected activities shortly before she was terminated. Ms. Carrillo was experiencing a serious health condition and exercised her right to protected leave under the FMLA and FEHA, she exercised her right under the ADA to reasonable accommodations in the form of extended leave beyond the 12 weeks afforded her under FMLA, and she filed an official complaint regarding what she reasonably believed to be illegal bullying and harassment. Shortly after her engagement in the above-mentioned protected activities, City of Hanford retaliated against Ms. Carrillo by denying her request for leave as a reasonable accommodation under the ADA and ultimately terminating her employment due to her request. In fact, on the very same day that she was informed that the investigation was closed, she received the first threat that her job would be terminated. Ms. Carrillo's employment was terminated in violation of fundamental public policies of the State of California, including those set forth in statutes prohibiting disability discrimination. As such, City of Hanford is liable for wrongful termination in violation of public policy.

The remedies for retaliation and wrongful termination include reinstatement with back pay and benefits, actual damages, front pay, emotional distress damages, and a civil penalty of $10,000 for each violation. See Cal. Lab. Code §§ 1105 and 1102.5(f). Further, a section 1102.5(c) violation triggers civil penalties pursuant to PAGA. See Cal. Lab. Code § 2699.5.

The following wage and hour claims are based upon allegations by our client. We requested employment records to which Ms. Carrillo is legally entitled, such as earnings statements, her personnel file, and daily time records. Upon receipt and review of these records, the following claims may be amended accordingly, including any penalties should the records not be timely produced.

Unpaid Off-the-Clock Overtime

California labor law defines 'hours worked' as 'the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.' The California Division of Labor Standards Enforcement (DLSE) has interpreted this definition to extend beyond an employee's scheduled shift, including instances involving pre- and post-shift duties.

California Labor Code §§ 510 and 1198 provide that it is unlawful to employ persons without compensating them at a time-and-a-half or double pay rate, depending on the number of hours worked on a daily or weekly basis. Labor Code § 510 states that work in excess of eight hours in one workday and/or 40 hours in one workweek must be compensated at no less than one and one-half times the employee's regular rate pay rate.

Ms. Carrillo was scheduled to work five (5) days a week, eight (8) hours per day. However, she was often suffered and permitted to work both before and after clocking in/out. Ms. Carrillo would often begin work before clocking in in order accomplish tasks necessary to prepare for the day – she was not permitted to clock in during this time. It was also necessary for her to stay late on several occasions in order to deliver paperwork to dispatch – which she was not permitted to do during her regular work hours, as the paperwork could not sit on her desk overnight and she was not allowed to leave her assigned station during the day. This off the clock time was often after she had already put in an eight (8) hour workday and caused her to work in excess of forty (40) hours per week. Ms. Carrillo spent approximately two (2) hours a week performing work while off the clock, both before and after clocking in/out for her shift.

As a result, Ms. Carrillo did not receive compensation for these hours she was suffered and permitted to work at her regular rate, much less at the overtime rate. Therefore, City of Hanford owes Ms. Carrillo approximately **$4,436.48** in unpaid off the clock overtime wages.

Meal & Rest Break Violations

California law requires employers to provide an uninterrupted, 30-minute meal period to non-exempt employees each time they work more than five hours in a day, and a second, uninterrupted 30-minute meal period to employees who work more than ten hours in a day. See Cal. Lab. Code § 226.7, 512§ Wage Order 16-2001, §§ 10. 11. The first meal period must be provided no later than the end of an employee's fifth hour of work, and the second meal period by the end of the tenth hour. See Brinker Restaurants Corp. v. Superior Court (2012) 53 Cal.4th 1004. Further, employers must 'authorize and permit' uninterrupted, ten-minute rest breaks for every four hours of work. See Cal. Lab. Code § 226.7; Wage Order 16-2001, § 11. Each employee is entitled to be free from all work duties during their rest period and must be paid for the time.

Employers are required not only to relieve employees for at least one meal period during each shift of over five hours, but also to keep records of having done so. Brinker, supra at 1052-1053. Where an employer fails to record meal periods, the burden falls on the employer to show that the employee was relieved of all duties and to rebut a presumption that meal periods were not adequately provided. Id.

An employee who is not provided with legally mandated meal periods and rest breaks is entitled to one additional hour of pay at her regular rate of compensation for each day in which she was denied a timely, uninterrupted meal or rest break. See Cal. Lab. Code § 226.7.

Due to lack of relief while on a post, City of Hanford frequently and systematically required Ms. Carrillo to take late meal periods. Ms. Carrillo was occasionally required to take her meal break late, as City of Hanford had no one to cover her as she went on break. Additionally, City of Hanford failed to provide legally compliant rest periods. Prior to January 2020, it was City of Hanford's policy to withhold rest breaks in lieu of releasing employees from their shift early – contrary to requirements of the applicable wage order.

After January 2020, Ms. Carrillo was still denied uninterrupted rest breaks as she was consistently required to assist the person covering while she was "on break" – making herself available in case they had questions.

To this end, Ms. Carrillo was denied an opportunity to take a timely and uninterrupted meal period at least one (1) time a week and a timely and uninterrupted rest break ten (10) times a week. Therefore, in light of our client's regular rate of pay of $20.14 an hour and the pervasiveness of these violations, City of Hanford is liable for **$14,825.10** in unpaid meal period and rest break premiums.

Unreimbursed Business Expenses

California employees must be reimbursed for necessary job expenses. In pertinent part, the California Labor code provides as follows:

(a) An employer shall indemnify his or her employee for all necessary expenditures and losses incurred by the employee in direct consequence of the discharge of her or her duties . . . Cal. Lab. Code § 2802 (a). This code section goes on to state that 'the term 'necessary expenditures of losses' shall include all reasonable costs, including but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section. Id.

Ms. Carrillo was required to purchase items in order to perform her job such as office supplies In particular, Ms. Carrillo was required to fill out certain forms in blue ink so that it would stand out when documents were copied. Ms. Carrillo had to use her own money to purchase blued pens and City of Hanford failed to reimburse Ms. Carrillo for this expense as required by law. Therefore, City of Hanford owes Ms. Carrillo unreimbursed business expenses of approximately **$13.00**.

Uniform Maintenance Compensation

As a condition of employment, City of Hanford required Ms. Carrillo to wear a company shirt as a uniform. This entailed weekly and sometimes daily maintenance of the uniform. California's IWC Wage Orders each specify, 'When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.' (Emphasis added) (Title 8, California Code of Regulations, §11150 (9) (A)).

Under California law, employers may delegate the responsibility for maintaining uniforms worn by employees to the employees themselves, but only if the employer pays employee a weekly stipend equal to one hour's pay at the current federal minimum wage; absent such a stipend, all time expended by the employee constitutes compensable time toward wages earned, including overtime and minimum wage calculations (See e.g. *Simmons, California Wage and Hour Manual for California Employers* (2015), pgs. 686-688; see also. *In re Work Uniforms Cases,* 133 Cal. App. 4th 328 (2005); *Department of Industrial Relations v. UI Video Stores, Inc.,* 55 Cal. App. 4th 1084 (1997).

Ms. Carrillo was issued and required to wear a uniform in the form of company shirts as a condition of employment. Ms. Carrillo expended at least one (1) hour per week maintaining the uniform in the form of washing, drying, and/or ironing the uniform. City of Hanford failed to pay to Ms. Carrillo the legally

Attachment: Demand Letter - Alyssa Carrillo (Administration: Reject Notice of Government Claim)

required stipend, as evidenced by Ms. Carrillo's earning statements. Consequently, City of Hanford should have compensated Ms. Carrillo for the time expended maintaining the uniform(s).

As Ms. Carrillo already worked at least 40 hours per week, time spent maintaining her uniform should have been paid at the overtime rate.

As such, City of Hanford is liable to Ms. Carrillo for **$2,223.76** in unpaid wages. Moreover, City of Hanford's failure to pay for all time worked, including time spent on washing, drying, and ironing uniforms constitute violations of Labor Code §201 et seq, as City of Hanford did not timely pay to Ms. Carrillo all owed wages for hours worked during the applicable pay period.

Non-Compliant Wage Statements

California law has strict requirements regarding workers' pay stubs. Specifically, employers must issue wage statements to their employees that accurately include nine distinct pieces of information. See Cal. Lab. Code §226(a)(1)-(9). Failure to comply with just one of the nine requirements triggers an employer's liability. Additionally, the California Wage Statement Statute provides that workers issued non-compliant wage statements may recover $50 for the initial pay period in which a violation occurs and $100 for each subsequent pay period, up to a maximum of $4000. See Cal. Lab. Code § 226 (e)(1).

Ms. Carrillo's wage statements failed to include all of her wages in the form of unpaid off the clock overtime. As such, all wage statements issued by City of Hanford to Ms. Carrillo were non-compliant with section 226. Therefore, City of Hanford is liable for up to **$4,000** in penalties for non-complaint wage statements. See Cal. Lab. Code § 226 (e)(1).

Waiting-Time Penalties

California law requires that all wages owed to an employee be paid to the employee when she or she either quits or is fired. See Cal. Lab. Code § 203. The 'waiting-time penalty' for violating Section 203 is one day of pay at the employee's regular rate for each day the owed wages go unpaid, up to 30 days. *Id*.

As discussed, City of Hanford did not pay Ms. Carrillo all wages owed in the form of off the clock overtime, earned wages, and reimbursements at the time of termination. Ms. Carrillo did not receive these wages by the 30th day after termination and has yet to receive these wages. Thus, City of Hanford is liable for **$4,833.60** in waiting-time penalties.

Attorneys' Fees and Costs

The claims set forth here also give rise to an award of attorneys' fees and costs for FEHA and wage-and-hour violations. *See* Cal. Gov. Code § 12965(b); Cal. Labor Code §§ 218.5, 226(h). This firm has already expended significant time communicating with Ms. Ms. Carrillo and evaluating these various causes of action by reviewing documents provided by the client and conducting related research and investigation. The time expended and corresponding fees will only increase if this dispute continues into litigation.

Summary of Exposure

As set forth above, there is substantial liability for the various enumerated claims and conduct described above. E-Justice Project has conservatively calculated the amount of that liability at more than **$138,983.54**, which includes unpaid wages, statutory penalties, estimated prelitigation attorney's fees and costs. This does not include PAGA and other civil penalties nor the considerable time and energy of the parties, court costs (or should this dispute be arbitrated, the arbitrator's fees and costs), and defense counsel's fees and costs.

Proposed Resolution and Settlement Demand

E-Justice Project's goal is to arrive at a fair and reasonable resolution to this dispute with as little time, energy and cost expended by the parties as possible. In my experience, a settlement can often be achieved for far less than the expected cost of defense. To this end, our client is willing to settle all claims at this time for a total of **$123,232.07**. This demand is made in an effort to resolve the matter efficiently and in good faith.

This settlement offer will remain open until close of business on March 22, 2021. If you do not respond to this letter, my client will have no other choice but to proceed accordingly. Please contact me to discuss this matter. I can be reached by phone at **(323) 760-7164** or via email at **CashaeEllis@EJusticeProject.com**

Regards,

Cashae Ellis
Attorney, E-Justice Project
(323) 760-7164

E-Justice Project, APC
5042 Wilshire Boulevard 46049
Los Angeles, CA 90036
1(866)357-4529

AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** G

SUBJECT:
Administration: Approval of a Letter of Opposition, on behalf of the City of Hanford, regarding S.B. 556, Wireless Broadband Infrastructure Removal of Local Authority of Public Rights-of-Way.

RECOMMENDATION:
That the City Council, by motion, approve the Letter of Opposition, on behalf of the City of Hanford, regarding S.B. 556 (Dodd), which is an attempt to Remove Local Authority of Public Rights-of-Way by wireless broadband providers.

BACKGROUND:
In 2018, the Federal Communications Commission (FCC) voted to limit the authority and standards that states and local governments can require for the installation and/or deployment of small cell wireless facilities. However, the FCC regulations explicitly protect the ability of local governments to ensure that such installations meet appearance and design standards, maintain traffic safety, protect historical resources' integrity, and safeguard citizens' quality of life. Additionally, local governments can continue to charge fees that are a reasonable approximation of the local government's actual and direct costs, including costs to maintain a structure within the right-of-way, process an application or permit, and review a siting application.

SB 556 (Dodd) is in direct conflict with the FCC's regulations. SB 556 is an attempt by the telecommunications industry to undermine local authority while making no meaningful progress towards closing the digital divide in California's unserved and underserved communities. This is a very bad piece of legislation that would usurp local control of its rights-of-way and go in the opposite of attempts by the League of California Cities, several cities in the State, and Nation, and concerned health and safety activists who are seeking more control over the citing of cell towers and facilities in their cities. The FCC data used to establish safety standards for cell towers and facilities is **over twenty-five years old.**

<u>What Does SB 556 Specifically Do to Conflict with Federal Law?</u>
Requires local governments to make space available on street light poles, traffic signal poles, utility poles, and other public infrastructure to telecommunications providers without recognizing local authority to manage the public right-of-way preserved in federal law; and

- Creates ambiguity in the fees local governments can charge for access to their infrastructure. SB 556 chooses not to incorporate federal conditions for valid fees, further restricting fees to "actual cost" and "reasonable actual cost" which conflicts with federal law.

- Cal Cities' 2021 strategic priorities focus on protecting and modernizing critical infrastructure, including broadband deployment. Cities throughout the state are committed to working together to close the digital divide, especially in unserved and underserved communities.

- SB 556 directly conflicts with the Federal Communications Commission's (FCC) adopted regulations on wireless services deployment, which cities and counties across the nation are actively implementing.

- SB 556 requires local governments to make space available to telecommunications providers for wireless infrastructure without recognizing local authority to manage the public right-of-way preserved in the federal law.
    - This change would give telecommunications companies throughout the state unfettered access to local infrastructure including street light poles, traffic signal poles, and utility poles without requiring service for those who need it the most, the unserved and underserved communities of this state.
    - To protect the public's investment, the control of the public rights-of-way must remain local.
- SB 556 creates ambiguity in the fees local governments can charge for access to their infrastructure.
    - The federal law explicitly outlines conditions for valid fees, limiting fees to costs to maintain a structure within the right-of-way, process an application or permit, and review a siting application.
    - If the goal of SB 556 is to implement the existing FCC orders into state law, there should be no added ambiguity created by changes from what was already decided at the federal level.

The alternative to miles and miles of cell towers and facilities above ground is to underground broadband as was originally conceived in cities long before the tech giants decided to go another way and throw their special interest monies and lawyers into the mix and bully localities into compliance with their wises. *We want technology, but we want it to be safely deployed.*

The decision of what is located in public rights-of-way belongs in the hands of locally elected officials.

A letter of opposition will demonstrate that the City of Hanford stands with other California cities in opposing this attempt to remove more local control from cities.

FISCAL IMPACT:
No impact to the City of Hanford

ATTACHMENTS:
SB 556 Opposition

City of HANFORD
CALIFORNIA 93230
CITY OFFICES 319 NORTH DOUTY STREET

MAYOR
Francisco Ramirez
VICE-MAYOR
Diane Sharp
COUNCIL MEMBERS
John Draxler
Kalish Morrow
VACANT
CITY MANAGER
Mario Cifuentez II

April 6, 2021

The Honorable Ben Hueso
Chair, Senate Energy, Utilities, and Communications Committee
State Capitol Building, Room 4035
Sacramento, CA 95814

RE: SB 556 (Dodd) Street Light Poles, Traffic Signal Poles, Utility Poles, and Support Structures: Attachments.
Notice of OPPOSITION (As Amended 03/16/21)

Dear Senator Hueso:

The City of Hanford must respectfully oppose SB 556 (Dodd), related to wireless broadband infrastructure deployment.

SB 556 directly conflicts with the Federal Communications Commission's (FCC) adopted regulations on wireless services deployment, which cities and counties across the nation are actively implementing. This measure requires local governments to make space available to telecommunications providers, which essentially strips our City's local authority to manage the public right-of-way preserved in federal law. FCC regulations explicitly enable local governments to ensure that such installations meet appearance and design standards, maintain traffic safety, protect historical resources' integrity, and safeguard citizens' quality of life. To protect the public's investment, the control of the public rights-of-way must remain local. The City of Hanford prides itself on its high quality of life and maintaining the small-town charm. This bill represents a direct threat to both of those community traits for the City of Hanford.

Additionally, SB 556 creates ambiguity in the fees local governments can charge for access to their infrastructure. Federal law explicitly outlines conditions for valid fees, limiting fees to a "reasonable approximation of the local government's actual and direct costs," including costs to maintain a structure within the right-of-way, process an application or permit, and review a siting application. SB 556, on the other hand, chooses not to incorporate these federal standards, further restricting fees to "actual cost" and "reasonable actual cost." If the goal of SB 556 is to implement the existing FCC orders into state law, there should be no added ambiguity created by changes from what was already decided at the federal level.

SB 556 is an attempt by the telecommunications industry to undermine local authority while making no meaningful progress towards closing the digital divide in California's unserved and underserved communities. As previously mentioned, cities and counties across the nation are implementing the FCC's orders. If California is to close the digital divide, legislative efforts should focus on encouraging and incentivizing telecommunications companies to service areas that for too long have not had access to reliable and affordable internet.

Administration 559-585-2515 ♦ Personnel 559-585-2520 ♦ Facsimile: 559-585-2595

Attachment: SB 556 Opposition (Admin: SB 556 Opposition)

While the City of Hanford stands ready to work with the Legislature to further the state's broadband goals, these efforts do not inherently conflict with the appropriate local authority to manage the right-of-way and comply with existing FCC decisions. For these reasons, the City of Hanford opposes SB 556 (Dodd).

Sincerely,

Francisco Ramirez,
Mayor
City of Hanford

cc: The Honorable Bill Dodd
Senator Melissa Hurtado
Congressman Rudy Salas
Rajveer Rakkar (via email)
League of California Cities, cityletters@cacities.org

Attachment: SB 556 Opposition (Admin: SB 556 Opposition)

AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** H

SUBJECT:
City Attorney: Approval of Second Amendment to Tower Lease with Option and Memorandum of Second Amendment to Tower Lease with Option

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STAFF RECOMMENDATION:
Staff recommends that the Council, by motion: (i) approve the Second Amendment to Tower Lease with Option and Memorandum of Second Amendment to Tower Lease with Option; and (ii) authorize the City Manager to execute both documents.

RECOMMENDED MOTION:
I move that the Council approve the Second Amendment to Tower Lease with Option and the Memorandum of Second Amendment to Tower Lease with Option and authorize the City Manager to sign both documents.

BACKGROUND:
The City and New Cingular Wireless PCS, LLC (Tenant) entered into a Tower Lease with Option (Lease) on April 6, 2005. Under the Lease, the City rented to Tenant space on and below the water tower located at Earl F. Johnson Park for wireless communication facilities. The Lease was amended in 2012. The ***existing*** terms of the Lease are summarized as follows:

- **Term**: Sixty (60) months commencing on May 1, 2012.

- **Automatic Renewal**: The Lease's term will renew for up to five (5) additional sixty (60) month terms. The Tenant may terminate the Lease by giving thirty (30) days' notice.

- **Rent**: Starting on May 1, 2012, the rent was nineteen thousand, ninety-two and 96/100 dollars ($19,092.96) per year. Beginning on May 1, 2017, the rent increases by three percent (3%) each year for the remainder of the term. The current rent is $20,863.39, increasing to $21,489.29 effective May 1, 2021.

The Tenant currently utilizes a thirty-two foot by fourteen and one-half foot (32’ x 14.5’) fenced area below the water tower for cabinets and other ground-mounted equipment. Through the attached Second Amendment to Tower Lease with Option (Second Amendment), the Tenant wishes to extend the fenced area by eight feet (8’), which will increase the fenced area to forty feet by fourteen and one-half feet (40’ x 14.5’), so a new generator may be installed. The Tenant requests no other modifications to the Lease, and the remaining terms will continue unchanged.

The Memorandum of Second Amendment to Tower Lease with Option summarizes the terms of Second Amendment and can be recorded against the leased premises by the Tenant.

ATTACHMENTS:

1. Tower Lease with Option and First Amendment to Tower Lease with Option

2. Second Amendment to Tower Lease with Option and Memorandum of Second Amendment to Tower Lease with Option

FISCAL IMPACT:

ATTACHMENTS:
AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson),
COH 2012.03.30 Second Amendment to Tower Lease and Memorandum of Second Amendment

TOWER LEASE WITH OPTION

THIS TOWER LEASE WITH OPTION ("Lease") is entered into this 6th day of February, 2005 ("Effective Date") by and between the City of Hanford, a Municipal corporation ("Lessor"), andNew Cingular Wireless PCS, LLC, a Delaware limited liability company, ("Lessee").

1. Premises

Lessor hereby leases to Lessee the use of that portion of the Tower and Property, sufficient for the placement of the Communications Facility as defined below together with a license for access and utilities, generally described and depicted in the attached Exhibit B, (collectively referred to hereinafter as the "Premises"). The Premises, located at1502 N. Brown St., Hanford, CA; APN: 010-034-003, comprises approximately 300 square feet. Lessee's location on the Tower shall be at 68 feet above ground level.

2. Term. The initial term of the Lease shall be five (5) years commencing on exercise of lease (Commencement Date) and terminating at midnight on the last day of the initial term (the "Initial Term").

3. Permitted Use. The Premises may be used by Lessee for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, antennas, microwave dishes, global positioning system antennas, equipment shelters and/or cabinets and related activities.

4. Rent.

(a) Lessee shall pay Lessor, as rent for the Premises, One Thousand Five Hundred and No/100 Dollars ($1,500.00) per month ("Rent"). Rent shall be payable monthly in advance by the first day of each month to Lessor at the address specified in Section 14 below. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason other than a default by Lessee, and all prepaid Rent shall be immediately refunded to Lessee.

(b) Commencing with the thirteenth (13th) month after the Commencement Date and at the end of each twelfth (12th) month thereafter during the Initial Term of this Lease, the Rent to be paid by Lessee for the ensuing twelve (12) month period shall be increased by 3%.

5. Renewal.

(a) Lessee shall have the right to extend this Lease for five (5) additional, five-year terms ("Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein.

(b) This Lease shall automatically renew for each successive Renewal Term unless Lessee notifies Lessor, in writing, of Lessee's intention not to renew this Lease, at least sixty (60) days prior to the expiration of the Initial Term or any Renewal Term. Except that if Lessee is in default on the date that any Renewal Term is to commence, the Renewal Term shall not commence and this Lease shall terminate on the last day of the Initial Term or any Renewal Term. If Lessee shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease on the date of termination.

6. Interference. Lessee shall not use the Premises in any way which interferes with the use of the Premises by Lessor, or lessees or licensees of Lessor, with rights in the Premises prior in time to Lessee's. Lessee acknowledges that Cricket Communications currently leases a portion of the Tower and has authority under that Lease to attach communication facilities to the Tower. Similarly, Lessor shall not

use, nor shall Lessor permit its lessees, licensees, employees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Lessee. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

7. Improvements; Utilities; Access.

(a) Lessee shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes, global positioning system antennas, equipment shelters and/or cabinets and related cables and utility lines (collectively the "Communications Facility"). The Communications Facility shall be configured as set forth in the attached Exhibit C. Lessee shall have the right to replace or upgrade the Communications Facility at any time during the term of this Lease. Lessee shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. The Communications Facility shall remain the exclusive property of Lessee. Lessee shall have the right to remove the Communications Facility at any time during the term of this Lease or any extension thereof and shall remove the Communication Facility upon termination of this Lease.

(b) The final plans and precise location of the Communications Facilities shall be subject to approval by Lessor, which shall not be unreasonably withheld, conditioned or delayed. Approval will be given by Lessor to Lessee by signing and returning to Lessee a copy of the final plans within thirty (30) business days after they are given to Lessor.

(c) Subject to the provisions of paragraph 6 of this Lease, Lessee, at its expense, may use any and all appropriate means of restricting access to the Communications Facility, including, without limitation, the construction of a fence.

(d) Lessee shall, at Lessee's expense, keep and maintain the Communications Facility now or hereafter located on the Premises in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty excepted. Upon termination or expiration of this Lease, the Premises shall be returned to Lessor in at least as good a condition as on the Commencement Date, normal wear and tear excepted.

(e) Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators). Lessor agrees to use reasonable efforts in assisting Lessee to acquire necessary utility service. Lessee shall, install separate meters for utilities used on the Property.

(f) As partial consideration for Rent paid under this Lease, Lessor hereby grants Lessee a license in, under and across the Property for ingress, egress, utilities and access for the permitted use described in paragraph 3 of this Lease to the Premises adequate to install and maintain utilities, which include, but are not limited to, the installation of power and telephone service cable, and to service the Premises and the Communications Facility at all times during the Initial Term of this Lease or any Renewal Term (collectively, "License"). The License provided hereunder shall have the same term as this Lease.

(g) Lessee shall have 24-hours-a-day, 7-days-a-week access to the Premises at all times during the Initial Term of this Lease and any Renewal Term.

8. Tower Maintenance.

(a) Lessor represents and warrants that its operation of the Tower, exclusive of Lessee's Communications Facilities, including the lighting system, if any, complies with all current laws, rules and regulations, applicable to Lessor's use of the Tower. The costs of maintaining the Tower in its condition on the Commencement Date shall be borne by Lessor with the exception of Lessee's Communications Facilities and except for damage to the Tower caused by Lessee or Lessee's agents, employees, contractors or subcontractors, which shall be borne by Lessee. Lessee shall repair at Lessee's cost any such damage, within forty-eight (48) hours, and to the extent that such damage cannot be repaired within Forty-eight (48) hours, Lessee shall make all efforts to begin such repairs and finish such repair in a timely manner. Should Lessee fail to repair any such damage, Lessor may, at Lessor's option, make such repairs and Lessee shall promptly reimburse Lessor for its reasonable costs and expenses incurred in such repair. Should Lessor fail to timely make repairs required by this Agreement, Lessee may, at Lessee's option, make such repairs and Lessor shall promptly reimburse Lessee for its reasonable costs and expenses incurred in such repair. Lessee shall have the option to make repairs to the Premises which the Lessor has no obligation to make pursuant to this Agreement, under the following conditions: (i) Lessee has received the Lessor's prior written approval to make such repairs before such repairs are made; (ii) such repairs are made by duly licensed contractors, pursuant to a written contract by and between Lessee and such licensed contractor; (iii) all such repairs are made in accordance with all applicable laws, rules, ordinances and regulations; (iv) the repairs will not, in any way, interfere with the use of the Premises by Lessor or any lessees or licensees of the Lessor; and (v) the total cost of such repairs shall be paid by Lessee. Lessee shall indemnify, defend and hold Lessor and its officials, officers, employees and agents harmless from any and all liability, loss, damages, claims and attorney fees resulting from Lessee's or its contractors repair of the Premises. Lessee shall keep the Premises free and clear of all mechanic's liens resulting from Lessee's repair of the Premises.

(b) Lessee acknowledges and agrees that as of the date of this Agreement, Lessor is using the Tower for the storage of water and that at some time prior to the end of the term of this Lease or any extension thereof, Lessor may elect to remove the Tower from the Property. Should Lessor elect to remove the Tower from the Property, it shall provide Lessee with written notice of such election ('Removal Notice") and the date on which Lessee must have completed removal of all of the Communication Facilities from the Property, which date must be at least six (6) months from the date of the Removal Notice ("Removal Date"). Lessee agrees, at its sole cost and expense, to remove all Communication Facilities from the Property on or before the Removal Date. On the Removal Date, this Lease shall automatically terminate and, except as to obligations and responsibilities of Lessor or Lessee which may survive the date of termination of this Lease, or as to any default of the provisions of this Lease by Lessor or Lessee which may exist on the Removal Date, neither Lessor nor Lessee shall have any further obligations or responsibilities under this Lease. Further, Lessee hereby waives any and all claims of any kind or nature it may have against Lessor and releases Lessor from any loss, costs, damages and liability Lessee may suffer or incur as a result of the termination of this Lease and Lessee removal of its Communication Facilities from the Premises as permitted under this subparagraph 8(b).

(c) The final plans and precise location of the Communications Facilities shall be subject to approval by Lessor which shall not be unreasonably withheld, conditioned or delayed. Approval will be given by Lessor to Lessee by initialling and returning to Lessee a copy of the final plans within thirty (30) business days after they are given to Lessor. All of the Lessee's construction and installation work shall be performed at Lessee's cost and expense and in a good and workmanlike manner. Lessor agrees to provide Lessee, its employees, agents and subcontractors access to the Premises twenty-four (24) hours a day, seven (7) days a week, at no additional charge to Lessee. Where necessary, Lessor shall maintain the access to the Premises that was in existence on the Effective Date of this Lease. Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on or near the Premises (including, but not limited to the installation of emergency power generators), or to bring utilities across the Property in the order to service the Premises and the Communications Facilities. Lessee shall pay for all public utilities furnished to the Premises for its use throughout the term hereof, and all other costs and expenses in connection with Lessee's use, operation and maintenance of the Premises and all Lessee's

activities conducted thereon. In the event that certain utilities are provided to Lessee by Lessor, the utility charges paid by Lessee to Lessor for such utilities shall not exceed the amount which Lessee would pay for such utilities if the same were billed directly to Lessee by a competitive provider at such provider's current applicable rates. In the event that any utility that is provided by Lessor to Lessee is interrupted for more than forty-eight (48) hours, or Lessor causes such interruption of other utilities used by Lessee, and the interruption materially and adversely affects the conduct of Lessee's business operations in the Premises, and, in the event that such interruption shall continue for twenty (20) days, Lessee shall be entitle to terminate this lease. During the period of any such utility interruption, Lessor agrees to cooperate with Lessee concerning the installation or use of backup utilities.

(d) Upon the expiration, cancellation or termination of this Lease, Lessee will remove the Communications Facilities, and all improvements and utilities associated therewith, repair any damages caused by installation and removal and surrender the Premises to Lessor in at least as good a condition as on the Commencement Date., less ordinary wear and tear and damages by the elements.

9. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

(a) immediately if Lessee notifies Lessor if Lessee is unable to obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or Governmental Approval necessary to the installation and/or operation of the Communications Facility;

(b) immediately upon written notice by Lessee if it is unable to occupy and utilize the Premises due to a ruling or directive of the FCC or other governmental or regulatory agency, including, without limitation, a take back of channels or change in frequencies;

(c) immediately upon written notice by Lessee if the Premises or the Communications Facility are destroyed or damaged so as in Lessee's reasonable judgment to substantially and adversely affect the effective use of the Communications Facility. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Lessee shall be entitled to the reimbursement of any Rent prepaid by Lessee.

(d) On the Removal Date as identified in paragraph 8 of this Lease.

(e) At any time that Lessee sees fit, upon written notice by Lessee. At such time. Lessee shall be subject to a cancellation penalty of 6 months of the then-established rent.

(f) Immediately by Lessor if Lessee's Communications Facility or operation interferes with Lessor's primary use of the Tower to store and disseminate water.

10. DEFAULT AND REMEDIES

A. Acts Constituting a Default:

Any and all of the following actions shall constitute default by Lessee of this Lease:

1. Use of the Premises for any purpose other than as authorized in this Lease;

2. The failure by Lessee to make any payment of rent or additional rent required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of fifteen (15) days after written notice thereof from Lessor to Lessee; provided, however, that any such written notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure, Section 1161;

3. The failure by Lessee to observe or perform any other provision of this Lease to be observed or performed by Lessee, other than as specified in paragraph 2 above, where such failure shall continue for a period of fifteen (15) days after written notice thereof from Lessor to Lessee; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure, Section 1161; provided further, that if the nature of Lessee's default is such that more than fifteen (15) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee shall commence such cure within said fifteen (15) day period and thereafter diligently prosecute such cure to completion;

4. (i) The making by Lessee of any general assignment for the benefit of creditors; (ii) the filing by or against Lessee of a petition to have Lessee adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within thirty (30) days: (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

B. Remedies:

Lessor shall have the following remedies if Lessee commits a default. These remedies are not exclusive but are cumulative and in addition to any remedies now or hereafter allowed by law or elsewhere provided.

1. Lessee's Right to Possession Not Terminated. Lessor may continue this Lease in full force and effect, and the Lease will continue in effect as long as Lessor does not terminate Lessee's right to possession, and Lessor shall have the right to collect rent when due. During the period Lessee is in default, Lessor can enter the Premises and relet them, or any part of them, to third parties for Lessee's account. Lessee shall be liable immediately to Lessor for all costs Lessor incurs in reletting the Premises, including, without limitation, broker's commission, expenses of remodeling the Premises required by the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining term of this Lease. Lessee shall pay to Lessor the rent due under this Lease on the dates the rent is due, less the rent Lessor received from any reletting. No act by Lessor allowed by this paragraph shall terminate or cause a forfeiture of this Lease unless Lessor notifies Lessee that Lessor elects to terminate and forfeit this Lease.

2. Termination of Lessee's Right to Possession. Lessor can terminate Lessee's right to possession of the Premises at any time. No act by Lessor other than giving notice to Lessee shall terminate or cause a forfeiture of this Lease. Acts of maintenance, efforts to relet the Premises or the appointment of a receiver on Lessor's initiative to protect Lessor's interest under this Lease shall not constitute a termination of Lessee's right to possession. On termination, Lessor has the right to recover from Lessee:

a. The worth, at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease;

b. The worth, at the time of the award of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds that amount of the loss of rent that Lessee proves could have been reasonably avoided;

c. The worth, at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds that amount of the loss of rent Lessee proves could have been reasonably avoided; and

d. Any other amount, and court costs, necessary to compensate Lessor for all detriment proximately caused by Lessee's default of this Lease or which in the ordinary course of things, would be likely to result therefrom.

"The worth at the time of the award" as used in a. and b. of this paragraph, is to be computed by allowing interest at the rate of Ten Percent (10%) per annum or the maximum amount allowed by law, whichever is greater. "The worth, at the time of the award", as referred to in c. of this paragraph, is to be computed by discounting the amount at the discount of the Federal Reserve Bank of San Francisco at the time of award, plus One Percent (1%).

3. Appointment of Receiver. If Lessee is in default of this Lease, Lessor shall have the right to have a receiver appointed to collect rent and conduct Lessee's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Lessor to terminate or forfeit this Lease.

4. Removal of Property. Where personal property of the Lessee remains on the Premises after the tenancy has been terminated, for whatever reason, and the Premises have been vacated by the Lessee, the Lessor shall give written notice to such Lessee in accordance with the language of California Civil Code Sections 1983 through 1985, inclusive. The notice shall advise the person to be notified that said personal property must be claimed within fifteen (15) days from the date of personal delivery of said notice or within eighteen (18) days after the date said notice is deposited in the mail.

11. Taxes. Lessee shall pay any personal property taxes assessed on, or any portion of such taxes directly attributable to, the Communications Facility and all improvements associated therewith. Lessee acknowledges, understands and agrees that : (1) this Lease may create a possessory interest in Lessee which may be subject to real property taxes; (2) the property interest of Lessee created by this Lease may be subject to property taxes; and (3) this Lease may be subject to property taxes. Tenant agrees to pay all such taxes, as identified above, before the same become delinquent In the event that Lessee fails to pay any such taxes or other fees and assessments, Lessor shall have the right, but not the obligation, to pay such owed amounts and Lessee shall promptly reimburse Lessor the total amount paid by Lessor.

12. Insurance and Subrogation.

(a) At all times during the Initial Term and any Renewal Term Lessee shall maintain Commercial General Comprehensive Liability Insurance in an aggregate amount of Two Million and No/100 Dollars ($2,000,000.00). Lessee may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Lessee may maintain. Such insurance shall insure performance by Lessee of the indemnity provisions of this Lease. Lessor, its officers, officials, employees, agents and representatives, shall be named as additional insureds under such insurance.

(b) Lessor and Lessee hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

13. Indemnification:

Lessee shall indemnify, defend and hold harmless Lessor, its officers, officials, employees, agents and representatives against and from any and all claims arising from Lessee's use of the Premises or from any activity, work or thing done, by Lessee or its agents, employees, representatives, contractors or subcontractors in or about the Premises, and shall further indemnify, defend and hold harmless Lessor against and from any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any act, neglect, fault or omission of Lessee, or of its agents, employees, representatives, customers, invitees, contractors, or subcontractors for any injury or damage to any person or property whatsoever occurring in,

on, or about the Premises or any part thereof, and from and against all costs, attorneys' fees, expenses, liabilities, claims or any action or prosecution brought thereon. If any action or proceeding be brought against Lessor by reason of any such claims, Lessee, upon notice from Lessor, shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons in, upon, or about the Premises from any cause whatsoever. The provisions of this paragraph 13 shall survive the termination of this Lease.

14. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by for next-business-day delivery by a nationally recognized overnight carrier to the following addresses:

If to Lessee, to:	With a copy to:	If to Lessor, to:
c/o Cingular Wireless LLC Attn: Network Real Estate Administration Re: Cell Site #: SCRMCAKC014; Cell Site Name: Grangeville and Douty 6100 Atlantic Boulevard Norcross, Georgia 30071	Cingular Wireless Attn.: Legal Department Re: Cell Site #: SCRMCAKC014; Cell Site Name: Grangeville and Douty 15 East Midland Avenue Paramus, NJ 07652	City of Hanford Attn: Tom Haglund 319 N. Douty Street Hanford, CA 93230 Telephone: (559) 585-2521 Fax: (559) 585-2595

15. Quiet Enjoyment, Title and Authority. Lessor covenants and warrants to Lessee that (i) Lessor has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Lessee and which will not interfere with Lessee's rights to or use of the Premises; and (iii) execution and performance of this Lease by Lessor will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Lessor. Except as otherwise provided in this Lease, Lessor covenants that at all times during the term of this Lease, Lessee's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Lessee is not in default beyond any applicable grace or cure period. Lessee convenants and warrants to Lessor that (i) Lessee has full right, power and authority to execute this Lease; and (ii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Lessee.

16. Environmental Matters.

A. Compliance with Environmental Law. Lessee shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations (collectively "Hazardous Materials Laws") relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal, or transportation of any hazardous, toxic, contaminated or polluting materials, substances or wastes, including without limitation, any "hazardous substances", "hazardous waste", "hazardous materials", "toxic substances" or "petroleum products" (collectively "Hazardous Materials").

B. Hazardous Materials Handling. Lessee shall at its own costs, procure and maintain in effect during the entire term of this Lease or any extension thereof, and comply with all conditions of any and all permits, licenses or governmental and regulatory approvals required for Lessee's use, analysis, generation, manufacture, storage, disposal or transportation of the Hazardous Materials on the Premises. Lessee shall cause any and all Hazardous Materials removed from the Premises to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and waste. Lessee shall in all respects use, handle, treat, deal and manage any and all Hazardous Materials in, on, under or about the Premises in total conformity with all applicable Hazardous Materials Laws and pursuant to prudent industry

practices. Upon expiration or earlier termination of the term of this Lease or any extension thereof, Lessee shall cause all Hazardous Materials to be removed from the Premises and transported for use, storage or disposal in accordance and in compliance with all applicable Hazardous Materials Laws. Lessee shall not take any remedial action in response to the presence of any Hazardous Materials in, about or under the Premises or any building, or enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the Premises, without first notifying Lessor of Lessee's intention to do so and affording Lessor ample opportunity to appear, intervene or otherwise appropriately assert and protect Lessor's interest with respect thereto.

C. Notices. Lessee shall immediately notify Lessor in writing of: (i) any enforcement, clean up, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Materials Laws; (ii) any claim made or threatened by any person against Lessee or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result form any Hazardous Materials; and (iii) any reports made to any governmental agency arising out of or in connection with any Hazardous Materials used or stored upon or removed from the Premises, including any complaints, notices, warnings or asserted violations in connection therewith. Lessee shall also supply to Lessor as promptly as possible, and in any event within five (5) business days after Lessee first receives or sends the same, with copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Lessee's use thereof. Upon Lessor's request, Lessee shall promptly deliver to Lessor copies of hazardous waste manifests reflecting the legal and proper use and disposal of all Hazardous Materials used or removed from the Premises.

D. Indemnification of Lessor. Lessee shall indemnify, defend (by counsel reasonably acceptable to Lessor), protect and hold Lessor, its employees, agents, attorneys, successors, assigns, officials, officers, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenditures (including attorneys' fees) or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (a) the presence in, on, upon or about the Premises or a discharge in or from the Premises of any Hazardous Materials or Lessee's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, upon, about or from the Premises or (b) Lessee's failure to comply with any Hazardous Materials Law. Lessee's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, clean up or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith, and shall survive the expiration or earlier termination of the term of this Lease or any extension thereof. For purposes of the release and indemnity provisions hereof, any acts or omissions of Lessee or its employees, agents, assignees, contractors, licensees or invitees of Lessee, or other acting for or on behalf of Lessee, whether or not they are negligent, intentional, willful or unlawful, shall be strictly attributable to Lessee. This indemnification shall survive the termination of this Lease.

E. Environmental Laws. Lessor represents that it has no knowledge of the presence of any Hazardous Materials on the Premises and shall not introduce or use any Hazardous Materials on the Property in violation of any applicable law. Lessor agrees to defend, indemnify and hold harmless Lessee from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively "Claims") including, but not limited to, damage, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that Lessee may suffer or incur due to Lessor's breach of the provisions of this subparagraph 16E.

This paragraph 16 shall survive the termination of this Lease.

17. Assignment and Subleasing.

(a) Lessee may assign this Lease upon written notice to Lessor, to any person controlling, controlled by, or under common control of Lessee, or any person or entity that, after first receiving FCC or state regulatory agency approvals, acquires Lessee's radio communications business in the local market area where the Communication Facilities is located and assumes all obligations of Lessee

under this Lease. Upon such assignment, Lessee shall be relieved of all liabilities and obligations hereunder and Lessor shall look solely to the assignee for performance under this Lease and all obligations hereunder except that Lessee shall remain responsible for the performance of those liabilities or obligations which survive the termination of this Lease. Lessee may otherwise assign this Lease upon written approval of Lessor, which approval shall not be unreasonably withheld, conditioned or delayed, Lessee shall remain obligated to perform all of its obligations hereunder even though such assignment is approved by Lessor.

(b) Additionally, Lessee may, upon notice to Lessor, mortgage or grant a security interest in this Lease and the Communications Facility, and may assign this Lease and the Communications Facility to any mortgagees or holders of security interests, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees interests in this Lease are subject and subordinated to all of the terms and provisions of this Lease. In such event, Lessor shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. However, Lessor shall not be obligated to subordinate this Lease to any such Leasehold financing. Lessor agrees to notify Lessee and Lessee's Mortgagees simultaneously of any default by Lessee and to give Mortgagees the same right to cure any default as Lessee or to remove any property of Lessee or Mortgagees located on the Premises. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by Lessee. Failure by Lessor to give Mortgagees such notice shall not diminish Lessor's rights against Lessee, but shall preserve all rights of Mortgagees to cure any default and to remove any property of Lessee or Mortgagees located on the Premises as provided in Section 10 of this Lease.

18. Successors and Assigns. Subject to the provisions of paragraph 17 of this Lease, this Lease and the License granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

19. Waiver of Lessor's Lien. Solely as to the Mortgagees, Lessor hereby waives any and all lien rights it may have, statutory or otherwise concerning the Communications Facility or any portion thereof which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under applicable laws, and Lessor gives Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Lessee's and/or Mortgagee's sole discretion and without Lessor's consent. However, Lessor shall not be obligated to allow the removal of such property by Mortgages until Mortgages agree, in writing to comply with all the provisions on this Lease, as the Lessee hereunder until all such property is removed from the Premises. Additionally, the removal of such property from the Premises shall not constitute a termination of this Lease unless Lessor consents thereto in writing.

20. Miscellaneous.

(a) The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any. The venue for any such litigation arising hereunder, shall be the Superior Court of Kings County California.

(b) Each party agrees to furnish to the other, within twenty (20) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

(d) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

(e) If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties agree that

if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. Any questions of particular interpretation shall not be interpreted against the draftsman, but rather in accordance with the fair meaning thereof.

(f) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.

(g) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(h) All Exhibits referred herein and any Addenda are incorporated herein for all purposes. The parties understand and acknowledge that Exhibit A (the legal description of the Property), Exhibit B (the Premises location within the Property), and Exhibit C (Description of Communications Facility), may be attached to this Lease and the Memorandum of Lease, in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A, B or C, as the case may be, which may have been attached hereto in preliminary form, may be replaced by Lessee with such final, more complete exhibit(s). The terms of all Exhibits are incorporated herein for all purposes.

(i) Time is of the essence in the performance of all of the provisions of this Lease.

LESSOR:

By: Jan E Reynolds

Printed Name: Jan E. Reynolds

Its: City Manager

Date: 3/17/05

LESSEE: New Cingular Wireless PCS, LLC, a Delaware limited liability company

By: [illegible]

Date: 4/6/05

F KEVIN FLAHERTY
CA MARKET MANAGER

EXHIBIT A
LEGAL DESCRIPTION OF LESSOR'S PROPERTY

To the Tower Lease with Option dated APRIL 6, 2005, between the City of Hanford as Lessor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company as Lessee.

City: Hanford

State: California

County: Kings

The Property of which the Premises are a part is legally described as follows:

Real property in the City of HANFORD, County of KINGS, State of California, described as follows:

TWENTY-EIGHT (28), TWENTY-NINE (29), IN BLOCK THREE (3) COUNTY OF KINGS, STATE OF CALIFORNIA ALL IN THE HANFORD WATER COMPANY TRACT, IN THE CITY OF HANFORD, AS PER MAP RECORDED IN BOOK 2, PAGE 67 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 010-034-003

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

EXHIBIT B
DESCRIPTION OF PREMISES

To the Tower Lease with Option dated APRIL 6, 2005, between the City of Hanford as Lessor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company as Lessee.

The location of the Premises within the Property together with access, ingress, egress, easements and utilities are more particularly depicted as follows:

Real property in the City of HANFORD, County of KINGS, State of California, described as follows:

TWENTY-EIGHT (28), TWENTY-NINE (29), IN BLOCK THREE (3) COUNTY OF KINGS, STATE OF CALIFORNIA ALL IN THE HANFORD WATER COMPANY TRACT, IN THE CITY OF HANFORD, AS PER MAP RECORDED IN BOOK 2, PAGE 67 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 010-034-003

Johnson Park Tank 3 water site.

Lessor_____
Lessee_____

EXHIBIT C

DESCRIPTION OF COMMUNICATIONS FACILITIES

To the Tower Lease with Option dated APRIL 6, 2005, between the City of Hanford as Lessor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, a California Corporation, as Lessee.

Tower Plan and Equipment

Approximately 300 square feet of ground space of that property described in Exhibit A including, but not limited to the following:

- PCS antennas, microwave and GPS equipment
- Five BTS Radio Equipment cabinets
- One power panel
- One telco box

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

Cell Site No.: C014 - 101260
Cell Site Name: Grangeville/Douty
Fixed Asset No.: 10102176
Market: San Francisco / Sacr / Reno
Address: 1502 North Brown Street, Hanford, CA

FIRST AMENDMENT TO TOWER LEASE WITH OPTION

THIS FIRST AMENDMENT TO TOWER LEASE WITH OPTION ("First Amendment") dated as of the later date below is by and between City of Hanford, a municipal corporation, having a mailing address at 319 North Douty Street, Hanford, CA 93230 (hereinafter referred to as "Lessor") and New Cingular Wireless PCS LLC, a Delaware limited liability company, having a mailing address at 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 (hereinafter referred to as "Lessee").

WHEREAS, Lessor and Lessee entered into a Tower Lease with Option dated April 6, 2005 (hereinafter, the "Lease"), whereby Lessor leased to Lessee certain Premises, therein described, that are a portion of the property ("Property") located at 1502 North Brown Street, Hanford, CA 93230; and

WHEREAS, Lessor and Lessee desire to extend the term of the Lease; and

WHEREAS, Lessor and Lessee desire to modify, as set forth herein, the Rent (as defined below) payable under the Lease; and

WHEREAS, Lessor and Lessee desire to modify, as set forth herein, the Lessee's obligations to pay Rent to Lessor for a Rent Guarantee Period (as defined below); and

WHEREAS, Lessor and Lessee desire to amend the Lease to clarify the scope of Lessee's permitted use of the Premises; and

WHEREAS, Lessor and Lessee, in their mutual interest, further wish to amend the Lease as set forth below.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. **Term**. The term of the Lease shall be amended to provide that the Lease has a new initial term of sixty (60) months ("New Initial Term"), commencing on May 1, 2012 ("New Term Commencement Date"). As of such New Term Commencement Date, all remaining Renewal Terms in the Lease except as set forth herein shall be void and of no further force and consequence. The Lease will be automatically renewed for up to five (5) additional sixty (60) month terms (each a "Renewal Term") upon the same terms and conditions of the Lease, as amended herein, without further action by Lessee, unless Lessee notifies Lessor in writing of Lessee's intention not to renew the Lease at least sixty (60) days prior to the expiration of the then current Renewal Term. Hereafter, the defined term "Term" shall include the New Initial Term and any applicable Renewal Term. Lessor agrees and acknowledges that except that as such permitted use or other rights may be amended herein, Lessee may continue to use and exercise its rights under the Lease as permitted prior to the New Initial Term.

2. **Termination**. In addition to any rights that may exist in the Lease, after the Rent Guarantee Period, as defined below, Lessee may terminate the Lease at any time with thirty (30) days prior written notice to Lessor for any or no reason.

City of Hanford Original

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

3. **Modification of Rent**. Commencing on May 1, 2012, the annual rent payable under the Lease shall be Nineteen Thousand Ninety-Two and 96/100 Dollars ($19,092.96) annually (the "Rent"). The Rent shall be payable annually in advance on May 1st of each year and shall continue during the Term, subject to adjustment, if any, as provided below.

4. **Modification of Lessee's Obligation to Pay – Rent Guarantee**. Notwithstanding Lessee's obligations to pay Rent set forth under the Lease, for a thirty-six (36) month period commencing May 1, 2012, and ending April 30, 2015 ("Rent Guarantee Period"), Lessee's obligation to pay Rent is guaranteed and such obligation will not be subject to offset or cancellation by Lessee, except as due to loss from casualty or condemnation. Notwithstanding the foregoing, if Lessor exercises any of Lessor's rights to terminate the Lease, if any, Lessee will be released from any and all of its obligations to pay Rent during the Rent Guarantee Period as of the effective date of the termination. In addition, Lessee shall be released from any and all of its obligations to pay Rent during the Rent Guarantee Period if any of the following shall occur: (a) Lessor is in breach of the Lease, including but not limited to any default under the terms of the Lease beyond any applicable grace and cure period; (b) there is a foreclosure of the Property; (c) the Lessor shall require Lessee to relocate Lessee's equipment and facilities to a location that is not acceptable to Lessee in its reasonable business judgment if allowed for in the Lease; (d) any existing government permits and/or approvals cannot be obtained or maintained, at no fault of the Lessee; or (e) Lessee terminates the Lease pursuant to the terms of the Expansion of Permitted Use section as modified below. If the Lease is further modified in the future with an obligation for Lessee to pay additional Rent, the payment of Rent guarantee established in this paragraph will not be diminished or limited, but such Rent guarantee will not extend to that future additional Rent obligation.

5. **Future Rent Increase / Annual Payments**. The Lease is amended to provide that commencing on May 1, 2017, and annually thereafter, Rent shall increase by three percent (3%) over the Rent paid during the previous year.

6. **Expansion of Permitted Use**. Lessee, its personnel, invitees, contractors, agents, sublessees, or its authorized sublessees, or assigns may use the Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals and to modify, supplement, replace, upgrade, expand, including the number and type(s) of antennas, or refurbish the equipment and/or improvements thereon (collectively, "Communications Facility"), or relocate the same within the Premises at any time during the term of the Lease, so long as these changes do not exceed the structural capacity of the Tower/Structure at this height, or at Lessee's sole expense upgrade the structural capacity in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services or for any other reason. Lessee may operate the Communications Facility at any frequency for which it has all requisite licenses and permits so long as these frequencies do not cause an interference issue with an existing lawfully installed and properly operated tenants on the Tower/Structure. Lessor shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. If Lessor does not comply with the terms of this section, in addition to any other rights it may have at law, Lessee may terminate the Lease and shall have no further liability to Lessor. If Lessor does not comply with the terms of this section, Lessee will have the right to exercise any and all rights available to it under law and equity, including the right to cure Lessor's default and to deduct the costs of such cure from any monies due to Lessor from Lessee.

City of Original

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

7. **Acknowledgement**. Lessor acknowledges that: 1) this First Amendment is entered into of the Lessor's free will and volition; 2) Lessor has read and understands this First Amendment and the underlying Lease and, prior to execution of this First Amendment, was free to consult with counsel of its choosing regarding Lessor's decision to enter into this First Amendment and to have counsel review the terms and conditions of this First Amendment; 3) Lessor has been advised and is informed that should Lessor not enter into this First Amendment, the underlying Lease between Lessor and Lessee, including any termination or non-renewal provision therein, would remain in full force and effect.

8. **Notices**. Paragraph 14 of the Lease is hereby deleted in its entirety and replaced with the following:

"NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Lessee:

New Cingular Wireless PCS LLC
Attn: Network Real Estate Administration
Re: Cell Site # 101260
Cell Site Name C014/Grangeville/Douty (CA);
Fixed Asset No.: 10102176
12555 Cingular Way, Suite 1300
Alpharetta, GA 30004

With a required copy of the notice sent to the address above to AT&T Legal at:

If sent via certified or registered mail:

New Cingular Wireless PCS LLC
Attn: AT&T Legal Department
Re: Cell Site # 101260
Cell Site Name C014/Grangeville/Douty (CA);
Fixed Asset No: 10102176
P.O. Box 97061
Redmond, WA 98073-9761

If sent via nationally recognized overnight courier:

New Cingular Wireless PCS LLC
Attn: AT&T Legal Department
Re: Cell Site # 101260
Cell Site Name C014/Grangeville/Douty (CA);
Fixed Asset No: 10102176
16331 NE 72nd Way

City of Hanford Original

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

Redmond, WA 98073-9761

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

And as to Lessor:

City of Hanford
Attn: Barbara Marty, Economic Development Manager
319 North Douty Street
Hanford, CA 93230

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein."

9. **Sale of Property / Rental Stream Offer**.

a. Sale of Property. If Lessor, at any time during the Term of the Lease, decides to sell, subdivide or rezone any of the Premises (or any interest therein), all or any part of the Property or surrounding property (or any interest therein), to a purchaser other than Lessee, Lessor acknowledges and agrees that such sale, subdivision or rezoning shall be subject to the Lease and Lessee's rights thereunder. Lessor agrees that it shall promptly notify Lessee in writing such sale, subdivision or rezoning.

b. Rental Stream Offer. If at any time after the date of this First Amendment, Lessor receives a bona fide written offer from a third party or receives a modified written offer from a third party seeking an assignment of the rental stream associated with the Lease ("Rental Stream Offer"), Lessor shall immediately furnish Lessee with a copy of the Rental Stream Offer. Lessee shall have the right within ninety (90) days after it receives such copy and representation to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Lessee chooses not to exercise this right of first refusal or fails to provide written notice to Lessor within the ninety (90) day period, Lessor may assign the rental stream pursuant to the Rental Stream Offer, subject to the terms of the Lease. If Lessor attempts to assign or transfer rent payments without complying with this Paragraph, the assignment or transfer shall be void, Lessee shall not be responsible for any failure to make payments under the Lease and reserves the right to hold payments due under the Lease until Lessor complies with this Paragraph.

c. If Lessor attempts to transfer ownership to a third party in accordance with (a) or (b) without fully complying with the terms and conditions of (a) and (b) hereinabove, such a transfer shall be void and of no further force or effect. Lessor agrees to indemnify Lessee for any and all claims associated with such a purported transfer.

10. **Charges**. All charges payable under the Lease such as utilities and taxes shall be billed by Lessor within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Lessor, and shall not be payable by Lessee. The foregoing shall not apply to monthly rent which is due and payable without a requirement that it be billed by Lessor. The provisions of this subsection shall survive the termination or expiration of the Lease.

City of Original

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

11. **Memorandum of Lease**. Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

12. **Other Terms and Conditions Remain**. In the event of any inconsistencies between the Lease and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this First Amendment.

13. **Capitalized Terms**. All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

City Of Original

Cell Site No.: C014 - 101260
Cell Site Name: Grangeville/Douty
Fixed Asset No.: 10102176
Market: San Francisco / Sacr / Reno
Address: 1502 North Brown Street, Hanford, CA

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this First Amendment on the date and year below.

LESSOR:
City of Hanford,
a municipal corporation

By: _____
Ron Hoggard, Interim City Manager

Date: 3/8/12

LESSEE:
New Cingular Wireless PCS LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____

Print Name: Jim Sidorick

Title: Senior Manager Real Estate & Construction

Date: 3/20/12

City of Original

Cell Site No.: C014 - 101260
Cell Site Name: Grangeville/Douty
Fixed Asset No.: 10102176
Market: San Francisco / Sacr / Reno
Address: 1502 North Brown Street, Hanford, CA

LESSOR ACKNOWLEDGEMENT

State of California
County of Kings)

On 3/8/12 before me,
Carol S. Hansen, notary public,
(insert name and title of the officer)

personally appeared **Ron Hoggard**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

CAROL S. HANSEN
Commission # 1833760
Notary Public - California
Kings County
My Comm. Expires Jan 27, 2013

Signature _____ (Seal)

City of Original

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

Cell Site No.: C014 - 101260
Cell Site Name: Grangeville/Douty
Fixed Asset No.: 10102176
Market: San Francisco / Sacr / Reno
Address: 1502 North Brown Street, Hanford, CA

LESSEE ACKNOWLEDGEMENT

State of California
County of _____)

On _____ before me,
_____,
(insert name and title of the officer)

personally appeared
_____, who
proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

See attached

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

City of Hanford Original

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On March 26, 2012 before me, Kathleen Angela Martic-Kongeal a Notary Public, personally appeared Jim Sidorick, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature Kathleen Angela Martic Kongeal
Printed Name: Kathleen Angela Martic-Kongeal
My Commission Expires Dec 26, 2014

KATHLEEN ANGELA MARTIC-KONGEAL
Commission # 1919024
Notary Public - California
Alameda County
My Comm. Expires Dec 26, 2014

C014
FA#10102176
Grangeville/Douty

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

City of Original

Cell Site No.: C014 - 101260
Cell Site Name: Grangeville/Douty
Fixed Asset No.: 10102176
Market: San Francisco / Sacr / Reno
Address: 1502 North Brown Street, Hanford, CA

Attachment 1

Memorandum of Lease

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

City of Hanford Original

Recording Requested By
& When Recorded Return To:

AT&T Mobility
Attn.: Property Management
3851 N. Freeway Blvd
Sacramento, CA 95834

APN: #: 010-034-003

(Space Above This Line For Recorder's Use Only)

Re: Cell Site #C014 - 101260
Cell Site Name: C014/Grangeville/Douty (CA)
Fixed Asset Number: 10102176
State: CA
County: Kings

MEMORANDUM OF LEASE

1. This Memorandum of Lease is entered into on this 26 day of March, 2012, by and between City of Hanford, a municipal corporation, having a mailing address at 319 North Douty Street, Hanford, CA 93230 (hereinafter referred to as "**Lessor**") and New Cingular Wireless PCS LLC, a Delaware limited liability company, having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 (hereinafter referred to as "**Lessee**"). Lessor and Lessee entered into a certain Tower Lease with Option dated April 6, 2005, as amended by that certain First Amendment to Tower Lease With Option dated March 26, 2012 (hereinafter, the "**Lease**") for the purpose of installing, operating and maintaining a Communications Facility and other improvements at Lessor's real property located in the City of Hanford, County of Kings, commonly known as 1502 North Brown Street. All of the foregoing are set forth in the Lease.

2. The Lease initially commenced on April 6, 2005, and the parties agree to further extend the Lease for a new initial term of five (5) years ("**New Initial Term**") commencing on May 1, 2012, with five (5) successive five (5) year options to renew.

3. The portion of the land being leased to Lessee (the "**Premises**") is described in **Exhibit 1** annexed hereto.

4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall control. The Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Lease.

City of Hanford Original

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LESSOR:
City of Hanford,
a municipal corporation

By: _____
Ron Hoggard, Interim City Manager

Date: 3/6/12

LESSEE:
New Cingular Wireless PCS LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____

Print Name: Jim Sidorick

Title: Senior Manager
Real Estate & Construction

Date: 3/26/12

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

City of Original

LESSOR ACKNOWLEDGEMENT

State of California
County of Kings)

On 3/8/12 before me, Carol S. Hansen, notary public,
(insert name and title of the officer)

personally appeared **Ron Hoggard**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

CAROL S. HANSEN
Commission # 1833760
Notary Public - California
Kings County
My Comm. Expires Jan 27, 2013

Signature _____ (Seal)

LESSEE ACKNOWLEDGEMENT

State of California
County of _____)

On _____ before me, _____,
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SEE ATTACHED

Signature _____ (Seal)

City of Original

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On March 26, 2012 before me, Kathleen Angela Martic-Kongeal a Notary Public, personally appeared Jim Sidorick, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature Kathleen Angela Martic Kongeal
Printed Name: Kathleen Angela Martic-Kongeal
My Commission Expires Dec 26, 2014

KATHLEEN ANGELA MARTIC-KONGEAL
Commission # 1919024
Notary Public - California
Alameda County
My Comm. Expires Dec 26, 2014

C014
FA#10102176
Grangeville/Douty

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

City of Hanford Original

Exhibit 1
Legal Description

Street Address: 1502 North Brown Street, Hanford, CA 93230

APN: 010-034-003

The location of the Premises within the Property together with access, ingress, egress, easements and utilities are more particularly depicted as follows:

Real property in the City of HANFORD, County of KINGS, State of California, described as follows:

TWENTY-EIGHT (28), TWENTY-NINE (29), IN BLOCK THREE (3) COUNTY OF KINGS, STATE OF CALIFORNIA ALL IN THE HANFORD WATER COMPANY TRACT, IN THE CITY OF HANFORD, AS PER MAP RECORDED IN BOOK 2, PAGE 67 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Attachment: AT&T - Cingular Wireless PCS Tower Lease, Memorandum of Lease, and First Amendment (Earl F Johnson), (City Attorney:

City of Hanford Original

Market: San Francisco
Cell Site Number: CVL02312
Cell Site Name: GRANGEVILLE - DOUTY
Fixed Asset Number: 10102176

SECOND AMENDMENT TO TOWER LEASE WITH OPTION

THIS SECOND AMENDMENT TO TOWER LEASE WITH OPTION ("**Second Amendment**") dated as of the latter of the signature dates below, is by and between City of Hanford, a municipal corporation, having a mailing address of 319 N. Douty Street, Hanford, CA 93230 ("**Lessor**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319-5309 ("**Lessee**").

WHEREAS, Lessor and Lessee entered into a Tower Lease with Option dated April 6, 2005, as amended by that certain First Amendment to Tower Lease with Option dated March 26, 2012 (collectively, the "**Lease**"), whereby Lessor leased to Lessee certain Premises, therein described, that are a portion of the Property located at 1502 North Brown Street, Hanford, CA 93230; and

WHEREAS, Lessor and Lessee desire to amend the Lease to increase the size of the Premises; and

WHEREAS, Lessor and Lessee desire to amend the notice addresses contained in the Lease; and

WHEREAS, Lessor and Lessee desire to amend the Lease to allow for the addition of a generator to the New Premises Area (as defined below); and

WHEREAS, Lessor and Lessee, in their mutual interest, wish to amend the Lease as set forth below.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. **New Premises Area.** Lessor agrees to increase the size of the Premises leased to Lessee to accommodate Lessee's needs. Upon the execution of this Second Amendment, Lessor leases to Lessee the additional premises described on attached Exhibit B-1 ("**New Premises Area**"). Lessor's execution of this Second Amendment will signify Lessor's approval of Exhibit B-1. The Premises under the Lease prior to this Second Amendment in addition to the New Premises Area under this Second Amendment shall be the Premises under the Lease. Exhibit B-1 supplements Exhibit B to the Lease.

Attachment: COH 2012.03.30 Second Amendment to Tower Lease and Memorandum of Second Amendment (City Attorney: Approval of Second

2. **Generator.** Lessee shall have the right to install, repair, maintain, modify, replace, remove, utilize and operate (including but not limited to, operation as may be required by applicable law) the equipment as more completely described on attached Exhibit B-1, including without limitation a concrete pad and generator thereon, including back-up power supply (collectively, the "**Generator**"). Lessor's execution of this Second Amendment will signify Lessor's approval of Exhibit B-1. From and after the date of this Second Amendment, all references in the Lease to the Communications Facility shall include the Generator. Lessee shall have the right to access the New Premises Area pursuant to the terms of the Lease. The Generator shall remain the property of Lessee, and Lessee shall have the right to remove or modify said Generator at any time.

3. **No Additional Rent.** The parties agree that no additional rent shall be due from Lessee to Lessor hereunder.

4. **Other.** Lessor represents and warrants that, to its actual current knowledge, no conditions exist within the New Premises Area or otherwise on the Property where the Premises and New Premises Area are located that would adversely impact Lessee's permitting and/or installation of a Generator within the New Premises Area. Lessor authorizes Lessee to prepare, execute and file all required applications to obtain any government approvals for Lessee's use of the New Premises Area under this Second Amendment and agrees, at Lessee's request, to reasonably assist Lessee with such applications and with obtaining and maintaining the government approvals; provided however, Lessor's obligation will be limited to assistance that does not result in Lessor incurring any fees or costs. Where applicable law governs how the Generator will be used, Lessee may use the Generator in the manner set forth under the applicable law. Lessee may terminate this Second Amendment by written notice to Lessor at any time. Within one hundred twenty (120) days after termination or expiration of the Lease or this Second Amendment, Lessee shall remove its equipment from the New Premises Area, and Lessee shall repair any damage, less ordinary wear and tear, to the New Premises Area caused by its removal activities. Any portions of the equipment that Lessee fails to remove within such period shall be deemed abandoned, and Lessor may remove the same and restore the New Premises Area at Lessee's expense. Lessee will, within thirty (30) days of Lessee's receipt of a written demand submitted by Lessor, pay Lessor for costs incurred by Lessor for removal of Lessee's abandoned property and restoration of the New Premises Area.

5. **Notices.** Section 14 of the Lease is hereby deleted in its entirety and replaced with the following:

> NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows.

If to Lessor:
City of Hanford,
Attn: City Manager
319 N. Douty Street
Hanford, CA 93230

Attachment: COH 2012.03.30 Second Amendment to Tower Lease and Memorandum of Second Amendment (City Attorney: Approval of Second

If to Lessee:

New Cingular Wireless PCS, LLC
Attn: TAG - LA
Re: Cell Site # CVL02312
Cell Site Name: GRANGEVILLE - DOUTY (**CA**)
Fixed Asset #: 10102176
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With Copy to:

New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site # CVL02312
Cell Site Name: GRANGEVILLE - DOUTY (**CA**)
Fixed Asset #: 10102176
208 S. Akard Street
Dallas, TX 75202-4206

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice. Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

6. Memorandum of Lease. Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease substantially in the form of the Attachment 2. Either party may record said Memorandum of Lease at any time, in its absolute discretion.

7. Other Terms and Conditions Remain. In the event of any inconsistencies between the Lease and this Second Amendment, the terms of this Second Amendment shall control. Except as expressly set forth in this Second Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Second Amendment. The rights granted to Lessee herein are in addition to and not intended to limit any rights of Lessee in the Lease. Unless otherwise specified herein or unless the context requires otherwise, the terms in the Lease shall apply to the New Premises Area.

8. Capitalized Terms. All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Second Amendment on the dates set forth below.

"LESSOR"
City of Hanford, a municipal corporation

By: _____
Name: _____
Title: _____
Date: _____

"LESSEE"
New Cingular Wireless PCS, LLC,
a Delaware limited liability company
By: AT&T Mobility Corporation
Its: Manager

By: _____
Name: _____
Title: _____
Date: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ **(Seal)**

Attachment: COH 2012.03.30 Second Amendment to Tower Lease and Memorandum of Second Amendment (City Attorney: Approval of Second

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

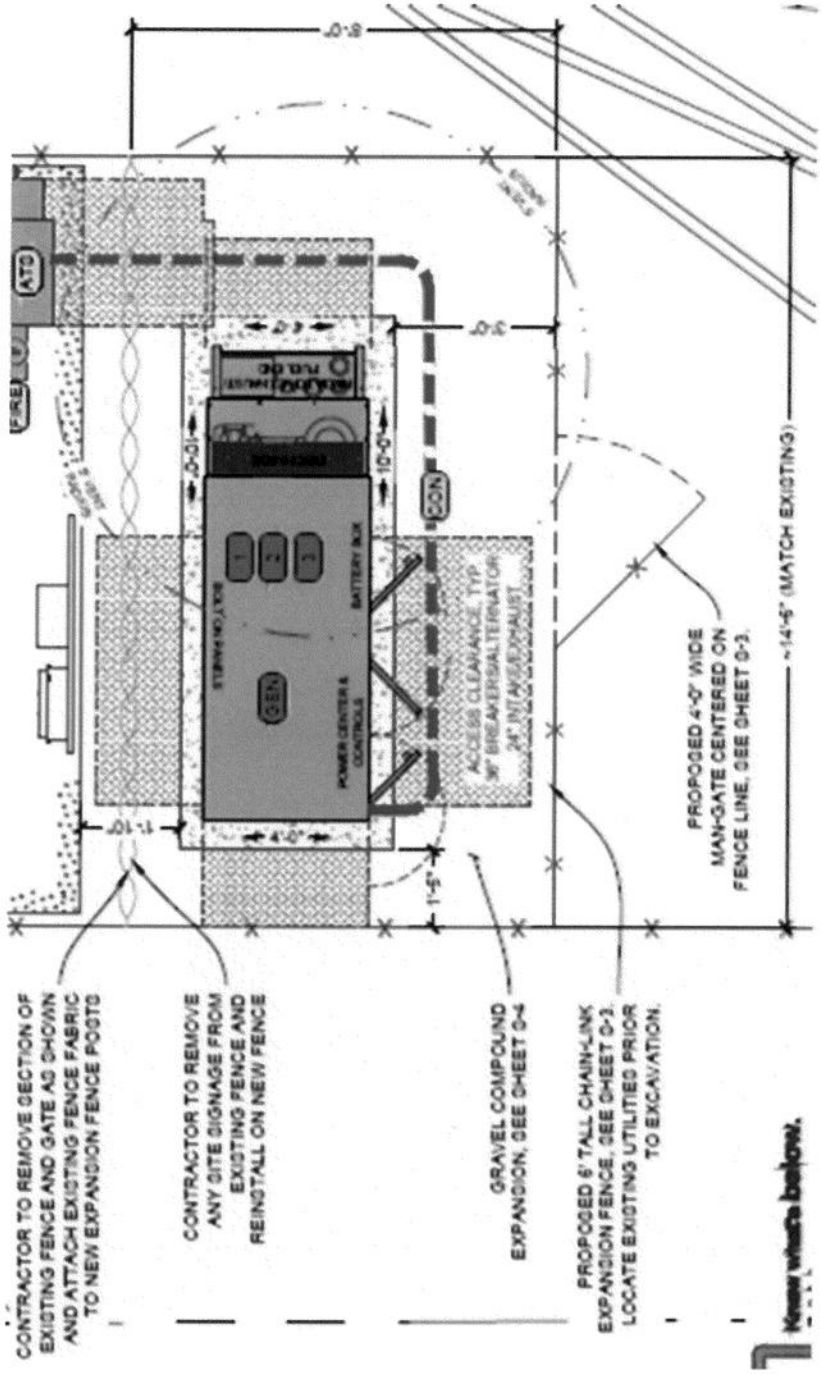
Signature _____ **(Seal)**

Attachment: COH 2012.03.30 Second Amendment to Tower Lease and Memorandum of Second Amendment (City Attorney: Approval of Second

EXHIBIT B-1
NEW PREMISES AREA
Page 1 of 3

to the Second Amendment to Tower Lease with Option dated _____, 20___, by and between City of Hanford, a municipal corporation, as Lessor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Lessee.

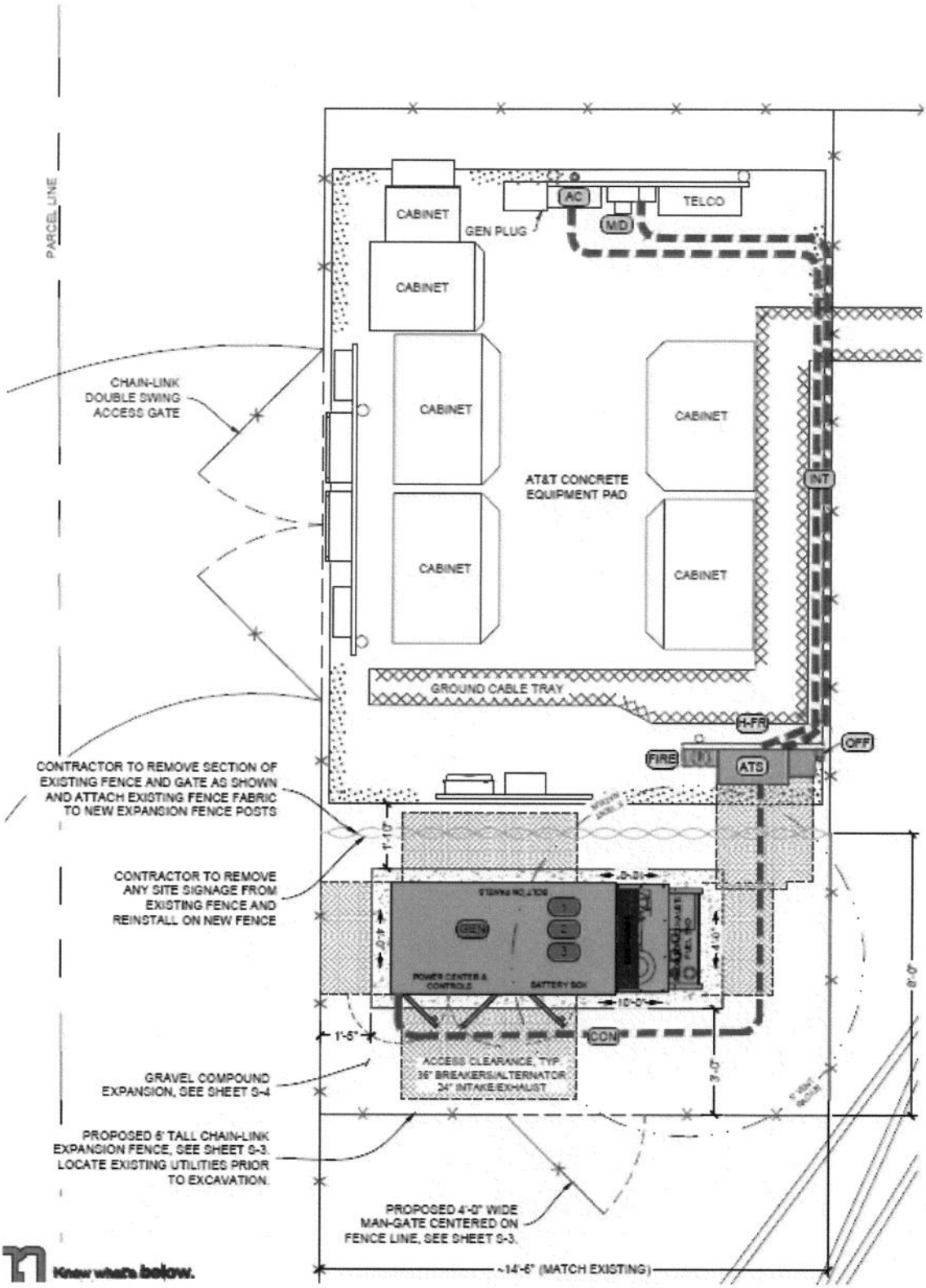
The New Premises Area, comprising 116 sq. ft., is described and/or depicted as follows:



Attachment: COH 2012.03.30 Second Amendment to Tower Lease and Memorandum of Second Amendment (City Attorney: Approval of Second

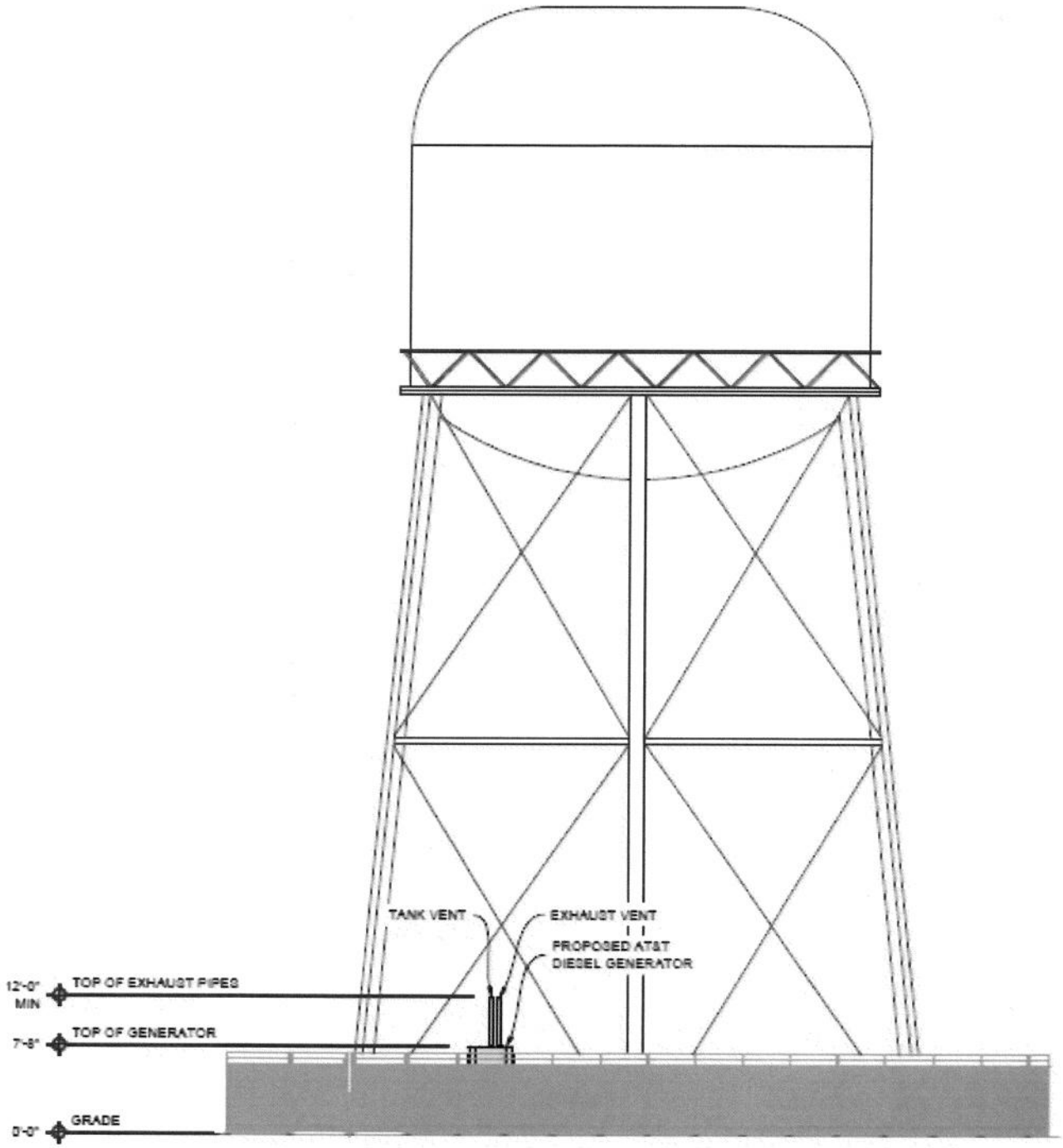
Page 2 of 3

OVERALL SITE PLAN



Attachment: COH 2012.03.30 Second Amendment to Tower Lease and Memorandum of Second Amendment (City Attorney: Approval of Second

ELEVATIONS



Attachment: COH 2012.03.30 Second Amendment to Tower Lease and Memorandum of Second Amendment (City Attorney: Approval of Second

(Space Above This Line For Recorder's Use Only)

Return to:
New Cingular Wireless PCS, LLC
Attn: Tower Asset Group - Lease Administration
1025 Lenox Park Blvd. NE, 3rd Floor
Atlanta, Georgia 30319

Re: Cell Site # CVL02312
Cell Site Name: GRANGEVILLE - DOUTY
Fixed Asset Number: 10102176
State: California
County: KINGS
APN: 010-034-003

MEMORANDUM OF SECOND AMENDMENT TO TOWER LEASE WITH OPTION

This Memorandum of Second Amendment to Tower Lease with Option is entered into on this ____ day of _____, 20___, by and between City of Hanford, a municipal corporation, having a mailing address of 319 N. Douty Street, Attn: City Manager ("**Lessor**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 ("**Lessee**").

1. Lessor and Lessee entered into a certain Tower Lease with Option dated April 6, 2005, as amended by that certain First Amendment to Tower Lease with Option dated March 26, 2012, and as amended by that certain Second Amendment to Tower Lease with Option dated _____, 2021 (collectively, the "**Lease**"), whereby Lessor leased to Lessee certain Premises, therein described, that are a portion of the Property located at 1502 North Brown Street, Hanford, CA 93230 for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing are set forth in the Lease.

2. The initial term of the Lease commenced on April 6, 2005, for a period of five (5) years, with five (5) additional extension terms of five (5) years each. The First Amendment

amended the Lease to provide for an initial term of sixty (60) months commencing on May 1, 2012, with (5) additional renewal terms of (60) months each.

3. The portion of the land being leased to Lessee (the "**Premises**") is described in **Exhibit 1** annexed hereto.

4. This Memorandum of Second Amendment to Tower Lease with Option is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Second Amendment to Tower Lease with Option and the provisions of the Lease, the provisions of the Lease shall control. The Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Lease.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Second Amendment to Tower Lease with Option as of the day and year first above written.

LESSOR:
City of Hanford, a municipal corporation

By: _____
Print Name: _____
Its: _____
Date: _____

LESSEE:
New Cingular Wireless PCS, LLC,
a Delaware limited liability company
By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: _____
Its: _____
Date: _____

Attachment: COH 2012.03.30 Second Amendment to Tower Lease and Memorandum of Second Amendment (City Attorney: Approval of Second

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ **(Seal)**

Attachment: COH 2012.03.30 Second Amendment to Tower Lease and Memorandum of Second Amendment (City Attorney: Approval of Second

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ **(Seal)**

Attachment: COH 2012.03.30 Second Amendment to Tower Lease and Memorandum of Second Amendment (City Attorney: Approval of Second

EXHIBIT 1
DESCRIPTION OF PREMISES
Page 1 of 2

The real property on which the Premises is located is in the City of HANFORD, County of KINGS, State of California, and described as follows:

TWENTY-EIGHT (28), TWENTY-NINE (29), IN BLOCK THREE (3) COUNTY OF KINGS, STATE OF CALIFORNIA ALL IN THE HANFORD WATER COMPANY TRACT, IN THE CITY OF HANFORD, AS PER MAP RECORDED IN BOOK 2, PAGE 67 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Street Address: 1502 North Brown Street, Hanford, CA 93230

APN: 010-034-003

That portion of the Premises located on the ground of the Property (excluding the tower space, and the access, ingress, egress, easements and utilities located on the Property) is more particularly depicted as follows:

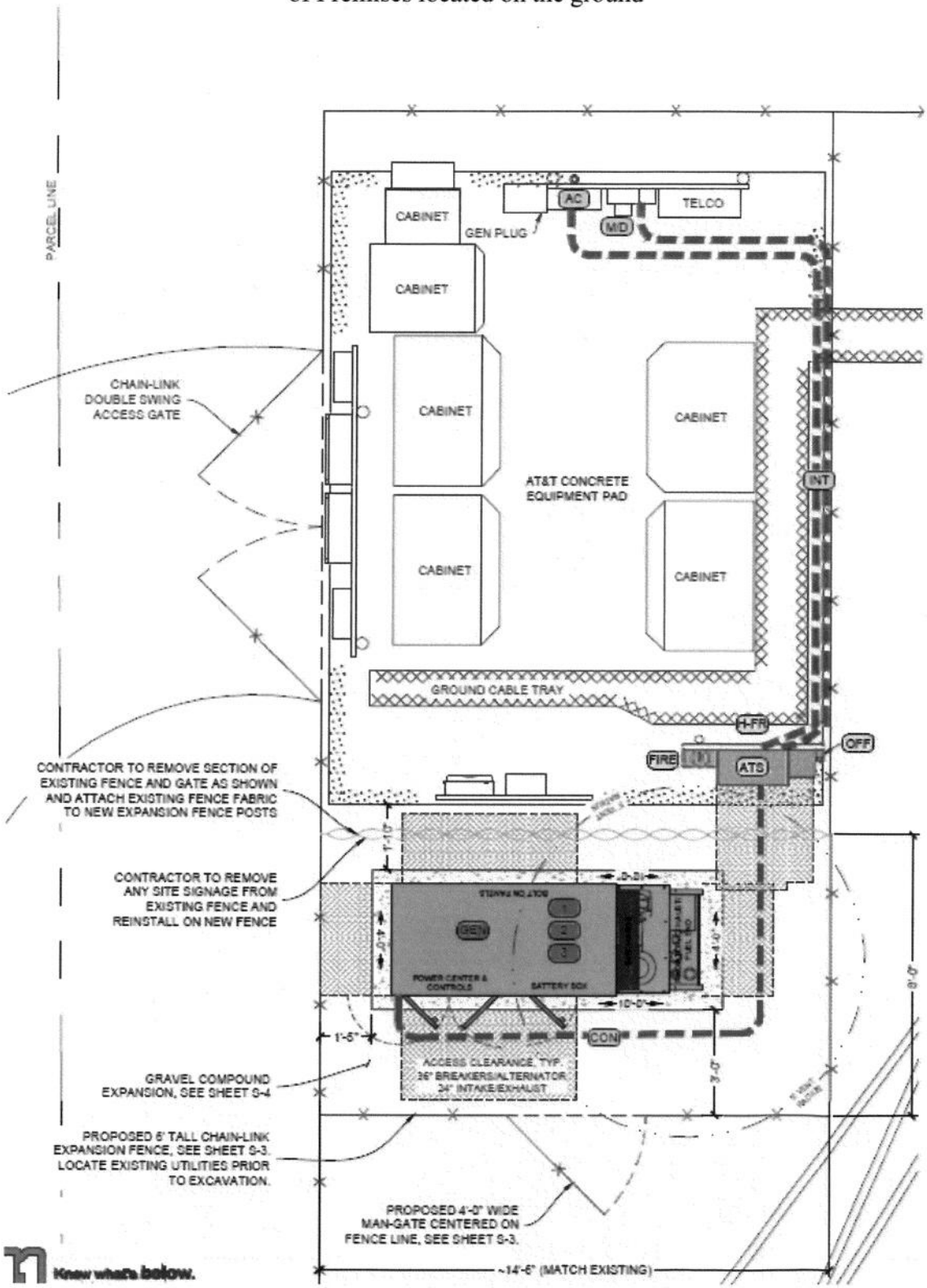
Approximate Square Footage of the ground based Premises: 416

Attachment: COH 2012.03.30 Second Amendment to Tower Lease and Memorandum of Second Amendment (City Attorney: Approval of Second

Page 2 of 2

OVERALL SITE PLAN

of Premises located on the ground



Attachment: COH 2012.03.30 Second Amendment to Tower Lease and Memorandum of Second Amendment (City Attorney: Approval of Second

AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** I

SUBJECT:
Information Technology: Approval of a Change to the contract with Tyler Technologies for the upgrade and implementation of the EnerGov software in the amount of $81,400.00 and Appropriation of the funding from the Computer Replacement Reserve to cover the additional cost.

RECOMMENDATION:
That the City Council by motion:

1. Approve a change to the contract with Tyler Technologies for the implementation of the EnerGov software in the amount of $81,400.00; and
2. Appropriate the funding from the Computer Replacement Reserve to cover the cost of the contract change.

BACKGROUND:
On May 1, 2018, the City Council approved a contract with Tyler Technologies for their Enterprise Resource Planning (ERP) software and implementation in the amount of $912,479. The first software platform in that implementation process was the Munis Financial System. At the time, it had a projected "Go Live" date of January 2020. In December of 2018 it was determined that the City was falling behind in the implementation schedule due to lack of staff and poor development planning, therefore, the City amended the contract and selected what Tyler terms as their "Production Ready" platform. The additional costs for migrating to the "Production Ready" platform for the Munis Financial System was approximately $21,880. The original go live for Financial system was to be in April of 2019. Moving to the Production Ready version allowed for the completion of the implementation to occur sooner, in July of 2019, but still three (3) months beyond the original implementation date.

The Human Content Management (HCM) software was to be the next phase of the implementation and should have been completed in conjunction with Financials, but it was not, due to improper setup and the staff not having a clear understanding of the data that was needed to build the system. Implementation of HCM was originally scheduled for October 2019, but due

to the delays in Financials was then pushed to January 2020. This deadline was not met either due to staffing changes in both HR and Finance. HCM is now currently on hold pending a more strategic plan for implementation and more reliance on milestones rather than deadlines.

EnerGov was originally set to start in January 2019. At that time, Staff from the various departments that would be utilizing the software, held the initial kick off meeting with Tyler. After the Kick-off meeting, it was determined that staffing was not adequate to perform the implementation and the decision was made to migrate that product to the “Production Ready” version as well. This move, and additional cost, was done to ensure that the City would be able to meet the original timeline for implementation. On February 19, 2019, the City Council approved a contract amendment in the amount of $110,080 to move to the "Production Ready" version.

The EnerGov software will be utilized by various City Departments to add efficiencies to the operations and provide better interaction and customer service to the public and our Citizens. It will be used for the following purposes:

- Buildings and Planning - Submittal of Applications and Plans and the Issuance/tracking of Permits;
- Code Enforcement - Tracking of complaints and compliance issues;
- Finance - Applications, Issuance and tracking of Business Licenses;
- Public Works - Applications, Issuance and tracking of Encroachment and Transportation Permits; and
- Fire - Application, Issuance and tracking of Fire Permits.

Due to a variety of issues, and absent a solid plan for implementation from the outset of the project, the implementation process has gone on longer than expected. We have now reached a point where Tyler is going to be releasing a new version of the software in the coming months. When that happens, the City will be required to upgrade to the new version anyway. The current version utilizes Microsoft's Silverlight product as an ancillary interface and Microsoft will not be supporting that product after the beginning of 2022. Due to this change, as well as some internal changes to processes, as well as additional processes done by the City, it has been determined that additional implementation time with Tyler is needed before the software can go live. The additional processes that we will be adding to EnerGov will be the issuance/tracking of Burglar Alarm Permits as well as Animal Licensing with the Police Department. The additional time will be used to finish configuration of the software as well as training staff on the use of the new interface. With this change the scheduled go-live date for the software will be December 2021.

The last remaining platform that will need to be implemented is the Munis Utility Billing (UB) software. The UB software had its initial kick-off call in October 2019. The original go live date was slated for January/February 2021. Due to a switch in Project Managers from the Tyler side, the implementation was pushed back to January 2021. Alejandro and Victoria have been very diligent at getting the work needed done. At this point we plan to go live in August 2021.

Original Contract Amount: $912,479

Upgrade to Production Ready Munis	$21,880	
Upgrade to Production Ready EnerGov:	$110,080	
Proposed Upgrade of EnerGov platform:	$81,400	
Total Projected Cost/Contract:		$1,125,839
Current funding expended:	$963,000	
Amended contract remaining	$162,839	

FISCAL IMPACT:
Fiscal Impact: This additional funding will come from the Computer Replacement Reserve, which currently has an unencumbered balance of $1.324 million.

ATTACHMENTS:
EnerGov Implementation (49 Days)

Quoted By:	Ryan Blair
Date:	3/18/2021
Quote Expiration:	9/14/2021
Quote Name:	City of Hanford - ERP - EnerGov Implementation Services
Quote Number:	2021-125076
Quote Description:	EnerGov Implementation Services

Sales Quotation For

City of Hanford
315 N Douty St
Hanford, CA 93230-3903
Phone +1 (209) 585-2505

Other Services

Description	Quantity	Unit Price	Unit Discount	Extended Price
Implementation	392	$185.00	$0.00	$72,520.00
Project Management	48	$185.00	$0.00	$8,880.00
TOTAL:				**$81,400.00**

Summary	One Time Fees	Recurring Fees
Total Tyler Software	$0.00	$0.00
Total Tyler Services	$81,400.00	$0.00
Total 3rd Party Hardware, Software and Services	$0.00	$0.00
Summary Total	**$81,400.00**	**$0.00**
Contract Total	**$81,400.00**	

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held for six (6) months from the Quote date or the Effective Date of the contract, whichever is later.

Customer Approval: _____ Date: _____

Attachment: EnerGov Implementation (49 Days) (IT: Tyler EnerGov Contract Change in the amount of $81,400)

Print Name: _____ P.O. #: _____

All primary values quoted in US Dollars

Attachment: EnerGov Implementation (49 Days) (IT: Tyler EnerGov Contract Change in the amount of $81,400)

Comments

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement") between the parties and subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms:

- License fees for Tyler and third party software are invoiced upon the earlier of (i) deliver of the license key or (ii) when Tyler makes such software available for download by the Client;
- Fees for hardware are invoiced upon delivery;
- Fees for year one of hardware maintenance are invoiced upon delivery of the hardware;
- Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software available for download by the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any such fees are prorated to align with the applicable term under the Agreement, with renewals invoiced annually thereafter in accord with the Agreement.
- Fees for services included in this sales quotation shall be invoiced as indicated below.
  - Implementation and other professional services fees shall be invoiced as delivered.
  - Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module.
  - Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, Tyler will invoice Client the actual services delivered on a time and materials basis.
  - Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where "Project Planning Services" are provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be invoiced monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
  - If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.
  - Notwithstanding anything to the contrary stated above, the following payment terms shall apply to services fees specifically for migrations: Tyler will invoice Client 50% of any Migration Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be billed upon the go-live of the applicable product suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite. Unless otherwise indicated on this Sales quotation, annual services will be invoiced in advance, for annual terms commencing on the date this sales quotation is signed by the Client. If listed annual service(s) is an addition to the same service presently existing under the Agreement, the first term of the added annual service will be prorated to expire coterminous with the existing annual term for the service, with renewals to occur as indicated in the Agreement.
- Expenses associated with onsite services are invoiced as incurred.

Tyler's quote contains estimates of the amount of services needed, based on our preliminary understanding of the size and scope of your project. The actual amount of services depends on such factors as your level of involvement in the project and the speed of knowledge transfer.

Unless otherwise noted, prices submitted in the quote do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy.

Tyler's prices do not include applicable local, city or federal sales, use excise, personal property or other similar taxes or duties, which you are responsible for determining and

Attachment: EnerGov Implementation (49 Days) (IT: Tyler EnerGov Contract Change in the amount of

Comments

remitting. Installations are completed remotely, but can be done onsite upon request at an additional cost.

In the event Client cancels services less than two (2) weeks in advance, Client is liable to Tyler for (i) all non-refundable expenses incurred by Tyler on Client's behalf; and (ii) daily fees associated with the cancelled services if Tyler is unable to re-assign its personnel.

Implementation hours are scheduled and delivered in four (4) or eight (8) hour increments.

Tyler provides onsite training for a maximum of 12 people per class. In the event that more than 12 users wish to participate in a training class or more than one occurrence of a class is needed, Tyler will either provide additional days at then-current rates for training or Tyler will utilize a Train-the-Trainer approach whereby the client designated attendees of the initial training can thereafter train the remaining users.

Tyler's pricing is based on the scope of proposed products and services being obtained from Tyler. Should portions of the scope of products or services be removed by the Client, Tyler reserves the right to adjust prices for the remaining scope accordingly.

Project Management includes project planning, kickoff meeting, status calls, task monitoring, verification and transition to support.

Development modifications, interfaces and services, where applicable, shall be invoiced to the client in the following manner: 50% of total upon authorized signature to proceed on program specifications and the remaining 50% of total upon delivery of modifications, interface and services.

AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** J

SUBJECT:
Public Works: Approval of the Notice of Completion for the Stonecrest Basin Pump Equipment Installation Project, and authorization for the Mayor to execute and the City Clerk to attest and file said Notice with the Kings County Recorder's Office.

Recommedation:
That the City Council, by motion, approve a Notice of Completion for the Stonecrest Basin Pump Equipment Installation Project, and authorize the Mayor to execute and the City Clerk to attest and file said Notice with the Kings County Recorder's Office.

Background:
On October 15, 2020, the Council awarded the Stonecrest to JT2 INC DBA Todd Companies of Visalia, CA. This project consisted of equipping the Stonecrest Basin with an electrical service, control panel, pump, and related piping equipment for dewatering the basin to accommodate additional development and routine maintenance. A storm drain wet well and related piping existed for the pumping of this basin to People's Ditch.

There were (3) contract change orders on this project that include:

1. Electrical work per electrical plans and specifications with the following clarification; Mount City furnished Pump Controller on existing block wall.
   (Credit for free standing panel rack)
2. Add pull box, Revise 4" size valve to 6" and shift vault west to avoid tree removal
3. Saw cut, demo & replace sidewalk in order to access SCE lines.

In total change orders amounted to a net increase of $2,057.00

SOURCE OF BUDGET FUNDING	AMOUNT
FY 2018/19 Capital Improvement Budget	$ 175,000.00
Total Budget Funding	$ 175,000.00

CONSTRUCTION COST:	
Original Contract – Total Bid Award	$86,500.00
Contract Change Order No. 1	-$1,952.00
Contract Change Order No. 2	$1,165.00
Contract Change Order No. 3	$2,844.00
Total Construction Cost	$ 88,557.00

FISCAL IMPACT:
The FY18/19 Capital Improvement Budget provided $175,000.00 for construction of this project including contingencies. The Final Project Construction and Finance History Report are attached for Council review.

ATTACHMENTS:
NOC - Recording Original WORD
NOC - Recording Original PDF
Final Project Construction and Finance History

RECORDING REQUESTED BY:
CITY OF HANFORD

When recorded return to:

City Clerk
City of Hanford
315 North Douty Street
Hanford, California 93230-3951

G.C. 27361.3 - Fee NIL

NOTICE OF COMPLETION

TO WHOM IT MAY CONCERN:

YOU ARE HEREBY NOTIFIED AS FOLLOWS:

1. The work of Improvement is located: N. Glacier Way 130FT N. of Willow Drive

2. The Improvement is particularly described as: Basin Pump Equipment Installation

3. The date of completion of the work of Improvement: 02/24/2021

4. The Owner of the work of Improvement: City of Hanford.

5. The nature of the owner's interest or estate: Fee Simple Title.

6. The name of the original contractor for the work of Improvement:
   JT2 INC DBA Todd Companies

7. The surety for the work of Improvement: Fidelity and Deposit Company of Maryland

8. All work for this project has been completed.

9. Accepted by minute action of the City Council of the City of Hanford on: March 16, 2021.

I certify under penalty of perjury that the foregoing is true and correct.
Dated this 6th day of April, 2021.

BY: _____
Francisco Ramirez, Mayor
City of Hanford, County of Kings, State of California

Attachment: NOC - Recording Original WORD (PW: NOC Stonecrest Basin Pump Equipment Installation Project)

I, the undersigned, say:
I am the person who signed the foregoing notice. I have read the above notice and know its contents, and the facts stated therein are true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Hanford, California, this ____ day of _____, 2021.

BY: _____
Francisco Ramirez, Mayor
City of Hanford, County of Kings, State of California

Authority: Section 1181 Civil Code

Attachment: NOC - Recording Original WORD (PW: NOC Stonecrest Basin Pump Equipment Installation Project)

RECORDING REQUESTED BY:
CITY OF HANFORD

When recorded return to:

City Clerk
City of Hanford
315 North Douty Street
Hanford, California 93230-3951

G.C. 27361.3 - Fee NIL

NOTICE OF COMPLETION

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Dated this 6th day of April, 2021.

BY: _____
Francisco Ramirez, Mayor
City of Hanford, County of Kings, State of California

Attachment: NOC - Recording Original PDF (PW: NOC Stonecrest Basin Pump Equipment Installation Project)

I, the undersigned, say:
I am the person who signed the foregoing notice. I have read the above notice and know its contents, and the facts stated therein are true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Hanford, California, this ____ day of _____, 2021.

BY: _____
Francisco Ramirez, Mayor
City of Hanford, County of Kings, State of California

Authority: Section 1181 Civil Code

Attachment: NOC - Recording Original PDF (PW: NOC Stonecrest Basin Pump Equipment Installation Project)

FINAL PROJECT CONSTRUCTION AND FINANCE HISTORY

PROJECT: Stonecrest Basin Pump Equipment Installation Project
CONTRACTOR: JT2 INC DBA Todd Companies
P.O. Box 6820
Visalia Ca 93290

CONTRACT DATES:		
	Bid Date	October 06, 2020
	Council Award	October 06, 2020
	Contractor Started Work	November 9, 2020
	Contract Time of Completion	December 11, 2020
	Contractor Completed Work	February 24, 2021

CONTRACT CHANGE ORDERS:

1. Contract Change Order No. 1: Electrical work per electrical plans and specifications with the following clarification; Mount City furnished Pump Controller on existing block wall. (Credit for free standing panel rack)

   For a net decrease of -$1,952.00
2. Contract Change Order No. 2: Add pull box, Revise 4" size valve to 6" and shift vault west to avoid tree removal

   For a net increase of $1,165.00
3. Contract Change Order No. 3: Saw cut, demo & replace sidewalk in order to access SCE lines.

   For a net decrease of $2,844.00

FINANCIAL HISTORY:

SOURCE OF BUDGET FUNDING	AMOUNT
FY 2018/19 Capital Improvement Budget	$ 175,000.00
Total Budget Funding	$ 175,000.00

CONSTRUCTION COST:

Original Contract – Total Bid Award	$86,500.00
Contract Change Order No. 1	-$1,952.00
Contract Change Order No. 2	$1,165.00
Contract Change Order No. 3	$2,844.00
Total Construction Cost	$ 88,557.00
Balance (Credit)	-$ 86,443.00

Attachment: Final Project Construction and Finance History (PW: NOC Stonecrest Basin Pump Equipment Installation Project)

AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** A

SUBJECT:
City Attorney: Adoption of Resolution 21-12-R declaring four (4) City-owned, undeveloped residential lots located on Idlewood Way, west of Greenbrier Drive, as surplus property

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SUBJECT:
Adoption of Resolution 21-12-R declaring that four (4) undeveloped residential lots owned by the City located on Idlewood Way, west of Greenbrier Drive, are surplus property and adoption of Notice of Exemption 2021-21.

BACKGROUND:
See attached staff report.

FISCAL IMPACT:

ATTACHMENTS:
Staff Report
Resolution 21-12-R and Exhibit
Notice of Exemption 2021-21

FISCAL IMPACT:

ATTACHMENTS:
2021.03.24 Staff Report - Surplus of Idlewood Lots
2021.03.24 Resolution for Surplus of Idlewood Lots
Notice of Exemption

CITY OF HANFORD CITY COUNCIL
STAFF REPORT
April 6, 2021

SUBJECT: Adoption of Resolution 21-12-R declaring that four (4) undeveloped residential lots owned by the City located on Idlewood Way, west of Greenbrier Drive, are surplus property and adoption of Notice of Exemption 2021-21.

STAFF RECOMMENDATION

Staff recommends that the Council: (i) adopt Resolution 21-12-R declaring four (4) undeveloped residential lots owned by the City located on Idlewood Way, west of Greenbrier Drive, as surplus property; and (ii) adopt Notice of Exemption 2021-21, which determines that sale of the lots is exempt from environmental review.

RECOMMENDED MOTIONS

1. I move to approve Resolution 21-12-R.

2. I move to approve Notice of Exemption 2021-21.

BACKGROUND

The subject property is comprised of four (4) vacant lots which were dedicated to the City of Hanford with the development of Greenbrier Gardens, Tract 876. The lots were dedicated by the subdivision developer, Rhetorical Flourish, LLC, on March 29, 2019. In accordance with Resolution No 2006-22, approving Tentative Tract 876, four (4) buildable lots were required to be dedicated to the City for use in its affordable housing program. With the elimination of the Redevelopment Agency of the City of Hanford, the City does not have the staff, nor resources, to fulfill the intended obligation.

See Figure 1 and 2, showing the project aerial and location.

Please note: The aerials show a former construction office and associated paved parking stall, which existed during development of Greenbrier Gardens, but has since been removed.

Attachment: 2021.03.24 Staff Report - Surplus of Idlewood Lots (City Attorney: Adoption of Resolution 21-12-R)

Figure 1: Aerial

Figure 2: Aerial (zoom)

Attachment: 2021.03.24 Staff Report - Surplus of Idlewood Lots (City Attorney: Adoption of Resolution 21-12-R)

The site is designated in the General Plan as Low-Density Residential (see Figure 3) and zoned R-L-5 Low-Density Residential (see Figure 4), in accordance with the General Plan.

Figure 3: General Plan Designation (outlined in red)
Low-Density Residential

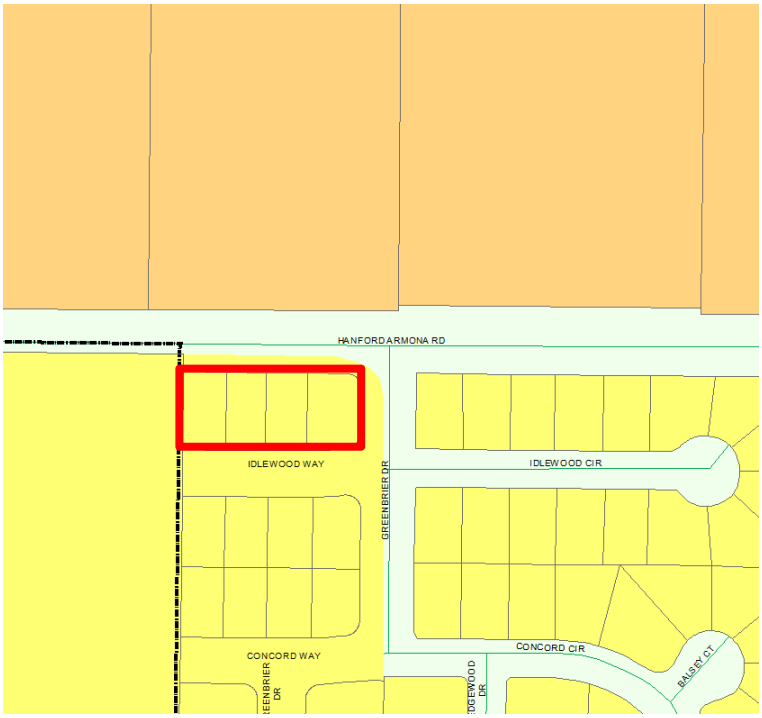
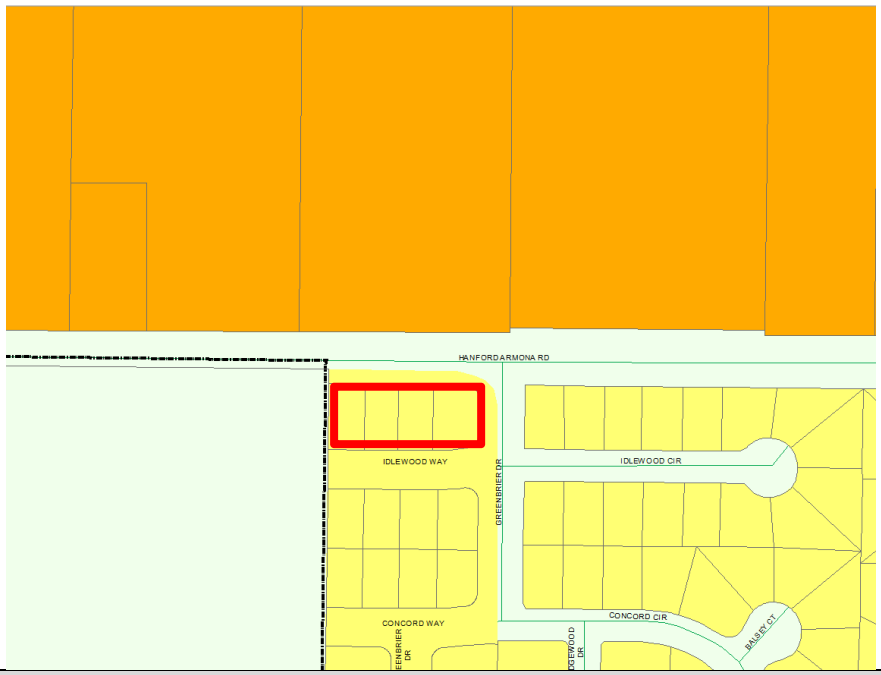


Figure 4: Zoning (outline in red)
R-L-5 Low-Density Residential

Attachment: 2021.03.24 Staff Report - Surplus of Idlewood Lots (City Attorney: Adoption of Resolution 21-12-R)



Background

Surplus Property Declaration and Future Sale of Property

Self-Help Enterprises (SHE) and Habitat for Humanity of Tulare/Kings (Habitat) wish to purchase the four (4) undeveloped lots. SHE and Habitat intend to develop an affordable owner-occupied home on each of the lots. One (1) home would be constructed through Habitat's Homeownership program and three (3) would be constructed through SHE's Infill New Construction program within eighteen (18) months of the title being transferred.

If the lots are sold to SHE and Habitat, each organization will record an affordability covenant for the lots, which will run with the land for the duration of a specified affordability period. The affordability period will be negotiated by the City and the purchasing parties and will be identified in the sales documents that will be submitted to the Council for review in the future.

However, prior to the sale of surplus property, the City is required to satisfy surplus property requirements of Government Code Section 54220, *et seq.* One (1) mandate requires the City to provide written notice to housing, park and open space, and school entities and agencies informing them of an opportunity to purchase or lease the four (4) lots. The entities and agencies will be given sixty (60) days to respond to the surplus property notice. Following the sixty (60) day notice period, if no agency or entity expresses an interest in the lots, the properties may be sold to other parties, including SHE and Habitat.

By adopting Resolution 21-12-R, the Council will declare the four (4) lots surplus and will direct the City Manager to send the required surplus property notice to housing, park and open space, and school agencies and entities. The Resolution further directs the City Manager to negotiate sales terms with SHE and Habitat if no agency or entity receiving the required surplus property notice expresses interest in the lots. The City Manager will submit the negotiated terms to the City Council for consideration and approval at a future meeting. The lots will not be sold until the Council approves the sales terms.

General Plan Consistency

California Government Code Section 65402 requires that surplus property declarations and the disposition of the City's real property be reviewed by the Planning Commission for determination as to whether the disposition conforms to the City's adopted General Plan.

On April 23, 2021, the Planning Commission determined that sale of the four (4) lots is consistent with the City's 2035 General Plan, adopted April 24, 2017. Specifically, the Planning Commission determined that the proposed sale of the lots and their development as affordable housing is consistent with the following sections of the General Plan:

> Land Use Goal L6: [Provide] a wide range of housing choices that insure opportunities for a variety of age groups, lifestyles, and income levels.
>
> Land Use Goal L8: [Provide] a range of residential building types suitable for a variety of lifestyles, ages, affordability levels, and design options.
>
> Policy L115 Housing Diversity: Encourage residential developments to have households with a diverse range of income levels.
>
> Section 3.10.2 Complete Neighborhoods:
>
> Complete neighborhoods meet the daily needs of residents and provide a mix of amenities, including pedestrian- and bicycle-friendly streets, parks, community centers, day care centers, community gardens, affordable housing, and neighborhood commercial and service uses.
>
> Policy L111 Complete Neighborhoods: Promote efforts to make new and existing neighborhoods more complete by encouraging the development of a mix of complementary uses and amenities that meet the daily needs of residents.
>
> Policy H67 Complete Communities: Support the concept of complete communities by requiring a mix of housing types that meet a variety of lifestyles and incomes.

ENVIRONMENTAL ASSESSMENT

Pursuant to Section 15312 of the California Environmental Quality Act Guidelines (CEQA), the sale of surplus government property is considered exempt from further environmental review. See attached Notice of Exemption.

RESOLUTION NO. 21-12-R
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HANFORD, CALIFORNIA, FOUR UNDEVELOPED RESIDENTIAL LOTS ON IDLEWOOD WAY, WEST OF GREENBRIER DRIVE, AS SURPLUS PROPERTY

At a regular meeting of the City Council of the City of Hanford, duly called and held on April 6, 2021, at 7:00 p.m., it was moved by Council Member _____, and seconded by Council Member _____, and duly carried that the following resolutions be adopted:

WHEREAS, the City of Hanford ("the City") owns four (4) undeveloped residential lots located on Idlewood Way, west of Greenbrier Drive (APNs 011-490-001 through 004) (collectively "the Lots"); and

WHEREAS, the Lots are more particularly described in the attached Exhibit "A," which is incorporated herein by reference; and

WHEREAS, the Lots were dedicated to the City by Rhetorical Flourish, LLC ("Rhetorical"), the developer of Tract 876 (Greenbrier Gardens); and

WHEREAS, a condition of approval for Tract 876 required Rhetorical to dedicate the Lots to the City for use in the City's affordable housing program; and

WHEREAS, with the State's dissolution of redevelopment agencies, including the Redevelopment Agency of the City of Hanford, the City does not have the staff or resources to the fulfill the purpose for which the dedication was made; and

WHEREAS, Self-Help Enterprises ("SHE") and Habitat for Humanity for Tulare/Kings ("Habitat") have expressed interest in purchasing the Lots for the development affordable housing; and

WHEREAS, acquisition and development of the Lots by SHE and Habitat would be consistent with the underlying reason for Rhetorical's dedication of the Lots to the City; and

WHEREAS, the City has no other plans to develop or utilize the Lots; and

WHEREAS, it is in the City's best interest to sell the Lots to parties that will develop the properties for affordable housing; and

WHEREAS, the development of affordable housing would contribute toward the creation of affordable housing that is mandated by the State.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Hanford hereby declares the Lots to be surplus.

Attachment: 2021.03.24 Resolution for Surplus of Idlewood Lots (City Attorney: Adoption of Resolution 21-12-R)

RESOLVED FURTHER, the City Manager is hereby authorized and directed to send a written offer ("Surplus Property Notice") to sell or lease the Lots to those public agencies identified in Government Code Section 54222.

RESOLVED FURTHER, the City Manager shall, in accordance with surplus property provisions of the Government Code, negotiate the terms of sale or lease of the Lots with any public agency that responds to the Surplus Property Notice and expresses an interest in the Lots.

RESOLVED FURTHER, if no agency or entity that receives the Surplus Property Notice desires to purchase or lease the Lots or if the City is unable to successfully negotiate a sale or lease with an interested agency or entity, the City Manager is hereby authorized and directed to negotiate the sale of the Lots to private parties that will develop affordable homes.

RESOLVED FURTHER, the City Manager is directed to provide the Council, for its review and approval, those terms that the City Manager negotiates in accordance with this Resolution.

RESOLVED FURTHER, the Lots will not be sold or leased until applicable terms are approved by the City Council.

PASSED, ADOPTED AND APPROVED this 6th day of April, 2021 by the following vote:

AYES:_____

NOES:_____

ABSTAIN: _____

ABSENT: _____

Approved _____
FRANCISCO RAMIREZ
Mayor

Attest:

_____
NATALIE CORRAL
CITY CLERK

STATE OF CALIFORNIA)

COUNTY OF KINGS) ss

CITY OF HANFORD)

I, Natalie Corral, City Clerk of the City of Hanford, do hereby certify the foregoing Resolution was duly passed and adopted at a special meeting of the City Council of the City of Hanford held on the 6th day of April, 2021.

Date: _____ _____

City Clerk

EXHIBIT "A"

RECORDING REQUESTED BY:

MAIL TAX STATEMENT
AND WHEN RECORDED MAIL DOCUMENT TO:
City of Hanford,
319 North Douty Street
Hanford, CA 93230

Space Above This Line for Recorder's Use Only

A.P.N.: 011-490-001, 002, 003 and 004

GRANT DEED

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX $-0-; CITY TRANSFER TAX $; **GC 6103 and R & T 11922**
SURVEY MONUMENT FEE $

[X] computed on the consideration or full value of property conveyed, OR
[ ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
[ ] unincorporated area; [X] City of **Hanford**, and
EXEMPT FROM BUILDING HOMES AND JOBS ACTS FEE PER GOVERNMENT CODE 27388.1(a)(2)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Rhetorical Flourish, LLC, a California limited liability company**

hereby GRANTS to **The City of Hanford, a municipal corporation**

the following described property in the City of **Hanford**, County of **Kings**, State of **California**:

LOTS 1, 2, 3 and 4, AS SHOWN ON THAT CERTAIN MAP ENTITLED "COUNTY TRACT NO. 876 - GREENBIER GARDEN",WHICH MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF KINGS, STATE OF CALIFORNIA ON MAY 16, 2014, IN BOOK 24 OF TRACT MAPS AT PAGE 88.

APN: 011-490-001 (Lot 1), 011-490-002 (Lot 2),

011-490-003 (Lot 3) and 011-490-004 (Lot 4)

Mail Tax Statements To: **SAME AS ABOVE**

Attachment: 2021.03.24 Resolution for Surplus of Idlewood Lots (City Attorney: Adoption of Resolution 21-12-R)

Grant Deed - continued

Date: **11/14/2018**

A.P.N.: 011-490-001, 002, 003 and 004

Dated: November 14, 2018

Rhetorical Flourish, LLC, a California limited liability company

By:_____
Name: Sandra Grouf
Title: Authorized Signor

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California)SS

COUNTY OF Solano)

On November 15, 2018 before me, Karron M. Vasquez, Notary Public, personally appeared Sandra Grouf

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(~~ies~~), and that by his/her/their signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

This area for official notarial seal.

Notary Signature

KARRON M. VASQUEZ
Notary Public – California
Solano County
Commission # 2228832
My Comm. Expires Feb 14, 2022

Attachment: 2021.03.24 Resolution for Surplus of Idlewood Lots (City Attorney: Adoption of Resolution 21-12-R)

CERTIFICATION OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this Grant Deed to the City of Hanford, a municipal corporation, is hereby accepted under authority of the Council of said City of Hanford and the Grantee Consents to the recordation thereof.

DATED: February 5, 2019

Darrel Pyle, City Manager

Notice of Exemption 2021-21

To: ☐ Office of Planning and Research
P.O. Box 3044, Room 212
Sacramento, CA 95812-3044

☒ County Clerk
County of Kings
Kings County Government Center
Hanford, CA 93230

From: City of Hanford
317 North Douty Street
Hanford, CA 93230

Project Title: Declaration of Surplus/Disposition of Real Property

Project Location – Idlewood Way, west of Greenbrier Drive
(APN 011-490-001, -002, -003, and -004)

Project Location – City: Hanford **Project Location – County:** Kings County

Description of Nature, Purpose and Beneficiaries of Project: The declaration as surplus and disposition of real property located on Idlewood Way, west of Greenbrier Drive, totaling 0.52 acres. The property is designated by the General Plan as Low-Density Residential and zoned R-L-5 Low-Density Residential.

Name of Public Agency Approving Project: City of Hanford

Name of Person or Agency Carrying Out Project: City of Hanford

Exempt Status: **(check one)**

☐ Ministerial (Sec. 21080(b)(1); 152698);
☐ Declared Emergency (Sec. 21080(b)(3); 15269 (a));
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
☒ Categorical Exemption: State type and section number: **15312 Surplus Government Property Sales**
☐ Statutory Exemption. State code number:

Reasons why project is exempt:
The City of Hanford determined the project to be exempt from environmental review pursuant to Section 15312 of the California Environmental Quality Act (CEQA) Guidelines. Class 12 consists of sales of surplus government properties, except for parcels of land located in an area of statewide, regional, or areawide concern, identified in Section 15206 (b)(4). The property is not located in an area of statewide, regional, or areawide concern.

Lead Agency
Contact Person: Gabrielle Myers Area Code/ Telephone: (559) 585-2578

Signature: _____ Date: March 23, 2021 Title: Senior Planner

☒ Signed by Lead Agency Date received for filing at OPR: _____
☐ Signed by Applicant

AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** B

SUBJECT:
Parks and Community Services: Approval of the contract with Park Planet for the Centennial Park Playground Renovation and appropriation of $263,660.49 from the Accumulated Capital Outlay fund to fund the project.

RECOMMENDATION:

That the City Council, by motion, award the contract for the Centennial Playground structures and construction to Park Planet for their proposed design for $263,660.49 and appropriate the funding from the Accumulate Capital Outlay (ACO) fund to fund the project.

BACKGROUND:

The Civic Park Playground was approved by Council through the 2020/2021 Fiscal Year Five-Year Capital Improvement Plan at a budget of $270,000. The original funding plan included funding from the Park Impact Fees. After further discussion with the City Attorney regarding the legal use of the Park Impact Fees, it was determined that this project does not qualify for the use of those fees and therefore the money must be appropriated from the City's ACO fund.

During the Council meeting on November 3, 2020, the Council awarded the Civic Park Playground contract to Park Planet for $170,474.23 to install a universally accessible play structure located adjacent to the carousel.

On January 19, 2021, Council tabled the item but rejected the bid from Bush Construction for the Civic Park site improvements associated with the play structure citing concerns regarding cost and project location.

On February 2, 2021, Council expressed concern regarding the proposed location within Civic Park. Council was presented with alternative sites for consideration and directed staff to relocate the new universally accessible play structure to Centennial Park.

Working collaboratively with Park Planet, three design options and cost estimates were presented to the Parks and Recreation Commission during their February 8, 2021 meeting. Input from the Commission included the importance of ADA accessibility, age-appropriate play areas, shade, unique play features, and different from play structures currently with Hanford's park system (see attached renderings and itemized quote).

Working with staff, Park Planet submitted a design and cost estimate that met the criteria expressed by the Commission. The current design provides a universally accessible play structure, a large Sky Dome rope climber, shade structures, and two new swings. The existing ADA accessible swing will be utilized and repositioned within the current design. To reduce cost, rubberized flooring is designed to provide ADA accessibility to the play structure, with the remaining play area surface utilizing wood chips. The Parks Division will be installing park benches around the perimeter of the play area to provide seating for parents and caregivers. The total cost of this new playground is $263,660.43.

This proposed new playground will provide Hanford residents with new, improved, and unique play structures that can be enjoyed and accessed by all persons.

FISCAL IMPACT:
This project will be funded through the Accumulated Capital Outlay (ACO) Reserve Fund in the amount of $263,660.49.

ATTACHMENTS:
Centennial Park Playground Proposal and Design Rendering

Park Planet

A Division of Park Associates Inc.

Parks and Play Spaces Since 2000

Proposal For: Centennial Park
11731 Hanford Armona Rd
Hanford CA 93230

Park Planet Rep: Kasanna Coulter
M: 559-341-5768
Kasanna@parkplanet.com

415 Elm St,
Red Bluff CA 96080

www.parkplanet.com

O: 530.244.6116
F: 530.246.0518

Park Planet

System Type R5

For Kids Ages 5-12

Centennial Park
Hanford, CA

Project #PPT2122C95F

PLAYCRAFT SYSTEMS
A PLAYCORE Company

*Colors and textures may vary from actual produ

Park Planet

System Type R5

For Kids Ages 5-12

Centennial Park
Hanford, CA

Project #PPT2122C95F

PLAYCRAFT SYSTEMS
A PLAYCORE Company

*Colors and textures may vary from actual produ

Attachment: Centennial Park Playground Proposal and Design Rendering (Parks: Centennial Park Playground Renovation)

Park Planet
a Division of Park Associates In
415 Elm Stree
Red Bluff California 9608
(530) 244-611

QUOTE

Quoted To:

City of Hanford
317 N Douty St
Hanford, CA 93230

Contact: Jason Glick
Phone: 559-585-2528 / Email: jglick@cityofhanfordca.com

Quote #:	Q21-0577
Date:	March 17, 2021
Project:	Centennial Park Playground
City:	Hanford
Sales Rep - Email:	Kasanna Coulter - kasanna@parkplanet.com
Terms:	Net 30dys / Install

#	Description	Vendor	Item No	Qty	Rate	Amount
1	Structure Custom Round 5 Steel Play System..SN: R50A7983B	PlayCraft	PR-R5	1	83,803.00	83,803.00
2	Large Sky Dome Net	PlayCraft	A2-NE-913	1	50,930.00	50,930.00
3	Playcraft Spring Sale Sky Dome Discount (if ordered before 5/1/2021)	Park Planet	Discount-Park Planet	1	-10,186.00	-10,186.00
4	8ft Single Post Swing - (1 Inclusive Seat) - 5' Dia. Posts	PlayCraft	A2-2181-1ADA	1	2,165.00	2,165.00
5	8ft Single Post Swing (2 Belts) - 5' Dia. Posts	PlayCraft	A2-2181-2B	1	1,625.00	1,625.00
6	5-12 Age Appropriate Sign (HDPE) - With Left Side Sanitation....	PlayCraft	A2-1303-STN-L	1	1,340.00	1,340.00
7	Handsfree Hand Sanitizer Dispenser	PlayCraft	HNDSNTZR_AUTO	1	72.00	72.00
8	Wood Fiber - Chinese Camp Mill	Park Planet	Wood Fiber - CC	50	17.00	850.00
9	Slide Mats -includes freight	Fibar Group	Slide Mats	3	175.00	525.00
10	PlayCraft Freight w/ Liftgate & Pallet Jack **PlayCraft shipping pallet dimensions can reach upwards of 4'W x 8'H x 18'L. Offloading is the CUSTOMERS responsibility and is NOT included in shipping costs. Please discuss offloading options with an Park Planet representative PRIOR to placing an order.	PlayCraft	PCF	1	4,000.00	4,000.00
11	Bettendorf Freight	Bettendorf Enterprises	BDF	1	1,100.00	1,100.00
12	Offloading & storage of equipment is the customer's responsibility. For most products a forklift rated for 5000lbs or more is recommended.					
Installation by Park Associates Inc. CA - Lic# 959805 DIR# PW-LR-1000423561 Prevailing Wage						
13	Installation assumes normal digging conditions with standard bobcat & auger. Bobcat & concrete truck access required.					
14	IF APPLICABLE: 1. Park Planet installers are not signatory to any unions and will not sign any PLA for the installation of the playground or special playground surfacing. The following supply and/or installation estimates do not include signing a PLA or paying any union labor or fees. All of the labor quoted herein will need to be excluded from a PLA agreement and union labor requirement waived by the purchasing agency, owner or District. 2. Skilled & Trained Workforce – If this project is a Lease Lease-Back, or Design-Build Project, or a contract that triggers the Skilled and Trained Workforce requirements for a Public Works project, please contact Park Planet immediately. The					

Attachment: Centennial Park Playground Proposal and Design Rendering (Parks: Centennial Park Playground Renovation)

#	Description	Vendor	Item No	Qty	Rate	
	Following estimate for equipment and/or labor does NOT include such compliance. Park Planet and their subcontractors will NOT comply with Skilled and Trained Workforce labor and reporting. Park Planet's portion of work (and our subcontractor's work) will need to fall within an exception or waiver to the Skilled and Trained Workforce requirements or our estimate will not be valid.					
15	Installation of Park Planet Single Post Swing, ADA Swing & Sign w/Sanitizing Station - PC2181 +1302+1303	Park Associates Inc.	INST-CA	1	5,500.00	5,500.00
16	Demo and SAVE single ADA swing (returned to District), demo and dispose of existing swing, structure & PIP, demo and re-use base rock from original PIP for new PIP sub base.	Park Associates Inc.	INST-CA	1	9,670.00	9,670.00
17	Installation of temporary fencing around work area while project is under construction Remains around work area until PIP is completed	Park Associates Inc.	INST-CA	1	4,270.00	4,270.00
18	Pull back and reinstall existing wood fiber, install 50 CY of new wood fiber -if additional wood fiber is needed, there will be an extra cost.	Park Associates Inc.	INST-CA	1	4,695.00	4,695.00
19	Re-use and compact base rock from original PIP for the new PIP sub base (1,000 sqft) -City of Hanford to provide additional Class 2 Base rock for PIP area if needed	Park Associates Inc.	INST-CA	1	4,160.00	4,160.00
20	City will offload and store equipment, installer will transport equipment from City yard to job site once construction begins	Park Associates Inc.	INST-CA	1	3,270.00	3,270.00
21	Pour in Place Safety Surfacing Island Provide & install 850 SF of 3.5" TOTAL UNIFORM thickness SpectraPour safety surfacing. 3.5" UNIFORM thickness is certified for a max. fall height of 8'-0" Wear layer to be 50% Standard Color / 50% Black mixed with standard aromatic resin. NO GRAPHICS OR COLOR PATTERNS INCLUDED.	Park Associates Inc.	INST-CA	1	17,330.00	17,330.00
22	Third Party CPSI Playground Inspection	Park Associates Inc.	INST-CA	1	2,000.00	2,000.00
Installation of Option 3 Equipment						
23	Installation of Park Planet 5-12 Unit - R50A7983C	Park Associates Inc.	INST-CA	1	59,815.00	59,815.00
24	Installation of Sky Dome Net - FRENE804	Park Associates Inc.	INST-CA	1	7,220.00	7,220.00
25	Exclusions: Offloading and storage of equipment. Site preparation not specifically stated. Site is assumed flat and suitable for construction. Drainage Consideration Inspections or applicable permits and fees Removal of obstacles to reach construction site. Site security including security fencing. *Additional fees may apply if Bonding or Special Insurance required* **Location and Marking of utility, plumbing and irrigation lines is the responsibility of the customer. Park Planet is not responsible for repairing unmarked underground utilities and pipes. ** By signing below, you acknowledge and agree to our Contract; Exclusions, Conditions & Payment Terms, which are to be included in, and supersede any additional contracts or sub-contract agreements made separately based on this "Estimate". Unless otherwise specified above we Exclude Responsibility for: material delivery &/or offloading equipment, storing of equipment, removal of packaging accumulated by equipment supplied by others, project security, landscape & hardscape repair based on access route to site, delays or returns due to layout conflicts, locating underground utilities; utilities, pipes, obstructions in work area, conditions unforeseen and/or not disclosed at time of estimate, permits, engineering, material testing, soil samples. Conditions: Grades; stable, compacted, & workable (rough					

#	Description	Vendor	Item No	Qty	Rate	
	grade to be taken + or - one tenth of one inch), adequate access to work site provided for workmen, materials, tools & equipment. Quote assumes all labor to be completed without interruption.					

QUOTE GOOD FOR 30 DAYS

Sub Total	254,154.00
CA-Kings (7.25%)	9,506.49
Total	**$263,660.49**

ORDER / DELIVERY INFORMATION:

A PURCHASE ORDER OR SIGNED CHANGE ORDER MUST BE RECEIVED BEFORE ADDITIONAL EQUIPMENT, INSTALLATION, OR SERVICES CAN PROCEED.

Authorized Signature: _____ Date:_____

**Purchasing agent who is authorized to enter into binding agreement for quoted entity.

**By signing this quote, I have read and agree to the quote Terms & Conditions listed below, on the following 2 pages.

TERMS & CONDITIONS

1. General Notes
*Assembly and Installation NOT included unless otherwise noted
*Payment and Performance bonds are NOT included unless otherwise stated. If required, additional charges will apply. Please call for details!
*Customer responsible for quoted quantities and model numbers, please check!
*Price reflects quoted quantity. Please request revision if alternate quantity is desired.

2. Payment / Ordering
*Most repeat customers are given the terms of 50% Deposit with order; Remainder within 30 Days from Delivery.
*Others require a onepage credit application or payment with order
*TO ORDER, please sign quote and return via email or fax to avoid any shipping delays. Fax or email copy deemed to be legal equivalent of original. If Payment with Order is required, please sign quote below and return with payment. All past due accounts subject to 1 ½% monthly finance charge. In the even legal action is required to effect collection venue shall be Red Bluff, CA.

3. Shipping / Unloading
*Shipped by Common Carrier – Customer will need 24 people to unload. Liftgate NOT included. Items will be boxed and / or stretch wrapped to pallets and customer is responsible for offloading. Delivery Drivers do NOT unload
**IMPORTANT: Customer is responsible for receiving and checking quantities and condition at time of delivery Please note any shortages or damages on delivery copy.
*Notwithstanding anything to the contrary in any Contract Documents, Customer understands that estimated shipment times for materials are an estimate only. We have no control over shipment dates. We thus make no guarantee to Owner or Customer regarding the projected shipment dates for materials and shall no be liable for any loss caused by the timing of shipments.

4. Engineered Wood Fiber
*Customer to provide access for Engineered Wood Fiber delivery with tractor truck and 53' trailer.
*Compaction of the Engineered Wood Fiber is NOT included in the installation cost, if desired, please request an updated proposal.

5. General Notes for Purchased Installation
*Installation does NOT include ground preparation, excavation, safety surfacing, and/or safety surfacing borders, prep work, flat work, grading, rerouting of water, electric, drainage or sprinkler lines unless otherwise noted in the proposal
*Demo of existing equipment or safety surfacing is NOT included unless otherwise stated in the proposal
*ROCK CLAUSE: Pricing is based on normal soil conditions which would allow an auger on a tractor to dig footings. If rocks/boulders interfere with the progres of the excavation, additional fees may apply.
*ACCESS CLAUSE: Installation based on clear access to area. Crane service is NOT included. Customer to provide access for bobcat to work area, bobcat will be provided by installer. Minimum access shall be 7' wide and 7' high. If adequate access is not provided additional charges may apply and repairs to landscape and irrigation may be required. Customer is responsible for any repairs to landscape if proper access is not provided.
*UTILITY CLAUSE: Unless stated in writing in the quote proposal, installation does not include marking of utilities by Dig Alert or other similar entities. Customer can, however, call Dig Alert directly. Dig Alert CANNOT locate any private lines, PVC or plastic water lines. Installation does NOT include repair or relocating any underground utilities, such as drainage, irrigation, live water lines, main low voltage lines, gas, electrical, communication, or sewer etc. Customers responsibility to provide locations of any utilities prior to commencement of work.
*Customer is responsible for all landscape repairs such as, but not limited to damaged trees, bushes, lawn, curbing, sidewalks and/or asphalt paving caused by materials truck and/or 2ton bobcat needed to complete project.
*Installation does NOT include ground preparation, excavation, safety surfacing, and/or safety surfacing borders unless otherwise noted
*Before we proceed with the playground installation, the playground area MUST be compacted, be free of debris, and excavated accordingly. Please call for details.
*Concrete pad for surface mount items NOT included and MUST be provided by customer unless otherwise stated.
*Surface mount anchoring to asphalt and paver areas is NOT included unless otherwise stated.
*Private Utility Locator is NOT included unless otherwise noted. Private Utility Locator CANNOT locate any PVC or plastic water lines
*Installation does NOT include saw cutting and/or core drilling unless otherwise noted
*Installation does NOT include jackhammering. Please call for details.
*Area MUST have normal soil conditions and be level.
*All Athletic Equipment Goals such as soccer, football, etc, install location MUST be marked out by customer prior to installation, if installation was purchased.

6. Temporary Fencing
*Security guards and/or temporary fencing to prevent injuries, vandalism and/or accidental damage to install area or to the rubberized surface while it sets is NOT included unless noted on quote. If desired, the installers can put up caution tape, but Temporary Fencing is recommended. Although the fencing, if provided, is intended to provide this security, the overall security of the property is ultimately the responsibility of customer. We are not responsible for any vandalism or injuries even with the provision of the fencing.

7. ADA Access
*Play Equipment MUST be installed over an impactabsorbing surface such as ADA compliant Engineered Wood Fiber or Rubber Surfacing. If not quoted, please call for details.
*This area is NOT ADA compliant without the installation of compliant surfacing and an accessible route up to and into the playground area. Please call for details.

8. PouredinPlace Rubber Surfacing
*Rubber Surfacing cure time is normally 4872 hours and can vary depending on weather conditions.
*Rubber Surfacing cannot be installed during extreme weather conditions and may also not be installed if rain or frost is forecast during the cure time.
*48Hour Manned Security is NOT included for rubber.

9. Shade Shelters (non DSA)
*Shade Shelter installation price EXCLUDES – unless otherwise stated in this quote engineering, drawings, calculations, permits, permit submittal, site plans, special inspections, soil reports, impact fees, special assessment fees. Customer is responsible for any and all of these items if required by the City/County.
*Shade Shelter manufacture time is 8 weeks. Permitting can add 24 weeks or more to lead time. PLEASE NOTE: Shade Orders are NOT released into production until permit is issued!
*Shade Shelter installation price EXCLUDES concrete pad, footings, masonry columns, electrical wiring and lights unless otherwise noted.

TERMS & CONDITIONS (Continued)

10. Shade Shelters (DSA)
**8-10 Week lead time is AFTER DSA approval by your architect of choice
* Customer to receive shade shelter. If receiving by us is needed, please call for pricing and details!
* Job to be completed in one mobilization. Additional moves will be additional pricing if we are required to remobilize due to schedule issues, stop work or a delay in work not caused by us.
*Pricing does NOT include, architectural drawings, site/plot plans, DSA submittal fees, job site inspector fees, shop welding inspection fees, and/or permits
*DSA inplant Welding Inspector to be hired by the School District. Welding Inspector fee has NOT been quoted.
*School District / Architect responsible for submission of plans to DSA for DSA approval
*Fabrication cannot start until inspections have been coordinated, colors have been selected, and approved plans received.
*Pricing does NOT include footings, steel cages, anchor bolts, or erecting of shade shelter unless otherwise noted.

11. Prevailing Wages
*Prevailing Wages NOT included unless otherwise noted. (ie: Davis Bacon, TERO, ect.) If this is a Prevailing Wage project, please request alternate pricing.
*If Prevailing Wages / Davis Bacon Wages were INCLUDED, all other special work fees NOT included Additional Labor Charges may apply if alternate labor is required.
*If DIR Project Registration is required, work may not begin until we receive DIR Project ID number.
*Park Planet does not meet the Skilled & Trained Workforce Requirements and will not participate in same. Park Planet will not sign any PLA's for Union Work and is not signatory to any unions.

12. Indemnity Provision
*Notwithstanding anything to the contrary in any Contract Documents we shall have no duty to defend or indemnify Owner, Customer, or any other party we agree to defend or indemnify in any Contract Documents for that portion of any claim arising out of the comparative fault of any party we agree to defend or indemnify in any Contract Documents.

13. Park Planet General Insurance
Call for Proof of Insurance & W-9

AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** C

SUBJECT:
Public Works: Approval of seven (7) On-Call Architectural and Engineering Consultant Services Agreements

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RECOMMENDATION:
That the City Council, by motion, authorize the City Manager to execute, and the City Clerk to attest, the attached On-Call Architectural and Engineering Services agreements with the following firms to provide services for a three-year term:

- 4Creeks, Inc. of Visalia, CA
- Blair, Church & Flynn Consulting Engineers of Clovis, CA
- Lane Engineers, Inc. of Tulare, CA
- Peters Engineering Group, Inc. of Clovis, CA
- Provost and Pritchard of Visalia, CA
- QK, Inc. of Visalia, CA
- Zumwalt-Hansen and Associates of Hanford, CA

BACKGROUND:
Consultants are periodically used to prepare plans and specifications for Capital Improvement Projects, which allows City of Hanford engineering staff to manage other projects during design and construction. Having on-call consultants available provides assistance to city staff and expedites the design of projects, which is necessary to meet construction deadlines and keep up with the Capital Improvement Projects scheduled. Additionally, the majority of these consultants offer multiple services and will be pre-qualified, ready, and available to provide professional services to ALL departments in the City. The City has been using on-call agreements for Architectural and Engineering (A&E) services since 1994. On-call agreement significantly reduce A&E costs and streamline project initiation and solicitation.

The City provides services for Local, State, and Federally funded projects. In 2019, the Council approved a Resolution adopting Chapter 10 of the Caltrans Local Assistance Procedures Manual,

which established the requirements for consultant selections to perform work on Federal and/or State funded projects.

The required procedures for soliciting, evaluating, scoring, and negotiating the agreement were followed, and seven (7) consultants were selected for On-Call Architectural and Engineering Services. Of the selected consultants, six have an approved Indirect Cost Rate from Caltrans, and are approved to work on State and Federal projects. Zumwalt-Hansen and Associates has been a consultant with the city for many years, and has requested to provide services for local funded projects only.

Requests for Qualifications (RFQ's) were solicited, and fourteen (14) proposals were received for evaluation. Staff reviewed and ranked the proposals based on several criteria including qualifications and experience, and recommends approval of seven (7) on-call agreements with the firms listed above.

All firms are licensed in the State of California. Based on their professional qualifications and demonstrated competence, these consultants are qualified to provide the necessary On-Call Architectural and Engineering Consultant Services for the City of Hanford. Attached are the on-call agreements for Council review. In accordance with Section 4525 and 4529 of the Government Code, the engineering fees were negotiated with the selected firms, and the fee schedules are attached as a part of each agreement.

Project assignments will be distributed to all seven firms at the direction of the City Engineer, and the six firms qualified for State and Federally funded project will be selected for each project based on mini-RFP's. Each project will have a work order detailing the specifics of that project, and staff will follow standard requests for approval from Council when costs exceed $20,000 on a per project basis.

FISCAL IMPACT:
The cost for project engineering is included in each capital improvement project budget. An estimate for costs of services will be determined for each project prior to commencing services and actual services will be paid in accordance with the consulting firm's hourly fee schedule which is attached to each agreement.

ATTACHMENTS:
4Creeks-Hanford A&E Consultant Agreement
BCF-Hanford A&E Consultant Agreement
Lane-Hanford A&E Consultant Agreement
Peters-Hanford A&E Consultant Agreement
P&P-Hanford A&E Consultant Agreement
QK-Hanford A&E Consultant Agreement
Zumwalt-Hanford A&E Consultant Agreement

CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

4CREEKS, INC.

City of Hanford
900 S. 10th Avenue
Hanford, CA 93230

CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

(For Local Assistance Federal-aid Projects, based on Caltrans LAPM Form 10-R)

This exhibit contains fiscal requirements from 2 CFR 200 and may be used for state-only funded contracts as well.

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AGREEMENT FOR PROFESSIONAL SERVICES FOR ON-CALL ENGINEERING SERVICES

ARTICLE I: INTRODUCTION

This Agreement for Professional Services ("Agreement") is made and entered into this 6th day of April, 2021, by and between the City of Hanford, a Municipal Corporation ("CITY"), and **4Creeks, Inc.** ("CONSULTANT"), incorporated in the State of California.

The Project Manager for the "CONSULTANT" will be **Chris Crawford, PE**.

The name of the "CITY" is as follows: City of Hanford.

The Contract Administrator for CITY will be the City Engineer and/or its assignees.

RECITALS

1. CONSULTANT represents to CITY that they are trained, experienced, licensed and competent to perform the services which will be required by this Agreement; and

2. CONSULTANT represents to CITY that they possess the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

3. CITY desires to retain CONSULTANT to render Professional Architectural and Engineering Consulting Services as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth herein for such other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

A. **RETENTION OF CONSULTANT.** Subject to the terms and conditions set forth herein, the CITY retains the CONSULTANT to perform the services identified in this Agreement, as an Independent Contractor and CONSULTANT hereby accepts this independent contractor appointment.

B. **SCOPE OF SERVICES.** The work to be performed under this AGREEMENT is described in Article III, Statement of Work, and the approved CONSULTANT's Cost Proposals. The approved CONSULTANT's Cost Proposals shall be attached hereto as Exhibit "A" and incorporated by reference. If there is any conflict between the approved Cost Proposals and this AGREEMENT, this AGREEMENT shall take precedence.

C. **INDEMNIFICATION.** 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 actions, injuries, claims, damages, demands, liabilities, costs, losses, and expenses, direct or indirect, including without limitation, any and all court costs, reasonable attorneys' fees, expert witness fees, and other expenses which the CITY may sustain or incur as a consequence of, or are in any way related to or arising out of any failure to the CONSULTANT 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 and services on the part of CONSULTANT, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statue of repose or statute of limitations; provided however, the duty to defend shall apply regardless of whether an application statute of limitations has lapsed.

D. **INDEPENDENT CONTRACTOR STATUS.** CONSULTANT, in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employee's), in the performance of the Services to be performed pursuant to this Agreement, is an Independent Contractor, and shall not act as an agent or employee of the CITY, and that no relationship of employer-employee exists between the Parties hereto. The CONSULTANT's assigned personnel shall not be entitled to, or obtain retirement benefits or other benefits which accrue to CITY employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. Nothing in the Agreement shall create or be construed as creating a partnership, joint venture, or any other relationship between the CITY and CONSULTANT.

E. **TAX WITHHOLDINGS**. 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.

F. **THIRD PARTY PERSONS EMPLOYED.** 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.

G. **AGREEMENT NOT TRANSFERABLE.** Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT 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 CITY under this AGREEMENT, 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.

H. **NEGLIGENT ACTS AND OMMISSIONS.** CONSULTANT shall be fully responsible to the CITY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons employed by them for whom CONSULTANT is legally liable, in the same manner as persons directly employed by CONSULTANT.

I. **ALTERATIONS APPROVED IN WRITING.** 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.

J. **PAYMENTS.** 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.

K. **INTEREST OF CONSULTANT**. CONSULTANT and its shareholders and covenants represent that they do not now have any investment or interest in real property, and shall not acquire any interest, direct or

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indirect in the area covered by this Agreement, or any other source of income, interest in real property, or investment which would be affected in any manner or degree by the performance of CONSULTANT's Services hereunder. CONSULTANT further covenants and represents that, in the performance of the Services hereunder, to the best of its knowledge no person having any such interest shall perform any Services under this Agreement.

CONSULTANT is not a designated employee within the meaning of the Political Reform Act because CONSULTANT:

1. Will conduct, research, and arrive at conclusions with respect to rendition of information, advice, recommendation, or counsel, independent of the control and direction of the CITY or of any CITY official, other than normal agreement monitoring; and
2. Shall possesses no authority with respect to any CITY decision beyond rendition of information, advice, recommendation, or counsel. FPPC Reg.18700, et seq.

L. **PROFESSIONAL ABILITY OF CONSULTANT**. CITY has relied upon CONSULTANT's representations regarding its training and professional ability to perform the Services hereunder as a material inducement to enter into this Agreement. CONSULTANT shall therefore provide properly skilled personnel to perform all Services under this Agreement. The primary provider of the Services

called for by this Agreement shall be _____**Chris Crawford, PE, QSD**_____.
(Consult fill in employee name and title who will represent the agreement to the CITY)

who shall not be replaced without the written consent of the CITY. All work performed by the CONSULTANT under this Agreement shall be in accordance with the applicable professional standard of care, and shall meet the local professional standard of quality ordinarily to be expected of competent persons in CONSULTANT's field of expertise working in Kings County.

M. **COMPLIANCE WITH LAWS**. CONSULTANT shall use the proper standard of care in performing the Services, and shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations in effect at the time the Agreement is executed. In addition, if the request for proposal to provide professional services which are the subject of this Agreement cited any Federal or State Financial Assistance involved in the project for which the Services are provided, the CONSULTANT shall perform all services in accordance with all applicable federal and state laws, rates and regulations in effect at the time the agreement is executed.

N. **LICENSES**. CONSULTANT represents and warrants to CITY that it has all licenses, permits, qualifications, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT shall maintain a CITY of Hanford Business License.

ARTICLE II: CONSULTANT'S REPORTS OR MEETINGS

A. **PROGRESS REPORTS AND BILLINGS.** CONSULTANT shall submit progress reports and billings on EACH specific project in accordance with the Work Order at least once a month. CONSULTANT's bill shall include a brief description of the Services performed, the date the Services were performed, the number of hours spent, and by whom, and shall include a description of any authorized reimbursable expenditures. The report should be sufficiently detailed for the CITY's Contract Administrator or Project Coordinator: to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; to sufficiently address any difficulties or special problems encountered so remedies can be developed. The CITY shall pay the CONSULTANT no later than 60 days after the date of submittal of a complete invoice for completed tasks and approval of the invoice by CITY staff.

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B. **MEETINGS.** CONSULTANT's Project Manager shall meet with CITY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE III: STATEMENT OF WORK

A. **CONSULTANT SERVICES.** The CONSULTANT shall perform professional engineering and land surveying services, in accordance with all the provisions of this Agreement. The Scope of Work for each project will be determined by the CITY Engineer. For State and Federal Aid projects, the project scope will be incorporated into a streamlined (mini) RFP, and will be sent to the pre-qualified selected CONSULTANTS under agreement. The CONSULTANT shall submit their proposal to the CITY within the required timeframe, and the CITY shall select the top proposal using Qualifications Based Selection. Upon selection, the CITY will negotiate the cost based on the agreement labor price agreement. A work order will be assigned for each project after CONSULTANT determines an estimated cost for producing all necessary plans and documents to satisfy the Scope of Work. For Local Funded projects, the CONSULTANT will submit a scope of work with cost, and a Work Order will be prepared. The CONSULTANT shall correct any and all errors and/or omissions in the performance of the Services and any documents resulting therefrom even though CITY has accepted said Services or documents. CONSULTANT shall make such corrections upon CITY's request and at no cost or expense to CITY.

B. **ENVIRONMENTAL COMPLIANCE**. This AGREEMENT provides for CONSULTANT environmental services that result in CEQA or NEPA approval. Federal funded projects require NEPA clearance in addition to CEQA. NEPA Environmental documents are not considered complete until a Caltrans Official signs the Categorical Exclusion (CE), the Finding of No Significant Impact (FONSI), or the Record of Decision.

C. **RIGHT OF WAY.** Existing and proposed Right of Way requirements are to be determined and shown by the CONSULTANT. Land surveys and computations with metes and bounds descriptions shall be made by a California Licensed Land Surveyor. Projects shall be tied into recorded monumentation and bench marks. A bench mark map with record elevation data is available from the City. Services shall include preparation of Appraisal Map, Acquisition Maps, and Legal Descriptions used to acquire right of way or property.

D. **SURVEYS.** This AGREEMENT provides for CONSULTANT licensed surveying services for preliminary surveying, topographic surveys, monumentation mapping, construction staking, and monument setting and recording of corner records. Work under this service shall be performed or as directed by a California Licensed Land Surveyor.

E. **SUBSURFACE INVESTIGATIONS.** This AGREEMENT provides for CONSULTANT Sub-Surface Investigations as directed by the CITY for Environmental testing, topographic mapping, boring, construction staking, and other specialized sub surface investigation services, either by the CONSULTANT, or under the direction of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order.

F. **CONSTRUCTION MANAGEMENT.** This AGREEMENT does NOT provide for a CONSULTANT in a Management role.

G. **DESIGN PLANS, SPECIFICATIONS, AND ESTIMATES.** This AGREEMENT provides for CONSULTANT Design Plans, Specifications, and Estimates as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order. Design work shall meet City Standards.

H. **ARCHITECTURAL AND STRUCTURAL ENGINEERING.** This AGREEMENT provides for CONSULTANT Architectural and Structural Engineering as directed by the CITY and performed either by the CONSULTANT, or under the direction of the CONSULTANT, for structural design and analysis as determined

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in the Scope of Work of the assigned Work Order. All Architectural and Structural Engineering shall by performed by a Licensed Structural Engineer and shall meet all City and State Standards.

I. **TRAFFIC ENGINEERING AND TRAFFIC SIGNAL DESIGN.** This AGREEMENT provides for CONSULTANT Traffic Engineering and Traffic Signal Design as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for traffic engineering and traffic signal design as determined in the Scope of Work of the assigned Work Order. All Traffic Engineering shall by performed by a licensed Professional Engineer and shall meet all City and State Standards.

J. **MAPPING, INCLUDING GIS AND GPS.** This AGREEMENT provides for CONSULTANT Mapping, including GIS and GPS, as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for mapping as determined in the Scope of Work of the assigned Work Order.

K. **RAILROAD PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Railroad Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for railroad permitting and coordination as determined in the Scope of Work of the assigned Work Order.

L. **UTILITY PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Utility Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for utility permitting and coordination as determined in the Scope of Work of the assigned Work Order.

M. **CONFERENCES, SITE VISITS, AND INSPECTION OF WORK.** This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the CITY, County, State, and/or FHWA. Costs incurred by CONSULTANT for meetings subsequent to the initial meeting shall be included in the fee.

N. **CHECKING SHOP DRAWINGS.**
This AGREEMENT provides for the CONSULTANT to provide plan checking of shop drawings and contract documents. Payment for checking of drawings by CONSULTANT shall be paid at the hourly rate per the attached Fee Schedule. The total compensation paid to the CONSULTANT for all services in this agreement shall not exceed the maximum contract amount stated in Article V, Section P.

O. **CONSULTANT SERVICES DURING CONSTRUCTION.**
This AGREEMENT provides for CONSULTANT services during the course of construction, including resident engineering, construction surveys and construction staking. Payment for services shall be paid at the rates stated in the attached Fee Schedule, and shall not exceed the Work Order fee stated without an approved Change Order.

P. **DOCUMENTATION AND SCHEDULES.**
This AGREEMENT provides for the CONSULTANT to document the results of the work to the satisfaction of CITY, and if applicable, to the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Work Order objectives. All final construction documents shall be stamped and wet signed when completed.

Q. **CITY OBLIGATIONS.** Data applicable to the Work Order Scope of Work shall be made available to the CONSULTANT at the time of Work Order Execution. Data may include maps, plans, documents, and records that are in the possession of the CITY. Additional items to be made available to the CONSULTANT shall be noted specifically on the Work Order.

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R. **DELIVERABLES AND NUMBER OF COPIES.**
The number of copies or documents to be furnished with each submittal, such as reports, brochures, sets of plans, specifications, maps, etc., shall be two (2) copies minimum unless otherwise specified in the work order or as may be required for City Permitting. Final plans and maps shall be plotted on 20# vellum or on plastic film mylar, and shall have stamp and original wet signatures.

S. **DESIGN STANDARD.**
All work performed under this AGREEMENT shall conform to the most current City of Hanford Standards, Caltrans Standards, and all other Local, State, and FHWA requirements.

ARTICLE IV: PERFORMANCE PERIOD

A. This AGREEMENT shall go into effect on **April 6, 2021**, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY'S Contract Administrator. The AGREEMENT shall be in effect for 3 (three) years, and end on **April 6, 2024**, unless extended by AGREEMENT amendment. AGREEMENT amendments shall be limited to two separate ONE YEAR EXTENSIONS, and in no case shall the AGREEMENT exceed five years.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on CITY until the AGREEMENT is fully executed and approved by CITY.

C. The period of performance for each specific project shall be in accordance with the Work Order for that project. If work on a Work Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the Work Order in progress only. In no case shall the maximum term of this AGREEMENT exceed five (5) years.

ARTICLE V: ALLOWABLE COSTS AND PAYMENTS

A. **PAYMENT.** CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's attached approved 10-H2: Cost Proposal Fee Schedule (Exhibit B), subject to Prevailing Wage Requirements which are available at the office of the City Engineer. An estimate for cost of services for each project shall be submitted to the City Engineer before commencement of work. Payment by CITY under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment. An increase in the fee schedule for non-prevailing wage classifications will be allowed at the beginning of Year 2 (two) of this agreement and shall be made a part of an AGREEMENT extension, if said agreement is extended for a period. The CONSULTANT must notify the CITY thirty (30) days in advance of such increases. The CONSULTANT is limited to two (2) price increases during the three years contract period, and one increase per year for each year the contract is extended. An increase in fee schedule for prevailing wage classifications shall be allowed when the Prevailing Wage for said wage determination increases. The services included in this agreement shall increase by the same amount approved for increase by the Department of Industrial Relations. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within sixty (60) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate.

B. **DIRECT COSTS.** In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal, and identified in the approved Cost Proposal and in the executed Work Order.

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C. **WORK ORDERS.** Specific projects will be assigned to CONSULTANT after approval of the proposal for each specific project through the issuance of Work Orders. Work Orders shall be number consecutively for each specific project.

D. **DRAFT WORK ORDERS.** After a project to be performed under this AGREEMENT is identified by CITY, CITY will prepare a draft Work Order with Scope of Work; less the cost estimate. A draft Work Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a CITY Project Coordinator. The draft Work Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Work Order within ten (10) calendar days along with a Cost Estimate for requested services, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and the total dollar amount. After agreement has been reached on the negotiable items and total cost; a finalized Work Order shall be signed by both CITY and CONSULTANT.

E. **NOT TO EXCEED COMPENSATION**. Work Orders may be negotiated for specific rates of compensation Not to Exceed amount, of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT. Work Orders that are approved as "Flat Fee" must have any prevailing wage increase built into the cost proposal, and the CONSULTANT must pay the required prevailing wage rates to workers. Work Orders that are approved as "Time and Materials, Not to Exceed" will require prevailing wage rates be paid to workers, and the total amount "Not to Exceed" will be increased to accommodate said increases in the amount approved by the DIR.

F. **STATE RATE REIMBURSEMENTS.** Reimbursement for transportation and subsistence costs shall not exceed State rates. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

G. **CHANGE ORDERS.** When milestone cost estimates, or not to exceed estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment Change Order for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

H. **MONTHLY PAYMENTS.** Progress payments for each Work Order will be made monthly in arrears based on services provided and actual costs incurred.

I. **NOTICE TO PROCEED.** 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 or for any work performed prior to approval of this AGREEMENT, or for work done on a project Work Order prior to the City's issuance of a Notice to Proceed (NTP).

J. **EXECUTED WORK ORDERS.** A Work Order is of no force or effect until returned to CITY and signed by an authorized representative of CITY. No expenditures are authorized on a project and work shall not commence until a Work Order for that project has been executed by CITY.

K. **INVOICES.** CONSULTANT will be reimbursed within thirty (30) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Work Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Work Order. 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, the project title and the Work Order number. Credits due CITY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to CITY's Contract Administrator at the following address:

City of Hanford
Attn.: Finance Dept., Accounts Payable
315 N. Douty Street
Hanford CA 93230

L. **PERIOD OF PERFORMANCE FOR WORK ORDERS.** The period of performance for Work Orders shall be in accordance with dates specified in each individual Work Order. No Work Order will be written which extends beyond the expiration date of this AGREEMENT.

M. **AMOUNT PAYABLE FOR WORK ORDER.** The total amount payable by CITY for an individual Work Order shall not exceed the amount agreed to in the Work Order, unless authorized by amendment Change Order.

N. **PAYMENT FOR DELIVERABLES.** If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Work Order, no payment will be made until the deliverable has been satisfactorily completed.

O. **AMENDMENT TO AGREEMENT.** Work Orders may not be used to amend the language (or the terms) of this AGREEMENT, nor to exceed the scope of work under this AGREEMENT.

P. **AGREEMENT MAXIMIM PAYMENT.** The total amount payable by CITY for all Work Orders resulting from this AGREEMENT shall not exceed **$150,000 per year, or $ 450,000.00 for the total three-year agreement.** It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Work Orders.

Q. **EXTRA WORK.** At any time during the term of this Agreement, CITY may request that CONSULTANT perform Extra Work. As used herein, "Extra Work" means any work which is determined by CITY to be necessary for the proper completion of the Services, but which the parties did not include in the Scope of Work. Extra work will be performed on an hourly basis under the CONSULTANT's most current hourly fee schedule. CONSULTANT shall not perform, nor be compensated for Extra Work without written authorization from CITY.

ARTICLE VI: TERMINATION

A. This AGREEMENT may be terminated by CITY, provided that CITY gives not less than thirty (30) calendar days' written notice to CONSULTANT (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, and in accordance with Section 15, Property of CITY. Upon termination, CONSULTANT shall be entitled to compensation for Services performed up to the effective date of termination, unless this Agreement is terminated for cause, in which case, CITY may withhold compensation due

CONSULTANT in order to reimburse CITY for any losses, damages or expenses caused by CONSULTANT's default under this Agreement

B. CITY may temporarily suspend this AGREEMENT, at no additional cost to 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 provided for in subsection A of this section.

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.

D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Section 11C. 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, and in accordance with Section 15, Property of CITY.

E. If the CITY is in breach of the payment terms or otherwise is in material breach of this AGREEMENT, the CONSULTANT may suspend performance of services upon ten (10) calendar days' notice to the CITY. The CONSULTANT shall have no liability to the CITY, and the CITY agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this AGREEMENT by the CITY. Upon receipt of payment in full of all outstanding sums due from the CITY, or curing of such other breach that caused the CONSULTANT to suspend services, the CONSULTANT shall resume services, and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension. If the CITY does not cure said material breach of AGREEMENT within thirty (30) calendar days of notice, the CONSULTANT may terminate the AGREEMENT upon written notice to the CITY.

ARTICLE VII: COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

Consulting Architectural & Engineering (A&E) firms providing engineering and design related services under a contract funded by a federal grant, are required by regulation (as specified in 2 CFR Part 200) to account for and bill costs in accordance with the Federal Cost Principles of 48 CFR 31. In efforts to comply with the Federal Cost Principles, A&E consulting firms that provide services on federal-aid highway projects are required to develop indirect cost rates in accordance with the Federal Cost Principles on an annual basis.

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.

F. 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.

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Consultant shall provide all documents and files per Work Order to the City as required per Ownership of Data requirements in the Agreement.

ARTICLE VIII: RETENTION OF RECORD/AUDITS

A. For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and CITY shall maintain any and all books of account, ledgers, invoices, vouchers, canceled checks, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate work papers, and other evidence pertaining to the performance, services, expenditures, and disbursements 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 work papers 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. 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 CONSUTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, work paper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

B. CONSULTANT shall maintain all documents and records that demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the CITY. Copies of such documents shall be provided to the CITY for inspection at the CITY offices.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request, require that custody of the records be given to the CITY and that the records and documents be maintained in the CITY offices. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

ARTICLE IX: 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 thirty (30) calendar 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 AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, 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, CITY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall

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be adjusted by CONSULTANT and approved by CITY 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 AGREEMENT 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, CITY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT 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 Caltrans Audits and Investigation (A&I). Caltrans A&I, 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 AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During Caltrans A&I's review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans A&I 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 Caltrans A&I 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 A&I.

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 Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I 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. Caltrans A&I 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 Caltrans A&I 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) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2)

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all work under this AGREEMENT has been completed to the satisfaction of CITY; and, (3) Caltrans A&I 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 X: SUBCONTRACTING

A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the CITY and any Subconsultants, and no sub-agreement 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 Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.

C. Any sub-agreement 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 the CONSULTANT by the CITY.

E. Any substitution of Subconsultants must be approved in writing by the CITY Contract Administrator in advance of assigning work to a substitute Subconsultant.

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

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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.

Method 3: The CITY shall 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. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the CITY. 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 subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other 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 noncompliance 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 XI: EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

A. Prior authorization in writing by 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 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 AGREEMENT 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, CITY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT 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.

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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 XII: STATE PREVAILING WAGE RATES

A. **D.I.R. REGISTRATION.** 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. **WAGE DETERMINATIONS (CALTRANS).** 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 (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). 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 RATES.** 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 representatives 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 to a representative of CITY, the Division of Labor Standards

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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.

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 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. **CERTIFIED PAYROLL.** 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.

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.

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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 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.

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 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.

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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 XIII: CONFLICT OF INTEREST

A. During the term of this AGREEMENT, the 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. The 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 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 AGREEMENT.

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 Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, 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.

E. CONSULTANT maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement.

F. Further CONSULTANT warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or result from the award or making of this Agreement.

G. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability.

H. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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ARTICLE XIV: REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT 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 AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV: PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING (for use when Federal funding will exceed $150,000)

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 AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the 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 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 subagreements, which exceed one hundred thousand dollars ($100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI: 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 AGREEMENT, CONSULTANT and its subconsultants represents that they are an Equal Opportunity Employer, and shall not deny the AGREEMENT's benefits or discriminate against 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. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of CITY's programs or guidelines currently in effect as identified and provided to Consultant by CITY.

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 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 AGREEMENT 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 subconsultant*s* 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 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

ARTICLE XVII: 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:

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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 List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII: DISADVANTAGED BUSINESS ENTERPRISES (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 at https://dot.ca.gov/programs/civil-rights/dbe-search .

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. 49 CFR 26.55 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 enter into a federally-funded agreement, and proposes on a federal funded project RFP, 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 AGREEMENT is 0%.** Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Appendix "C": *Exhibit 10-O1: Consultant Proposal DBE Commitment* , 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 Appendix "D": 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 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 recipient 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 CONSULTANT from future proposing as non-responsible

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:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. 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.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. 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).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.

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7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. 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:
1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. 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 Page 24 of 32 September 2020 Local Assistance Procedures Manual EXHBIT 10-R A&E Boilerplate Agreement Language
3. Maintain records including:
- Name and business address of each 1st-tier subconsultant
- Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
- 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.

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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 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 AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, Appendix "E": *Exhibit 17-F1: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) for On-call Contracts*, 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 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.

M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX: INSURANCE

A. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies.

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1. Workers Compensation Coverage. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury or disease.

2. General Liability Coverage. Insurance Services Office (ISO) Form CG 0001, including products and completed operations, with limits of no less than TWO MILLION AND NO/100 DOLLARS ($2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be FOUR MILLION AND NO/100 DOLLARS ($4,000,000), twice the required occurrence limit.

3. Automobile Liability Coverage. ISO Form Number CA 0001 covering any auto (Code 1), with a limit no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury and property damage.

4. Professional Liability Coverage. Contractor will maintain Professional Liability coverage with limits no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per occurrence or claim, and TWO MILLION AND NO/100 DOLLARS ($2,000,000) policy aggregate.

B. If Consultant maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by Consultant.

C. Consultant's insurance policies shall be "occurrence" policies and not "claims-made" coverage except for Professional Liability Coverage.

D. Consultant may maintain an Umbrella policy in conjunction with the insurance policies referenced above. In such case, Consultant shall be deemed to have satisfied the insurance requirements of this contract as long as: (i) the coverage limits of the Umbrella policy and of the underlying liability policy(ies), when combined, satisfy each of the per occurrence and aggregate requirements identified in this subsection a.; and (ii) coverage under the Umbrella policy is as broad as and includes all incidents and events covered by the underlying insurance that it supplements.

E. Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Alternatively, the CITY may require Consultant to provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses within the retention.

F. The policies are to contain, or be endorsed to contain, the following provisions:

1. "The City and its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations; products used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. General liability coverage can be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2. For any claims related to this contract, Consultant's insurance coverage, with the exception of Professional Liability Insurance, shall be primary insurance as respects the City and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City and/or its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall be non-contributory.
3. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
4. These policies of insurance shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers, with the exception of Professional Liability Insurance. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with the policies of insurance obtained by Consultant.
5. With the exception of Professional Liability Insurance, these policies of insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
6. The insurer shall agree to waive all rights of subrogation against City, its officials, officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.
7. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.
8. The insurance provided by these policies shall not be canceled except after thirty (30) days written notice has been received by the City. The Consultant or its insurance agent shall, to the extent feasible, notify the City in writing thirty (30) days prior to the date on which any insurance policy required hereunder will be suspended voided, modified, or reduced. If such thirty (30) day prior notice is not feasible, notice will be promptly provided to the City upon Consultant's knowledge that a noticeable event will or has occurred.

G. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII and which are authorized to write business in California.

H. Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, true and correct copies of all required insurance policies, including endorsements required by these specifications, at any time. All forms and endorsements are to list the City of Hanford as additional insureds. The City reserves the right to require complete, true and correct copies of all required insurance policies, including endorsements required by these specifications, at any time. The policies can be redacted of personal information.

I. Consultant hereby grants to CITY and its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of Consultant may acquire against the CITY and/or its officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance. Consultant agrees to obtain endorsements necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

J. The CITY reserves the right to modify the insurance requirements contained in this contract, including, without limitation, coverage limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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K. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

ARTICLE XX: FUNDING REQUIREMENTS

A. It is mutually understood between the parties that this AGREEMENT 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 AGREEMENT were executed after that determination was made.

B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to 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 CITY 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 VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI: CHANGE IN TERMS

A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

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 CONSULTANT's Project Manager or members of the project team which shall not be unreasonable withheld, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by CITY's Contract Administrator.

ARTICLE XXII: CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT 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 AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII: DISPUTES

A. Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to resolve any dispute amicably between them through mediation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains

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unresolved after mediation, and 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.

B. 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 AGREEMENT.

ARTICLE XXIV: INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit 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 XXV: 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 Vehicle Code §591, 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 XXVI: OWNERSHIP OF DATA

A. It is mutually agreed that all materials prepared by CONSULTANT, its officers, employees, agents, and subcontractors under this AGREEMENT, except working notes and internal documents, shall become the sole property of the CITY in its discretion without further compensation to the CONSULTANT or to any other party, and the 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 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. The CITY's use of completed documents for other projects and/or the use of uncompleted documents without the written

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authorization of Consultant will be at the CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of, or changes to the Project Documents not performed by the Consultant.

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. Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for CITY to use, modify, reuse or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data electronic or otherwise recorded on computer diskettes which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that CITY is granted non-exclusive and perpetual license for any Documents & Data the subcontractor prepared under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. CITY shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purpose intended by this Agreement shall be at CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of or changes to the Project Documents not performed by the Consultant.

ARTICLE XXVII: CLAIMS FILED BY CITY's CONSTRUCTION CONTRACTOR

A. **CONSULTANT'S PERSONNEL AVAILABILITY.** 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 REIMBURSEMENT.** 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. **CONSULTANT'S PERSONNEL SERVICES.** 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.

D. **ATTORNEYS' FEES**. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court for the County of Kings, State of California for any proceeding arising hereunder.

Attachment: 4Creeks-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

E. **SOLE AND ONLY AGREEMENT.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this Agreement and no other agreement, statement or promise shall be valid or binding.

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

G. **AMENDMENT.** No change, amendment or modification of this Agreement shall be valid unless the same be in writing and signed by the parties hereto.

H. **GOVERNING LAW.** This Agreement shall be construed and governed pursuant to the laws of the State of California.

I. **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

ARTICLE XXVIII: CONFIDENTIALITY OF DATA

A. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information including financial, statistical, personal, technical, or other data, and other documents and data either created by or provided to CONSULTANT in connection with and relative to CITY's operations and CONSULTANTS performance of this agreement, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected and held confidential by CONSULTANT from unauthorized use and disclosure.

B. Such materials shall not, without the prior written consent of CITY, be used by Consultant for any purposes other than the performance of the Services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the Services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use CITY's name, insignia, photographs, or the project for which Consultant's Services are rendered, or any publicity pertaining to the Consultant's Services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent by CITY. Notwithstanding the foregoing, the CITY acknowledges that the Consultant may want/need to include projects performed under this agreement on proposals for similar work in the future. The CITY hereby grants permission to list any projects performed under this agreement for marketing purposes; provided however, Consultant will not make any representations regarding CITY's satisfaction with Consultant's work product unless Consultant receives a written statement or evaluation from CITY

C. Permission to disclose information on one occasion, or public hearing held by CITY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

D. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or CITY's actions on the same, except to CITY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.

E. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by CITY, and receipt of CITY'S written permission.

F. 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.

ARTICLE XXIX: 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 XXX: 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 records. The Consultant Performance Evaluation form and criteria is attached in Appendix "F".

ARTICLE XXXI 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 XXXII NOTIFICATION

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

CONSULTANT:

4CREEKS, INC

Attachment: 4Creeks-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

MATTHEW AINLEY, PE, QSD, Project Manager

324 S. SANTA FE STREET

VISALIA, CA 93292

CITY:

CITY OF HANFORD

ATTN: CITY ENGINEER, Contract Administrator

900 S. 10TH AVENUE

HANFORD, CA 93230

ARTICLE XXXIII: CONTRACT

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.

Attachment: 4Creeks-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

ARTICLE XXXIV: SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and in the year first set forth above.

CITY OF HANFORD,
a Municipal Corporation

By: _____
MARIO CIFUENTEZ, City Manager

Consultant: 4CREEKS, INC.

By: _____
MATTHEW AINLEY, Principal-In-Charge

APPROVED AS TO CONTENT:

By: _____
JOHNATHAN L. DOYEL
Public Works Director

ATTEST:

By: _____
NATALIE CORRAL
City Clerk

Attachment: 4Creeks-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

EXHIBIT "A"

Consultants Cost Proposal for On-Call Contract

(Approved Work Orders)

EXHIBIT "B"

Consultants Fee Schedule

(LAPM form 10-H2)

EXHIBIT 10-H2 COST PROPOSAL Page 1 of 2

SPECIFIC RATE OF COMPENSATION (USE FOR ALL ON-CALL OR AS-NEEDED CONTRACTS) (CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Prime Consultant

Consultant or Subcons. firm: 4Creek, Inc.

Project No. Various Contract No. Participation Amount: $450K Date: 11-02-2020

(1 of 6 consultants)

For Combined Rate	Fringe Benefit % + General & Administrative %	Safe Harbor Rate 110%	= 0.00% Home Office ICR%
	OR		
For Home Office Rate	Fringe Benefit % + General & Administrative %		= Home Office ICR%
For Field Office Rate	Fringe Benefit % + General & Administrative %		= 0.00% Field Office ICR%
		Fee %	=

Name / Job Title / Classification*	Hourly Billing Rates: Straight[1]	OT (1.5x)	OT (2.0x)	Effective date of hourly rate: From	To	Actual or Avg Hourly Rate[2]	% or $ Increase	Hourly Range for Classifications Only
Chris Crawford * Engineer V Salaried - Exempt	166.89	NA	NA	1/1/2021	12/31/2021	72.12	0%	
	171.86	NA	NA	1/1/2022	12/31/2022	74.36	3.00%	
	176.73	NA	NA	1/1/2023	12/31/2023	76.61	3.00%	
Matt Abley Engineer V Salaried - Exempt	116.06	NA	NA	1/1/2021	12/31/2021	50.34	0%	
	119.54	NA	NA	1/1/2022	12/31/2022	51.79	3.00%	
	123.12	NA	NA	1/1/2023	12/31/2023	53.30	3.00%	
Kyle McDonald * Engineer IV Salaried - Exempt	111.06	NA	NA	1/1/2021	12/31/2021	46.06	0%	
	114.39	NA	NA	1/1/2022	12/31/2022	49.53	3.00%	
	117.82	NA	NA	1/1/2023	12/31/2023	51.00	3.00%	
Ian Williams* Engineer I Salaried - Exempt	94.41	NA	NA	1/1/2021	12/31/2021	40.67	0%	
	97.24	NA	NA	1/1/2022	12/31/2022	42.10	3.00%	
	100.10	NA	NA	1/1/2023	12/31/2023	43.36	3.00%	
Taryn Pierce* Engineer I Hourly - Non Exempt	67.79	100.68	175.58	1/1/2021	12/31/2021	36.00	0%	
	69.81	103.68	180.83	1/1/2022	12/31/2022	38.14	3.00%	
	69.13	107.09	186.35	1/1/2023	12/31/2023	40.31	3.00%	
Elise Meijer* Associate Engineer Hourly - Non Exempt	76.86	88.34	154.15	1/1/2021	12/31/2021	32.00	0%	
	77.33	88.86	154.85	1/1/2022	12/31/2022	33.40	3.00%	
	78.86	91.69	159.29	1/1/2023	12/31/2023	34.40	3.00%	
Kevin Gist* Associate Engineer Hourly - Non Exempt	76.86	88.34	154.15	1/1/2021	12/31/2021	32.00	0%	
	77.33	88.86	154.85	1/1/2022	12/31/2022	33.40	3.00%	
	78.86	91.69	159.29	1/1/2023	12/31/2023	34.40	3.00%	
Amanda Gist* Project Tech IV Hourly - Non Exempt	72.77	83.68	145.93	1/1/2021	12/31/2021	31.00	0%	
	74.86	86.10	149.80	1/1/2022	12/31/2022	32.40	3.00%	
	77.20	88.79	154.38	1/1/2023	12/31/2023	33.42	3.00%	
Emily Hoang Project Tech III Hourly - Non Exempt	60.81	67.74	117.81	1/1/2021	12/31/2021	28.00	0%	
	60.87	68.77	121.34	1/1/2022	12/31/2022	28.37	3.00%	
	62.40	71.87	124.90	1/1/2023	12/31/2023	27.88	3.00%	
Mary Hernandez* Project Tech II Hourly - Non Exempt	56.44	63.76	110.88	1/1/2021	12/31/2021	24.00	0%	
	57.10	65.87	114.21	1/1/2022	12/31/2022	24.72	3.00%	
	58.82	67.84	117.68	1/1/2023	12/31/2023	25.46	3.00%	
Melissa Castillo Project Tech I Hourly - Non Exempt	46.30	53.13	92.40	1/1/2021	12/31/2021	20.00	0%	
	47.69	54.72	95.17	1/1/2022	12/31/2022	20.60	3.00%	
	49.01	56.37	98.03	1/1/2023	12/31/2023	21.22	3.00%	
Dustin Reilly* Construction Manager III Hourly - Non Exempt	59.86	62.98	101.70	1/1/2021	12/31/2021	36.00	0%	
	61.36	66.77	106.66	1/1/2022	12/31/2022	36.86	3.00%	
	65.77	68.84	171.86	1/1/2023	12/31/2023	37.13	3.00%	
Clay Garland* Construction Manager III Hourly - Non Exempt	76.23	87.66	152.46	1/1/2021	12/31/2021	43.00	0%	
	78.82	89.29	157.03	1/1/2022	12/31/2022	33.00	3.00%	
	80.87	63.60	161.34	1/1/2023	12/31/2023	35.01	3.00%	
Randy Wamish Land Surveyor IV Salaried - Exempt	116.06	NA	NA	1/1/2021	12/31/2021	58.32	0%	
	119.54	NA	NA	1/1/2022	12/31/2022	61.76	3.00%	
	123.13	NA	NA	1/1/2023	12/31/2023	63.30	3.00%	
Matt Limas Land Surveyor IV Salaried - Exempt	86.86	NA	NA	1/1/2021	12/31/2021	37.28	0%	
	88.63	NA	NA	1/1/2022	12/31/2022	38.37	3.00%	
	91.29	NA	NA	1/1/2023	12/31/2023	39.52	3.00%	
Hal Wyatt Instrumentman Hourly - Non Exempt	60.86	62.98	101.70	1/1/2021	12/31/2021	36.00	0%	
	63.29	65.77	106.66	1/1/2022	12/31/2022	36.06	3.00%	
	65.77	68.84	171.86	1/1/2023	12/31/2023	37.13	3.00%	
Justin Anjuan Instrumentman Hourly - Non Exempt	60.86	62.98	101.70	1/1/2021	12/31/2021	36.00	0%	
	63.29	65.77	106.66	1/1/2022	12/31/2022	36.06	3.00%	
	65.77	68.84	171.86	1/1/2023	12/31/2023	37.13	3.00%	
Christian Sano Rodman Hourly - Non Exempt	46.30	53.13	92.40	1/1/2021	12/31/2021	20.00	0%	
	47.69	54.72	95.17	1/1/2022	12/31/2022	20.60	3.00%	
	49.01	56.37	98.03	1/1/2023	12/31/2023	21.22	3.00%	
Johnny Sheen Rodman Hourly - Non Exempt	60.62	69.44	101.04	1/1/2021	12/31/2021	22.00	0%	
	62.34	69.30	104.09	1/1/2022	12/31/2022	22.66	3.00%	
	63.81	62.00	107.03	1/1/2023	12/31/2023	23.34	3.00%	
David Dale Planner V Salaried - Exempt	123.62	NA	NA	1/1/2021	12/31/2021	53.00	0%	
	127.53	NA	NA	1/1/2022	12/31/2022	54.21	3.00%	
	131.39	NA	NA	1/1/2023	12/31/2023	55.88	3.00%	
Molly Mahmoud Planner I Hourly - Non Exempt	65.84	73.71	131.07	1/1/2021	12/31/2021	28.00	0%	
	67.81	77.29	135.02	1/1/2022	12/31/2022	28.38	3.00%	
	69.84	80.32	139.09	1/1/2023	12/31/2023	30.34	3.00%	
Jason Arellano Utility Designer II Salaried - Exempt	134.61	NA	NA	1/1/2021	12/31/2021	53.34	0%	
	138.64	NA	NA	1/1/2022	12/31/2022	55.56	3.00%	
	152.50	NA	NA	1/1/2023	12/31/2023	57.23	3.00%	
Mark Sorbanet Structural Engineer II Salaried - Exempt	144.34	NA	NA	1/1/2021	12/31/2021	62.00	0%	
	148.71	NA	NA	1/1/2022	12/31/2022	64.38	3.00%	
	153.17	NA	NA	1/1/2023	12/31/2023	66.31	3.00%	
David Sandoe Project Tech IV Hourly - Non Exempt	66.36	70.79	138.60	1/1/2021	12/31/2021	30.00	0%	
	71.38	72.89	142.74	1/1/2022	12/31/2022	30.90	3.00%	
	73.53	64.66	147.04	1/1/2023	12/31/2023	31.83	3.00%	

CALCULATION INFORMATION

Conversion Rate 2.31

Notes:

1. Key personnel must be marked with an asterisk (*) and employees that are subject to prevailing age requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

Attachment: 4Creeks-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

EXHIBIT 10-H2 COST PROPOSAL Page 2 of 3

SPECIFIC RATE OF COMPENSATION (CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

☐ Prime Consultant ☑ Subconsultant

Consultant or Subconsultant: **4Creeks, Inc.**

Project No. Various Contract Date: 12/2/2019

Description of Item	Quantity	Unit	Unit	Total
Mileage Costs	TBD	Mile	$0.58	IRS Rate
Reprographics	N/A			At Cost
Permit Fees	N/A			
Plan Sheets	TBD	Per	$18.00	At Cost
Testing	N/A			
Vehicle	N/A			At Cost

NOTES:

1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.
7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicle that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

Attachment: 4Creeks-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

EXHIBIT 10-H4 COST PROPOSAL FOR CONTRACTS WITH PREVAILING WAGES

ACTUAL COST PLUS FIXED FEE; SPECIFIC RATES OF COMPENSATION AND COST PER UNIT OF WORK CONTRACTS

Please Note: Consultant completes all items in yellow highlight

CONSULTANT 4Creeks, Inc. _____ PRIME ____ SUB ____ CONTRACT TYPE _____ (LIST ONE OF THE ABOVE LISTED CONTRACT TYPES)

PROJECT NO. _____ CONTRACT NO. _____ DATE _____ Sub Consultant's Participation Amount $ _____

Loaded Rate Calculation

Non Exempt Employee Loaded Billing Rates

A) Straight Time = Actual Hourly Rate * (1 + Field O.H.) * (1 + Fee) + Delta Base * (Applicable Multiplier Delta Base) + Delta Fringe * (Applicable Multiplier Delta Fringe)

B) 1.5X or 2.0X Overtime = (Actual Hourly Rate) * (1 + Field O.H.) * (1 + Fee) +.5X or 1.0X (Actual Hourly Rate) + Delta Base * (Applicable Multiplier Delta Base) + Delta Fringe * (Applicable Multiplier Delta Fringe)

Exempt Employee Loaded Billing Rates

C) Straight Time or 1.5X or 2.0X Overtime = Actual Hourly Rate * (1 + Field O.H.) * (1 + Fee) + Delta Base * (Applicable Multiplier Delta Base) + Delta Fringe * (Applicable Multiplier Delta Fringe)

The PW differentials Delta Base and Delta Fringe shown in the formulas above for Loaded Billing Rates are applicable only when performing services covered under DIR determinations.

Home Office Personnel:	Fringe Benefit %		Overhead %			Combined %
NORMAL	0.00%	+	0.00%	+	=	0.00%
OVERTIME	0.00%	+	0.00%	+	=	0.00%
Field Office Personnel:	**Fringe Benefit %**		**Overhead %**			**Combined %**
NORMAL	0.00%	+	110.00%	+	=	110.00%
OVERTIME	0.00%	+	110.00%	+	=	110.00%

Fee	=	10.00%
Applicable Multiplier Delta Base (Field)	=	1.00
Applicable Multiplier Fringe (Field)	=	0.00

Name/Classification	Home Office Personnel Field Office Personnel	Effective Date of Hourly Rate From	To	Prevailing Wage Rate established by State DIR (only applicable for prevailing wage work) Base Salary Straight	1.5 OT	2.0 OT	Fringe Benefits	Total Base Salary + Fringe Benefits Straight	1.5 OT	2.0 OT	Employee Actual Rate (fringe benefits vary year over year) Base Salary Straight	1.5 OT	2.0 OT	Estimate Fringe	Total = Base + Fringe Straight	1.5 OT	2.0 OT	DELTA (TOTAL) = Employee Total Rate - DIR Rate Straight	1.5 OT	2.0 OT	Applicable DELTA (TOTAL) = Employee Total - DIR Total Straight	1.5 OT	2.0 OT	DELTA (BASE) = Employee Base - DIR Base Straight	1.5 OT	2.0 OT	Applicable DELTA Base = DIR Rate - Employee Base Rate Straight	1.5 OT	2.0 OT	Applicable DELTA FRINGE = DELTA TOTAL - DELTA BASE (Employee - DIR) Straight	1.5 OT	2.0 OT	Applied Hourly Billing Rate Straight	OT (1.5x)	% Escalation Increase	Hourly Rate and/or Average Hourly Rate	Hourly Range for Class
Ian Williams Construction Inspector Prevailing Wage Work (Exempt)	FIELD	8/22/2020	6/30/2021	$50.05	$75.07	$100.10	$32.69	$82.74	$107.76	$132.79	$73.94	$105.63	$123.94	$8.85	$82.79	$107.76	$132.79	$0.05	$0.00	$0.00	$0.00	$0.00	$0.00	$23.89	$31.56	$23.84	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$170.60	$246.32		$73.94	N/A
Clay Gartand Construction Inspector Prevailing Wage Work (non-Exempt)	FIELD	8/22/2020	6/30/2021	$50.05	$75.07	$100.10	$32.69	$82.74	$107.76	$132.79	$74.11	$105.63	$124.11	$8.85	$82.79	$107.76	$132.79	$0.05	$0.00	$0.00	$0.00	$0.00	$0.00	$24.06	$31.56	$24.01	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$171.19	$246.32		$74.11	N/A
Dustin Smith Construction Inspector Prevailing Wage Work (non-Exempt)	FIELD	8/22/2020	6/30/2021	$50.05	$75.07	$100.10	$32.69	$82.74	$107.76	$132.79	$81.66	$106.63	$131.66	$1.13	$82.79	$107.76	$132.79	$0.05	$0.00	$0.00	$0.00	$0.00	$0.00	$31.61	$31.56	$31.56	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$188.63	$246.32		$81.66	N/A

1. Prevailing Wages specified are based on current DIR determination. Any future DIR escalation of prevailing wage rates will be reflected in the loaded rates
2. "NC" denotes No Charge for work more than 8 hours per day and for weekends and holidays for this contract only.
3. The billing rates shown in this cost proposal for field staff entitled for PW rates are calculated with estimated fringe benefits of the staff. The actual billing rates to be used in the invoices will be calculated by using the actual PW fringe benefits of the individual staff in accordance with the certified benefits statement submitted with each invoice.
4. The employees' actual hourly rates shown in this cost proposal are the rates that were effective on xx/xx/xx. Caltrans Contract Manager's pre-approval is required for addition of staff not previously listed on the cost proposal. The billing rates for these employees, including those that fall under general classifications, will be calculated and reimbursed based on their actual hourly rates on xx/xx/xx. Hourly rates for new employees hired after the date of this cost proposal will not exceed (or shall be in line with) the rates of similar personnel listed on this cost proposal having similar experience.
5. Travel Time Charges:
   For Managers: On weekdays up to a maximum of 8 hours will be charged for work time, travel time or any combination of travel and work time. Billing Rate = Loaded Rate Formula "C" above.
   For Exempt staff: During regular work day, actual travel time not to exceed 8 hours in any one day or one way travel will be billed as follow:
   Billing rate for travel time = Loaded Rate Formula "C" above.
   All travel time, outside of the regular work day, will be billed without the application of overhead rate as follow: Billing Rate = (Actual Hourly Rate) (1+ Fee) + (Delta Base + Delta Fringe)
   For Non-Exempt Employees: During regular work day, actual travel time not to exceed 8 hours in any one day or one way travel will be billed at full normal overhead rate (i.e. without the application of the 1.5X or 2.0X multiplier for overtime as follow:

EXHIBIT 10-H4 COST PROPOSAL FOR CONTRACTS WITH PREVAILING WAGES

ACTUAL COST PLUS FIXED FEE; SPECIFIC RATES OF COMPENSATION AND COST PER UNIT OF WORK CONTRACTS

Please Note: Consultant completes all items in yellow highlight

CONSULTANT 4Creeks, Inc. _____ PRIME ____ SUB ____ CONTRACT TYPE _____ (LIST ONE OF THE ABOVE LISTED CONTRACT TYPES)

PROJECT NO. _____ CONTRACT NO. _____ DATE _____ Sub Consultant's Participation Amount $ _____

Loaded Rate Calculation

Non Exempt Employee Loaded Billing Rates

A) Straight Time = Actual Hourly Rate * (1 + Field O.H.) * (1 + Fee) + Delta Base * (Applicable Multiplier Delta Base) + Delta Fringe * (Applicable Multiplier Delta Fringe)

B) 1.5X or 2.0X Overtime = (Actual Hourly Rate) * (1 + Field O.H.) * (1 + Fee) + 5X or 1.0X (Actual Hourly Rate) + Delta Base * (Applicable Multiplier Delta Base) + Delta Fringe * (Applicable Multiplier Delta Fringe)

Exempt Employee Loaded Billing Rates

C) Straight Time or 1.5X or 2.0X Overtime = Actual Hourly Rate * (1 + Field O.H.) * (1 + Fee) + Delta Base * (Applicable Multiplier Delta Base) + Delta Fringe * (Applicable Multiplier Delta Fringe)

Home Office Personnel	Fringe Benefit %		Overhead %			Combined %
NORMAL	0.00%	+	0.00%	+	=	0.00%
OVERTIME	0.00%	+	0.00%	+	=	0.00%
Field Office Personnel	**Fringe Benefit %**		**Overhead %**			**Combined %**
NORMAL	0.00%	+	110.00%	+	=	110.00%
OVERTIME	0.00%	+	110.00%	+	=	110.00%
				Fee	=	10.00%
				Applicable Multiplier Delta Base (Field)	=	1.00
				Applicable Multiplier Fringe (Field)	=	0.00

The PW differentials Delta Base and Delta Fringe shown in the formulas above for Loaded Billing Rates are applicable only when performing services covered under DIR determinations.

Name/Classification	Home Office Personnel Field Office Personnel	Effective Date of Hourly Rate		Prevailing Wage Rate established by State DIR (only applicable for prevailing wage work)							Employee Actual Rate (fringe benefits vary year over year)							DELTA (TOTAL) = Employee Total Rate - DIR Rate			Applicable DELTA (TOTAL) = (Employee Total - DIR Total)			DELTA (BASE) = Employee Base - DIR Base			Applicable DELTA Base = DIR Rate - Employee Base Rate			Applicable DELTA FRINGE = DELTA TOTAL - DELTA BASE (Employee - DIR)			Loaded Hourly Billing Rate		% Escalation Increase	Hourly Rate and/or Average Hourly Rate	Hourly Range for Class
					Base Salary			Fringe	Total Base Salary + Fringe Benefits					Base Salary			Estimate	Total = Base + Fringe																				
		From	To	Straight	1.5 OT	2.0 OT	Benefits	Straight	1.5 OT	2.0 OT	Straight	1.5 OT	2.0 OT		Fringe	Straight	1.5 OT	2.0 OT	Straight	1.5 OT	2.0 OT	Straight	1.5 OT	2.0 OT	Straight	1.5 OT	2.0 OT	Straight	1.5 OT	2.0 OT	Straight	1.5 OT	2.0 OT	Straight	OT (1.5x)			
Justin Aslesen Surveyor - Instrumentman Prevailing Wage Work (non-Exempt)	FIELD	10/1/2020	10/1/2021	$51.71	$76.34	$100.97	$28.51	$80.36	$104.99	$129.62	$79.82	$103.86	$120.06		$2.54	$80.36	$104.99	$129.62	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$19.11	$27.52	$19.11	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$163.59	$239.92		$70.82	N/A
Hal Wyatt Surveyor - Instrumentman Prevailing Wage Work (non-Exempt)	FIELD	10/1/2020	10/1/2021	$51.71	$76.34	$100.97	$28.65	$80.36	$104.99	$129.62	$73.36	$103.86	$122.82		$7.00	$80.36	$104.99	$129.62	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$21.65	$27.52	$21.65	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$169.46	$239.92		$73.36	N/A
Johnny Rivera Surveyor - Rodman Prevailing Wage Work (non-Exempt)	FIELD	10/1/2020	10/1/2021	$51.13	$75.47	$99.81	$28.60	$79.73	$104.07	$128.41	$74.45	$98.79	$123.13		$5.28	$79.73	$104.07	$128.41	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$23.32	$23.32	$23.32	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$171.98	$228.20		$74.45	N/A
Christian Ibarra Surveyor - Rodman Prevailing Wage Work (non-Exempt)	FIELD	10/1/2020	10/1/2021	$51.13	$75.47	$99.81	$28.60	$79.73	$104.07	$128.41	$74.62	$98.96	$123.30		$5.11	$79.73	$104.07	$128.41	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$23.49	$23.49	$23.49	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$172.37	$228.80		$74.62	N/A

1. Prevailing Wages specified are based on current DIR determination. Any future DIR escalation of prevailing wage rates will be reflected in the loaded rates
2. "NC" denotes No Charge for work more than 8 hours per day and for weekends and holidays for this contract only.
3. The billing rates shown in this cost proposal for field staff entitled for PW rates are calculated with estimated fringe benefits of the staff. The actual billing rates to be used in the invoices will be calculated by using the actual PW fringe benefits of the individual staff in accordance with the certified benefits statement submitted with each invoice.
4. The employees' actual hourly rates shown in this cost proposal are the rates that were effective on xx/xx/xx. Caltrans Contract Manager's pre-approval is required for addition of staff not previously listed on the cost proposal. The billing rates for these employees, including those that fall under general classifications, will be calculated and reimbursed based on their actual hourly rates on xx/xx/xx. Hourly rates for new employees hired after the date of this cost proposal will not exceed (or shall be in line with) the rates of similar personnel listed on this cost proposal having similar experience.
5. Travel Time Charges:
   For Managers: On weekdays up to a maximum of 6 hours will be charged for work time, travel time or any combination of travel and work time. Billing Rate = Loaded Rate Formula "C" above.
   For Exempt staff: During regular work day, actual travel time not to exceed 8 hours in any one day or one way travel will be billed as follow:
   Billing rate for travel time = Loaded Rate Formula "C" above.
   All travel time, outside of the regular work day, will be billed without the application of overhead rate as follow: Billing Rate = (Actual Hourly Rate) (1+ Fee) + (Delta Base + Delta Fringe)
   For Non-Exempt Employees: During regular work day, actual travel time not to exceed 8 hours in any one day or one way travel will be billed at full normal overhead rate (i.e. without the application of the 1.5X or 2.0X multiplier for overtime as follow:

EXHIBIT 10-H2 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

7. Generally Accepted Accounting Principles (GAAP)
8. Terms and conditions of the contract
9. Title 23 United States Code Section 112 - Letting of Contracts
10. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
11. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
12. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: Danielle Avila Title*: CEO $ 0.00

Signature: Danielle Avila Date of Certification (mm/dd/yyyy) 02/08/2021

Email: Danielle@4-Creeks.com Phone Number: 559-802-3652

Address: 324 S. Santa Fe, Suite A Visalia, CA 93292

* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Engineering & Survey Services.

Attachment: 4Creeks-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

EXHIBIT "C"

Consultant's Proposal DBE Commitment

(LAPM form 10-O1: Consultant shall utilize form for specific Federal or State projects work orders requiring a DBE goal.)

Reset Form

EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____

3. Project Description: _____

4. Project Location: _____

5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %

Local Agency to Complete this Section

17. Local Agency Contract Number: _____

18. Federal-Aid Project Number: _____

19. Proposed Contract Execution Date: _____

20. Consultant's Ranking after Evaluation: _____

Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.

_____ _____

_____ _____

_____

11. TOTAL CLAIMED DBE PARTICIPATION %

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.

_____ _____
12. Preparer's Signature 13. Date

_____ _____
14. Preparer's Name 15. Phone

_____
16. Preparer's Title

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Attachment: 4Creeks-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

1. Local Agency - Enter the name of the local or regional agency that is funding the contract.
2. Contract DBE Goal - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. Project Location - Enter the project location as it appears on the project advertisement.
4. Project Description - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
5. Consultant's Name - Enter the consultant's firm name.
6. Prime Certified DBE - Check box if prime contractor is a certified DBE.
7. Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
8. DBE Certification Number - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
9. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
10. DBE % - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
11. Total Claimed DBE Participation % - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
12. Preparer's Signature - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
13. Date - Enter the date the DBE commitment form is signed by the consultant's preparer.
14. Preparer's Name - Enter the name of the person preparing and signing the consultant's DBE commitment form.
15. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
16. Preparer's Title - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

17. Local Agency Contract Number - Enter the Local Agency contract number or identifier.
18. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
19. Proposed Contract Execution Date - Enter the proposed contract execution date.
20. Consultant's Ranking after Evaluation – Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
21. Local Agency Representative's Signature - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
22. Date - Enter the date the DBE commitment form is signed by the Local Agency Representative.
23. Local Agency Representative's Name - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
24. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
25. Local Agency Representative Title - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

Attachment: 4Creeks-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

EXHIBIT "D"

Consultant Performance Evaluation Sheet

(for project closeout)

(LAPM form 10-S)

Exhibit 10-S Consultant Performance Evaluation

1. PROJECT DATA	2. CONSULTANT DATA
1a. Project (include title, location, and Activity/CIP No.)	2a. Consultant Name and Address
1b. Brief Description of Project (design, study, etc.)	2b. Consultant's Manager
1c. Budget Cost for Project: $_____	2c. Phone: _____

3. AGENCY DEPARTMENT/SECTION RESPONSIBLE

3a. Department (include section and division)	3b. Agency Project Manager (name & phone)

4. CONTRACT DATA (Engineering Services)

4a. Contract No.: _____ Termination date: _____ Base Fee: $ _____

Agreement date: _____ Date terminated: _____ Contingency: $ _____

4b. Amendment $ _____ / # _____ $ _____ / # _____
(Total Value) (Initiated by Agency) (Total Value) (Initiated by Agency)

4c. Change Order $ _____ / # _____ $ _____ / # _____
(Total Value) (Initiated by Agency) (Total Value) (Initiated by Agency)

4d. Total Fee per Agreement (4a. + 4b. + 4c.) $ _____ Total Fee Paid $ _____
(Do not include Contingency Listed in 4a.)

4e. Type of Services (Design, study, etc.)

4f. Historical Record of Key Submittal Dates (enter date or n/a if not applicable)

	Preliminary	30%	70%	90%	100%	Final
Per Agreement						
Delivery Date						
Acceptance Date						

4g. Notice To Proceed _____ (date)

4h. Number of Days _____ (number)

4i. Actual Number of Days (number)

4j. Reasons for Change Orders: (Indicate total for each reason)

Errors/Omissions $		% of Base Fee	0.00%
Unforeseen Conditions $		% of Base Fee	0.00%
Changed Scope $		% of Base Fee	0.00%
Changed Quantities $		% of Base Fee	0.00%
Program Task Options $		% of Base Fee	0.00%

5.OVERALL RATING (Complete Section II on reverse, include comments as appropriate.)

		Outstanding	Above Average	Average	Below Average	Poor	N/A
5a.	Plans/Specifications accuracy						
5b.	Consistency with budget						
5c.	Responsiveness to Agency Staff						
5d.	Overall Rating						

6. AUTHORIZING SIGNATURES

6a. Agency Design Team Leader _____ Date: _____

6b. Agency Project Manager _____ Date: _____

6c. Agency Public Works Manager Date:

6d. Consultant Representative Date:

See Reverse Side

Attachment: 4Creeks-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

PLANS/SPECIFICATIONS ACCURACY	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A	Responsiveness To Staff	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A
Plans Specifications clear and concise							Timely Responses						
Plans/Specs Coordination							Attitude toward Client and review bodies						
Plans/Specs properly formatted							Follows directions and Chain of responsibility						
Code Requirements covered							Work product delivered on time						
Adhered to Agency Standard Drawings/Specs							Timeliness in notifying Agency of major problems						
Drawings reflect existing conditions							Resolution of field Problems						
As-Built Drawings							Consistency with budget						
Quality Design							Reasonable Agreement negotiation						
Change Orders due to design deficiencies are minimized							Adherence to fee schedule						
							Adherence to project Budget						

Section III **EXPLANATIONS AND SUPPLEMENTAL INFORMATION**

(Attach additional documentation as needed)

Item _____: _____

_____

Item _____: _____

_____

Item _____: _____

Item _____: _____

_____

Item _____: _____

_____

Item _____: _____

_____

***Indicates supporting documentation attached.**

Attachment: 4Creeks-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

EXHIBIT "E"

Consultant Annual Certification of Indirect Costs and Financial Management System

(LAPM form 10-K)

From: Musa, Ahmad@DOT
To: Lisa Dock
Cc: rodney.whitfield@dot.gov; Grace.regidor@dot.gov; Sah, Kamal K@DOT; Pham, The@DOT; Ngo, Quyen@DOT; Perrault, James R@DOT; Lee, Alice M@DOT; Maenpaa, Amada M@DOT; Alvarez, Annabel M@DOT
Subject: Acceptance of ICRs for the City of Hanford and 4Creeks, Inc. (P1391-1031)
Date: Thursday, March 4, 2021 9:01:21 AM

Hello,

The Independent Office of Audits and Investigations (IOAI) conducted financial reviews of Indirect Cost Rates (ICR) for all consultants, as certified in their Exhibit 10-K, *Consultant Certification of Contract Costs and Financial Management System*. The Agreement is between the 4Creeks, Inc. and the City of Hanford. The review was conducted in accordance with Title 23 United States Code (USC) 112(b)(2) and Title 23 Code of Federal Regulation (CFR) 172.11 to evaluate if the costs used in the ICR calculations are reasonable and meet requirements of 48 CFR, Chapter 1, Part 31. IOAI did not audit, examine, or test any of the Consultants' financial management systems under generally accepted government auditing standards, and we do not express an opinion on its adequacy, or express an opinion on any costs or credits arising from the Agreement.

In addition, IOAI did not review proposed direct labor and other direct cost (ODC) items for reasonableness and allowability per 48 CFR, Chapter 1, Part 31. Please note the following as it relates to proposed direct labor and ODC items:

- 48 CFR 31.202(a) - No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective.
- Administrative direct labor classifications are generally included in the indirect cost pool and should not be included in the cost proposal as a direct cost.
- ODC items considered "Tools of the trade" are generally included in the indirect cost pool and should not be included in the cost proposal as a direct cost.
- Per the City's Master Agreement with the California Department of Transportation (Caltrans), the City must ensure that all travel related costs paid to all consultants such as mileage, per diem for meals and hotel rates are not to exceed the California Department of Human Resources' rates.

FOR CONTRACTS WITH ADVERTISEMENT/REQUEST FOR QUALIFICATIONS DATED AFTER JUNE 30, 2020, CONSULTANTS' 2019 ICR(S) ARE REQUIRED.

We reviewed and [accepted/adjusted or previously accepted] the following Consultants' ICRs and issued Caltrans' acceptance identification numbers (ID).

CONSULTANT	ICR Acceptance ID	One-Year Applicable Fiscal Period	Accepted ICR
4Creeks, Inc.	L2021-1299	01/01/21-12/31/21	110.00%

Note: For future contracts using the same fiscal year ICR, IOAI may request a separate field or project-specific rate if appropriate (FAR 31.31.203(f) and the AASHTO Audit Guide Section 5.6)

The Caltrans' acceptance ID is also posted to IOAI's website https://ig.dot.ca.gov/resources/icr-id-log or use the homepage link to navigate, https://ig.dot.ca.gov under the Resources tab, Indirect Cost Rate (ICR) Acceptance/Approval (HTML) or (PDF).

Please note that IOAI reviews all ICRs developed by the consultants when issuing Caltrans Acceptance ID numbers and the ICRs highlighted should be applied to the cost proposals for this contract.

Acceptance of each of the Consultant's ICR does not constitute establishment of a cognizant approved ICR in accordance with 23 CFR Part 172. IOAI retains the right to audit the accepted rates or recommended adjustments upon discovery of additional information.

The safe harbor rate (SHR) may be used for the life of the contract if the contract stipulates the ICR is fixed for the life of the contract. Consultants with an accepted SHR may also use the rate for all subsequent contracts submitted to IOAI through the end of the accepted year. The accepted SHR expires at the end of the calendar year the rate is accepted in and requests should be submitted annually.

This email is intended for the use of Caltrans and its sub-recipients and may be provided to other governmental entities sharing cost data for the purposes of complying with the acceptance of indirect cost rates pursuant to 23 USC 112. Specifically, 23 USC 112(b)(2)(E) states in part, audit information shall be confidential and shall not be accessible or provided, in whole or in part, to another firm or to any government agency which is not part of the group of agencies sharing cost data, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

Please retain a copy of this e-mail for your files. If you have questions, please contact Ahmad Musa, Auditor at Ahmad.Musa@dot.ca.gov or Amada Maenpaa, Audit Manager at (916) 323-7868.

Thank you.

Alice M. Lee
Audit Chief
Office of Project Delivery
Independent Office of Audits and Investigations

Ahmad Musa
Associate Management Auditor
Independent Office of Audits and Investigations
415-418-0592

EXHIBIT "F"

Disclosure of Lobbying Activities

(LAPM form 10-Q)

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action:

- ☐ a. contract
- ☐ b. grant
- ☐ c. cooperative agreement
- ☐ d. loan
- ☐ e. loan guarantee
- ☐ f. loan insurance

2. Status of Federal Action:

- ☐ a. bid/offer/application
- ☐ b. initial award
- ☐ c. post-award

3. Report Type:

- ☐ a. initial
- ☐ b. material change

For Material Change Only:
year ____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity

☐ Prime ☐ Subawardee
Tier _____, if known

Congressional District, if known

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, if known

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable _____

8. Federal Action Number, if known:

9. Award Amount, if known:

10. Name and Address of Lobby Entity
(If individual, last name, first name, MI)

11. Individuals Performing Services
(including address if different from No. 10)
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

12. Amount of Payment (check all that apply)

$ _____ ☐ actual ☐ planned

13. Form of Payment (check all that apply):

- ☐ a. cash
- ☐ b. in-kind; specify: nature _____
  Value _____

14. Type of Payment (check all that apply)

- ☐ a. retainer
- ☐ b. one-time fee
- ☐ c. commission
- ☐ d. contingent fee
- ☐ e deferred
- ☐ f. other, specify _____

15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:

(attach Continuation Sheet(s) if necessary)

16. Continuation Sheet(s) attached: **Yes** ☐ **No** ☐

17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Authorized for Local Reproduction

Standard Form - LLL

Federal Use Only:

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

Attachment: 4Creeks-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity 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 a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (Ml).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

Attachment: 4Creeks-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

BLAIR, CHURCH & FLYNN CONSULTING ENGINEERS

City of Hanford
900 S. 10th Avenue
Hanford, CA 93230

CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

(For Local Assistance Federal-aid Projects, based on Caltrans LAPM Form 10-R)

This exhibit contains fiscal requirements from 2 CFR 200 and may be used for state-only funded contracts as well.

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Attachment: BCF-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

AGREEMENT FOR PROFESSIONAL SERVICES FOR
ON-CALL ENGINEERING SERVICES

ARTICLE I: INTRODUCTION

This Agreement for Professional Services ("Agreement") is made and entered into this 6th day of April, 2021, by and between the City of Hanford, a Municipal Corporation ("CITY"), and _Blair, Church & Flynn Consulting Engineers_ ("CONSULTANT"), incorporated in the State of California.

The Project Manager for the "CONSULTANT" will be Jeffrey Brians, PE.

The name of the "CITY" is as follows: City of Hanford.

The Contract Administrator for CITY will be the City Engineer and/or its assignees.

RECITALS

1. CONSULTANT represents to CITY that they are trained, experienced, licensed and competent to perform the services which will be required by this Agreement; and

2. CONSULTANT represents to CITY that they possess the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

3. CITY desires to retain CONSULTANT to render Professional Architectural and Engineering Consulting Services as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth herein for such other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

A. **RETENTION OF CONSULTANT.** Subject to the terms and conditions set forth herein, the CITY retains the CONSULTANT to perform the services identified in this Agreement, as an Independent Contractor and CONSULTANT hereby accepts this independent contractor appointment.

B. **SCOPE OF SERVICES.** The work to be performed under this AGREEMENT is described in Article III, Statement of Work, and the approved CONSULTANT's Cost Proposals. The approved CONSULTANT's Cost Proposal shall be attached hereto as Exhibit "A" and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.

C. **INDEMNIFICATION.** 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 actions, injuries, claims, damages, demands, liabilities, costs, losses, and expenses, direct or indirect, including without limitation, any and all court costs, reasonable attorneys' fees, expert witness fees, and other expenses which the CITY may sustain or incur as a consequence of, or are in any way related to or arising out of any failure to the CONSULTANT 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,

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 and services on the part of CONSULTANT, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statue of repose or statute of limitations.

D. **INDEPENDENT CONTRACTOR STATUS.** CONSULTANT, in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employee's), in the performance of the Services to be performed pursuant to this Agreement, is an Independent Contractor, and shall not act as an agent or employee of the CITY, and that no relationship of employer-employee exists between the Parties hereto. The CONSULTANT's assigned personnel shall not be entitled to, or obtain retirement benefits or other benefits which accrue to CITY employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. Nothing in the Agreement shall create or be construed as creating a partnership, joint venture, or any other relationship between the CITY and CONSULTANT.

E. **TAX WITHHOLDINGS**. 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.

F. **THIRD PARTY PERSONS EMPLOYED.** 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.

G. **AGREEMENT NOT TRANSFERABLE.** Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT 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 CITY under this AGREEMENT, 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.

H. **NEGLIGENT ACTS AND OMMISSIONS.** CONSULTANT shall be fully responsible to the CITY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons employed by them for whom CONSULTANT is legally liable, in the same manner as persons directly employed by CONSULTANT.

I. **ALTERATIONS APPROVED IN WRITING.** 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.

J. **PAYMENTS.** 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.

K. **INTEREST OF CONSULTANT**. CONSULTANT and its shareholders and covenants represent that they do not now have any investment or interest in real property, and shall not acquire any interest, direct or

indirect in the area covered by this Agreement, or any other source of income, interest in real property, or investment which would be affected in any manner or degree by the performance of CONSULTANT's Services hereunder. CONSULTANT further covenants and represents that, in the performance of the Services hereunder, to the best of its knowledge no person having any such interest shall perform any Services under this Agreement.

CONSULTANT is not a designated employee within the meaning of the Political Reform Act because CONSULTANT:

1. Will conduct, research, and arrive at conclusions with respect to rendition of information, advice, recommendation, or counsel, independent of the control and direction of the CITY or of any CITY official, other than normal agreement monitoring; and
2. Shall possesses no authority with respect to any CITY decision beyond rendition of information, advice, recommendation, or counsel. FPPC Reg.18700, et seq.

L. **PROFESSIONAL ABILITY OF CONSULTANT**. CITY has relied upon CONSULTANT's representations regarding its training and professional ability to perform the Services hereunder as a material inducement to enter into this Agreement. CONSULTANT shall therefore provide properly skilled personnel to perform all Services under this Agreement. The primary provider of the Services

called for by this Agreement shall be _____Jeffrey Brians, PE_____.
(Consult fill in employee name and title who will represent the agreement to the CITY)

who shall not be replaced without the written consent of the CITY. All work performed by the CONSULTANT under this Agreement shall be in accordance with the applicable professional standard of care, and shall meet the local professional standard of quality ordinarily to be expected of competent persons in CONSULTANT's field of expertise working in Kings County.

M. **COMPLIANCE WITH LAWS**. CONSULTANT shall use the proper standard of care in performing the Services, and shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations in effect at the time the Agreement is executed. In addition, if the request for proposal to provide professional services which are the subject of this Agreement cited any Federal or State Financial Assistance involved in the project for which the Services are provided, the CONSULTANT shall perform all services in accordance with all applicable federal and state laws, rates and regulations in effect at the time the agreement is executed.

N. **LICENSES**. CONSULTANT represents and warrants to CITY that it has all licenses, permits, qualifications, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT shall maintain a CITY of Hanford Business License.

ARTICLE II: CONSULTANT'S REPORTS OR MEETINGS

A. **PROGRESS REPORTS AND BILLINGS.** CONSULTANT shall submit progress reports and billings on EACH specific project in accordance with the Work Order at least once a month. CONSULTANT's bill shall include a brief description of the Services performed, the date the Services were performed, the number of hours spent, and by whom, and shall include a description of any authorized reimbursable expenditures. The report should be sufficiently detailed for the CITY's Contract Administrator or Project Coordinator: to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; to sufficiently address any difficulties or special problems encountered so remedies can be developed. The CITY shall pay the CONSULTANT no later than 60 days after the date of submittal of a complete invoice for completed tasks and approval of the invoice by CITY staff.

B. **MEETINGS.** CONSULTANT's Project Manager shall meet with CITY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE III: STATEMENT OF WORK

A. **CONSULTANT SERVICES.** The CONSULTANT shall perform professional engineering and land surveying services, in accordance with all the provisions of this Agreement. The Scope of Work for each project will be determined by the CITY Engineer. For State and Federal Aid projects, the project scope will be incorporated into a streamlined (mini) RFP, and will be sent to the pre-qualified selected CONSULTANTS under agreement. The CONSULTANT shall submit their proposal to the CITY within the required timeframe, and the CITY shall select the top proposal using Qualifications Based Selection. Upon selection, the CITY will negotiate the cost based on the agreement labor price agreement. A work order will be assigned for each project after CONSULTANT determines an estimated cost for producing all necessary plans and documents to satisfy the Scope of Work. For Local Funded projects, the CONSULTANT will submit a scope of work with cost, and a Work Order will be prepared. The CONSULTANT shall correct any and all errors and/or omissions in the performance of the Services and any documents resulting therefrom even though CITY has accepted said Services or documents. CONSULTANT shall make such corrections upon CITY's request and at no cost or expense to CITY.

B. **ENVIRONMENTAL COMPLIANCE**. This AGREEMENT provides for CONSULTANT environmental services that result in CEQA or NEPA approval. Federal funded projects require NEPA clearance in addition to CEQA. NEPA Environmental documents are not considered complete until a Caltrans Official signs the Categorical Exclusion (CE), the Finding of No Significant Impact (FONSI), or the Record of Decision.

C. **RIGHT OF WAY.** Existing and proposed Right of Way requirements are to be determined and shown by the CONSULTANT. Land surveys and computations with metes and bounds descriptions shall be made by a California Licensed Land Surveyor. Projects shall be tied into recorded monumentation and bench marks. A bench mark map with record elevation data is available from the City. Services shall include preparation of Appraisal Map, Acquisition Maps, and Legal Descriptions used to acquire right of way or property.

D. **SURVEYS.** This AGREEMENT provides for CONSULTANT licensed surveying services for preliminary surveying, topographic surveys, monumentation mapping, construction staking, and monument setting and recording of corner records. Work under this service shall be performed or as directed by a California Licensed Land Surveyor.

E. **SUBSURFACE INVESTIGATIONS.** This AGREEMENT provides for CONSULTANT Sub-Surface Investigations as directed by the CITY for Environmental testing, topographic mapping, boring, construction staking, and other specialized sub surface investigation services, either by the CONSULTANT, or under the direction of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order.

F. **CONSTRUCTION MANAGEMENT.** This AGREEMENT does NOT provide for a CONSULTANT in a Management role.

G. **DESIGN PLANS, SPECIFICATIONS, AND ESTIMATES.** This AGREEMENT provides for CONSULTANT Design Plans, Specifications, and Estimates as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order. Design work shall meet City Standards.

H. **ARCHITECTURAL AND STRUCTURAL ENGINEERING.** This AGREEMENT provides for CONSULTANT Architectural and Structural Engineering as directed by the CITY and performed either by the CONSULTANT, or under the direction of the CONSULTANT, for structural design and analysis as determined

in the Scope of Work of the assigned Work Order. All Architectural and Structural Engineering shall by performed by a Licensed Structural Engineer and shall meet all City and State Standards.

I. **TRAFFIC ENGINEERING AND TRAFFIC SIGNAL DESIGN.** This AGREEMENT provides for CONSULTANT Traffic Engineering and Traffic Signal Design as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for traffic engineering and traffic signal design as determined in the Scope of Work of the assigned Work Order. All Traffic Engineering shall by performed by a licensed Professional Engineer and shall meet all City and State Standards.

J. **MAPPING, INCLUDING GIS AND GPS.** This AGREEMENT provides for CONSULTANT Mapping, including GIS and GPS, as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for mapping as determined in the Scope of Work of the assigned Work Order.

K. **RAILROAD PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Railroad Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for railroad permitting and coordination as determined in the Scope of Work of the assigned Work Order.

L. **UTILITY PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Utility Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for utility permitting and coordination as determined in the Scope of Work of the assigned Work Order.

M. **CONFERENCES, SITE VISITS, AND INSPECTION OF WORK.** This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the CITY, County, State, and/or FHWA. Costs incurred by CONSULTANT for meetings subsequent to the initial meeting shall be included in the fee.

N. **CHECKING SHOP DRAWINGS.**
This AGREEMENT provides for the CONSULTANT to provide plan checking of shop drawings and contract documents. Payment for checking of drawings by CONSULTANT shall be paid at the hourly rate per the attached Fee Schedule. The total compensation paid to the CONSULTANT for all services in this agreement shall not exceed the maximum contract amount stated in Article V, Section P.

O. **CONSULTANT SERVICES DURING CONSTRUCTION.**
This AGREEMENT provides for CONSULTANT services during the course of construction, including resident engineering, construction surveys and construction staking. Payment for services shall be paid at the rates stated in the attached Fee Schedule, and shall not exceed the Work Order fee stated without an approved Change Order.

P. **DOCUMENTATION AND SCHEDULES.**
This AGREEMENT provides for the CONSULTANT to document the results of the work to the satisfaction of CITY, and if applicable, to the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Work Order objectives. All final construction documents shall be stamped and wet signed when completed.

Q. **CITY OBLIGATIONS.** Data applicable to the Work Order Scope of Work shall be made available to the CONSULTANT at the time of Work Order Execution. Data may include maps, plans, documents, and records that are in the possession of the CITY. Additional items to be made available to the CONSULTANT shall be noted specifically on the Work Order.

R. **DELIVERABLES AND NUMBER OF COPIES.**
The number of copies or documents to be furnished with each submittal, such as reports, brochures, sets of plans, specifications, maps, etc., shall be two (2) copies minimum unless otherwise specified in the work order or as may be required for City Permitting. Final plans and maps shall be plotted on 20# vellum or on plastic film mylar, and shall have stamp and original wet signatures.

S. **DESIGN STANDARD.**
All work performed under this AGREEMENT shall conform to the most current City of Hanford Standards, Caltrans Standards, and all other Local, State, and FHWA requirements.

ARTICLE IV: PERFORMANCE PERIOD

A. This AGREEMENT shall go into effect on **April 6, 2021**, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY'S Contract Administrator. The AGREEMENT shall be in effect for 3 (three) years, and end on **April 6, 2024**, unless extended by AGREEMENT amendment. AGREEMENT amendments shall be limited to two separate ONE YEAR EXTENSIONS, and in no case shall the AGREEMENT exceed five years.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on CITY until the AGREEMENT is fully executed and approved by CITY.

C. The period of performance for each specific project shall be in accordance with the Work Order for that project. If work on a Work Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the Work Order in progress only. In no case shall the maximum term of this AGREEMENT exceed five (5) years.

ARTICLE V: ALLOWABLE COSTS AND PAYMENTS

A. **PAYMENT.** CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's attached approved Cost Proposal Fee Schedule (Exhibit B), subject to Prevailing Wage Requirements which are available at the office of the City Engineer. An estimate for cost of services for each project shall be submitted to the City Engineer before commencement of work. Payment by CITY under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment. An increase in the fee schedule for non-prevailing wage classifications will be allowed at the beginning of Year 2 (two) of this agreement and shall be made a part of an AGREEMENT extension, if said agreement is extended for a period. The CONSULTANT must notify the CITY thirty (30) days in advance of such increases. The CONSULTANT is limited to two (2) price increases during the three years contract period, and one increase per year for each year the contract is extended. An increase in fee schedule for prevailing wage classifications shall be allowed when the Prevailing Wage for said wage determination increases. The services included in this agreement shall increase by the same amount approved for increase by the Department of Industrial Relations. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within sixty (60) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate.

B. **DIRECT COSTS.** In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal, and identified in the approved Cost Proposal and in the executed Work Order.

C. **WORK ORDERS.** Specific projects will be assigned to CONSULTANT after approval of the proposal for each specific project through the issuance of Work Orders. Work Orders shall be number consecutively for each specific project.

D. **DRAFT WORK ORDERS.** After a project to be performed under this AGREEMENT is identified by CITY, CITY will prepare a draft Work Order with Scope of Work; less the cost estimate. A draft Work Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a CITY Project Coordinator. The draft Work Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Work Order within ten (10) calendar days along with a Cost Estimate for requested services, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and the total dollar amount. After agreement has been reached on the negotiable items and total cost; a finalized Work Order shall be signed by both CITY and CONSULTANT.

E. **NOT TO EXCEED COMPENSATION**. Work Orders may be negotiated for specific rates of compensation Not to Exceed amount, of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT. Work Orders that are approved as "Flat Fee" must have any prevailing wage increase built into the cost proposal, and the CONSULTANT must pay the required prevailing wage rates to workers. Work Orders that are approved as "Time and Materials, Not to Exceed" will require prevailing wage rates be paid to workers, and the total amount "Not to Exceed" will be increased to accommodate said increases in the amount approved by the DIR.

F. **STATE RATE REIMBURSEMENTS.** Reimbursement for transportation and subsistence costs shall not exceed State rates. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

G. **CHANGE ORDERS.** When milestone cost estimates, or not to exceed estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment Change Order for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

H. **MONTHLY PAYMENTS.** Progress payments for each Work Order will be made monthly in arrears based on services provided and actual costs incurred.

I. **NOTICE TO PROCEED.** 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 or for any work performed prior to approval of this AGREEMENT, or for work done on a project Work Order prior to the City's issuance of a Notice to Proceed (NTP).

J. **EXECUTED WORK ORDERS.** A Work Order is of no force or effect until returned to CITY and signed by an authorized representative of CITY. No expenditures are authorized on a project and work shall not commence until a Work Order for that project has been executed by CITY.

K. **INVOICES.** CONSULTANT will be reimbursed within thirty (30) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Work Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Work Order. 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, the project title and the Work Order number. Credits due CITY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to CITY's Contract Administrator at the following address:

City of Hanford
Attn.: Finance Dept., Accounts Payable
315 N. Douty Street
Hanford CA 93230

L. **PERIOD OF PERFORMANCE FOR WORK ORDERS.** The period of performance for Work Orders shall be in accordance with dates specified in each individual Work Order. No Work Order will be written which extends beyond the expiration date of this AGREEMENT.

M. **AMOUNT PAYABLE FOR WORK ORDER.** The total amount payable by CITY for an individual Work Order shall not exceed the amount agreed to in the Work Order, unless authorized by amendment Change Order.

N. **PAYMENT FOR DELIVERABLES.** If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Work Order, no payment will be made until the deliverable has been satisfactorily completed.

O. **AMENDMENT TO AGREEMENT.** Work Orders may not be used to amend the language (or the terms) of this AGREEMENT, nor to exceed the scope of work under this AGREEMENT.

P. **AGREEMENT MAXIMIM PAYMENT.** The total amount payable by CITY for all Work Orders resulting from this AGREEMENT shall not exceed **$150,000 per year, or $ 450,000.00 for the total three-year agreement.** It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Work Orders.

Q. **EXTRA WORK.** At any time during the term of this Agreement, CITY may request that CONSULTANT perform Extra Work. As used herein, "Extra Work" means any work which is determined by CITY to be necessary for the proper completion of the Services, but which the parties did not include in the Scope of Work. Extra work will be performed on an hourly basis under the CONSULTANT's most current hourly fee schedule. CONSULTANT shall not perform, nor be compensated for Extra Work without written authorization from CITY.

ARTICLE VI: TERMINATION

A. This AGREEMENT may be terminated by CITY, provided that CITY gives not less than thirty (30) calendar days' written notice to CONSULTANT (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, and in accordance with Section 15, Property of CITY. Upon termination, CONSULTANT shall be entitled to compensation for Services performed up to the effective date of termination, unless this Agreement is terminated for cause, in which case, CITY may withhold compensation due

CONSULTANT in order to reimburse CITY for any losses, damages or expenses caused by CONSULTANT's default under this Agreement

B. CITY may temporarily suspend this AGREEMENT, at no additional cost to 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 provided for in subsection A of this section.

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.

D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Section 11C. 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, and in accordance with Section 15, Property of CITY.

E. If the CITY is in breach of the payment terms or otherwise is in material breach of this AGREEMENT, the CONSULTANT may suspend performance of services upon ten (10) calendar days' notice to the CITY. The CONSULTANT shall have no liability to the CITY, and the CITY agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this AGREEMENT by the CITY. Upon receipt of payment in full of all outstanding sums due from the CITY, or curing of such other breach that caused the CONSULTANT to suspend services, the CONSULTANT shall resume services, and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension. If the CITY does not cure said material breach of AGREEMENT within thirty (30) calendar days of notice, the CONSULTANT may terminate the AGREEMENT upon written notice to the CITY.

ARTICLE VII: COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

Consulting Architectural & Engineering (A&E) firms providing engineering and design related services under a contract funded by a federal grant, are required by regulation (as specified in 2 CFR Part 200) to account for and bill costs in accordance with the Federal Cost Principles of 48 CFR 31. In efforts to comply with the Federal Cost Principles, A&E consulting firms that provide services on federal-aid highway projects are required to develop indirect cost rates in accordance with the Federal Cost Principles on an annual basis.

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.

F. 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.

Consultant shall provide all documents and files per Work Order to the City as required per Ownership of Data requirements in the Agreement.

ARTICLE VIII: RETENTION OF RECORD/AUDITS

A. For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and CITY shall maintain any and all books of account, ledgers, invoices, vouchers, canceled checks, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate work papers, and other evidence pertaining to the performance, services, expenditures, and disbursements 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 work papers 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. 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 CONSUTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, work paper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

B. CONSULTANT shall maintain all documents and records that demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the CITY. Copies of such documents shall be provided to the CITY for inspection at the CITY offices.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request, require that custody of the records be given to the CITY and that the records and documents be maintained in the CITY offices. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

ARTICLE IX: 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 thirty (30) calendar 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 AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, 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, CITY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall

be adjusted by CONSULTANT and approved by CITY 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 AGREEMENT 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, CITY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT 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 Caltrans Audits and Investigation (A&I). Caltrans A&I, 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 AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During Caltrans A&I's review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans A&I 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 Caltrans A&I 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 A&I.

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 Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I 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. Caltrans A&I 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 Caltrans A&I 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) Caltrans A&I 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) Caltrans A&I 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 X: SUBCONTRACTING

A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the CITY and any Subconsultants, and no sub-agreement 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 Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.

C. Any sub-agreement 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 the CONSULTANT by the CITY.

E. Any substitution of Subconsultants must be approved in writing by the CITY Contract Administrator in advance of assigning work to a substitute Subconsultant.

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.

Method 3: The CITY shall 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. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the CITY. 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 subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other 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 noncompliance 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 XI: EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

A. Prior authorization in writing by 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 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 AGREEMENT 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, CITY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT 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 five thousand dollars ($5,000) is credited to the project.

ARTICLE XII: STATE PREVAILING WAGE RATES

A. **D.I.R. REGISTRATION.** 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. **WAGE DETERMINATIONS (CALTRANS).** 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 (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). 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 RATES.** 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 representatives 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 to a representative of CITY, the Division of Labor Standards

Attachment: BCF-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

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.

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 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. **CERTIFIED PAYROLL.** 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.

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:

a. 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.

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 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 XIII: CONFLICT OF INTEREST

A. During the term of this AGREEMENT, the 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. The 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 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 AGREEMENT.

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 Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, 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.

E. CONSULTANT maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement.

F. Further CONSULTANT warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or result from the award or making of this Agreement.

G. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability.

H. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

ARTICLE XIV: REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT 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 AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV: PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING (for use when Federal funding will exceed $150,000)

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 AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the 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 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 subagreements, which exceed one hundred thousand dollars ($100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI: 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 AGREEMENT, CONSULTANT and its subconsultants represents that they are an Equal Opportunity Employer, and shall not deny the AGREEMENT's benefits or discriminate against 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. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of CITY's programs or guidelines currently in effect as identified and provided to Consultant by CITY.

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 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 AGREEMENT 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 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

ARTICLE XVII: 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 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 XVIII: DISADVANTAGED BUSINESS ENTERPRISES (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 at https://dot.ca.gov/programs/civil-rights/dbe-search .

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. 49 CFR 26.55 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 enter into a federally-funded agreement, and proposes on a federal funded project RFP, 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 AGREEMENT is 0%.** Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Appendix "C": Exhibit 10-O1: Consultant Proposal DBE Commitment , 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 Appendix "D": 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 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 recipient 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 CONSULTANT from future proposing as non-responsible

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:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. 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.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. 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).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.

7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. 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:
1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. 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 Page 24 of 32 September 2020 Local Assistance Procedures Manual EXHBIT 10-R A&E Boilerplate Agreement Language
3. Maintain records including:
   - Name and business address of each 1st-tier subconsultant
   - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
   - 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.

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 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 AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, Appendix "E": Exhibit 17-F1: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) for On-call Contracts, 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 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.

M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX: INSURANCE

A. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies.

1. Workers Compensation Coverage. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury or disease.

2. General Liability Coverage. Insurance Services Office (ISO) Form CG 0001, including products and completed operations, with limits of no less than TWO MILLION AND NO/100 DOLLARS ($2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be FOUR MILLION AND NO/100 DOLLARS ($4,000,000), twice the required occurrence limit.

3. Automobile Liability Coverage. ISO Form Number CA 0001 covering any auto (Code 1), with a limit no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury and property damage.

4. Professional Liability Coverage. Contractor will maintain Professional Liability coverage with limits no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per occurrence or claim, and TWO MILLION AND NO/100 DOLLARS ($2,000,000) policy aggregate.

B. If Consultant maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by Consultant.

C. Consultant's insurance policies shall be "occurrence" policies and not "claims-made" coverage except for Professional Liability Coverage.

D. Consultant may maintain an Umbrella policy in conjunction with the insurance policies referenced above. In such case, Consultant shall be deemed to have satisfied the insurance requirements of this contract as long as: (i) the coverage limits of the Umbrella policy and of the underlying liability policy(ies), when combined, satisfy each of the per occurrence and aggregate requirements identified in this subsection a.; and (ii) coverage under the Umbrella policy is as broad as and includes all incidents and events covered by the underlying insurance that it supplements.

E. Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Alternatively, the CITY may require Consultant to provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses within the retention.

F. The policies are to contain, or be endorsed to contain, the following provisions:

1. "The City and its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations; products used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. General liability coverage can be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2. For any claims related to this contract, Consultant's insurance coverage, with the exception of Professional Liability Insurance, shall be primary insurance as respects the City and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City and/or its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall be non-contributory.
3. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
4. These policies of insurance shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers, with the exception of Professional Liability Insurance. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with the policies of insurance obtained by Consultant.
5. With the exception of Professional Liability Insurance, these policies of insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
6. The insurer shall agree to waive all rights of subrogation against City, its officials, officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.
7. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.
8. The insurance provided by these policies shall not be canceled except after thirty (30) days written notice has been received by the City. The Consultant or its insurance agent shall, to the extent feasible, notify the City in writing thirty (30) days prior to the date on which any insurance policy required hereunder will be suspended voided, modified, or reduced. If such thirty (30) day prior notice is not feasible, notice will be promptly provided to the City upon Consultant's knowledge that a noticeable event will or has occurred.

G. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII and which are authorized to write business in California.

H. Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, true and correct copies of all required insurance policies, including endorsements required by these specifications, at any time. All forms and endorsements are to list the City of Hanford as additional insureds. The City reserves the right to require complete, true and correct copies of all required insurance policies, including endorsements required by these specifications, at any time. The policies can be redacted of personal information.

I. Consultant hereby grants to CITY and its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of Consultant may acquire against the CITY and/or its officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance. Consultant agrees to obtain endorsements necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

J. The CITY reserves the right to modify the insurance requirements contained in this contract, including, without limitation, coverage limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

K. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

ARTICLE XX: FUNDING REQUIREMENTS

A. It is mutually understood between the parties that this AGREEMENT 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 AGREEMENT were executed after that determination was made.

B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to 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 CITY 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 VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI: CHANGE IN TERMS

A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

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 CONSULTANT's Project Manager or members of the project team which shall not be unreasonable withheld, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by CITY's Contract Administrator.

ARTICLE XXII: CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT 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 AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII: DISPUTES

A. Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to resolve any dispute amicably between them through mediation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains

unresolved after mediation, and 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.

B. 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 AGREEMENT.

ARTICLE XXIV: INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit 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 XXV: 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 Vehicle Code §591, 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 XXVI: OWNERSHIP OF DATA

A. It is mutually agreed that all materials prepared by CONSULTANT, its officers, employees, agents, and subcontractors under this AGREEMENT, except working notes and internal documents, shall become the sole property of the CITY in its discretion without further compensation to the CONSULTANT or to any other party, and the 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 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. The CITY's use of completed documents for other projects and/or the use of uncompleted documents without the written

authorization of Consultant will be at the CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of, or changes to the Project Documents not performed by the Consultant.

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. Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for CITY to use, modify, reuse or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data electronic or otherwise recorded on computer diskettes which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that CITY is granted non-exclusive and perpetual license for any Documents & Data the subcontractor prepared under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. CITY shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purpose intended by this Agreement shall be at CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of or changes to the Project Documents not performed by the Consultant.

ARTICLE XXVII: CLAIMS FILED BY CITY's CONSTRUCTION CONTRACTOR

A. **CONSULTANT'S PERSONNEL AVAILABILITY.** 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 REIMBURSEMENT.** 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. **CONSULTANT'S PERSONNEL SERVICES.** 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.

D. **ATTORNEYS' FEES**. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court for the County of Kings, State of California for any proceeding arising hereunder.

E. **SOLE AND ONLY AGREEMENT.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this Agreement and no other agreement, statement or promise shall be valid or binding.

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

G. **AMENDMENT.** No change, amendment or modification of this Agreement shall be valid unless the same be in writing and signed by the parties hereto.

H. **GOVERNING LAW.** This Agreement shall be construed and governed pursuant to the laws of the State of California.

I. **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

ARTICLE XXVIII: CONFIDENTIALITY OF DATA

A. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information including financial, statistical, personal, technical, or other data, and other documents and data either created by or provided to CONSULTANT in connection with and relative to CITY's operations and CONSULTANTS performance of this agreement, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected and held confidential by CONSULTANT from unauthorized use and disclosure.

B. Such materials shall not, without the prior written consent of CITY, be used by Consultant for any purposes other than the performance of the Services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the Services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use CITY's name, insignia, photographs, or the project for which Consultant's Services are rendered, or any publicity pertaining to the Consultant's Services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent by CITY. Notwithstanding the foregoing, the CITY acknowledges that the Consultant may want/need to include projects performed under this agreement on proposals for similar work in the future. The CITY hereby grants permission to list any projects performed under this agreement for marketing purposes; provided however, Consultant will not make any representations regarding CITY's satisfaction with Consultant's work product unless Consultant receives a written statement or evaluation from CITY

C. Permission to disclose information on one occasion, or public hearing held by CITY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

D. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or CITY's actions on the same, except to CITY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.

E. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by CITY, and receipt of CITY'S written permission.

F. 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.

ARTICLE XXIX: 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 XXX: 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 records. The Consultant Performance Evaluation form and criteria is attached in Appendix "F".

ARTICLE XXXI 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 XXXII NOTIFICATION

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

CONSULTANT:

BLAIR, CHURCH & FLYNN CONSULTING ENGINEERS

JEFFREY BRIANS, PE

451 CLOVIS AVENUE, SUITE 200

CLOVIS, CA 93612

CITY:

CITY OF HANFORD

ATTN: CITY ENGINEER, Contract Administrator

900 S. 10TH AVENUE

HANFORD, CA 93230

ARTICLE XXXIII: CONTRACT

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.

ARTICLE XXXIV: SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and in the year first set forth above.

CITY OF HANFORD,
a Municipal Corporation

By: _____
MARIO CIFUENTEZ, City Manager

Consultant: BLAIR, CHURCH & FLYNN CONSULTING ENGINEERS

By: _____
JEFFREY BRIANS, Principal-In-Charge

APPROVED AS TO CONTENT:

By: _____
JOHNATHAN L. DOYEL
Public Works Director

ATTEST:

By: _____
NATALIE CORRAL
City Clerk

EXHIBIT "A"

Consultants Cost Proposal for On-Call Contract

(LAPM form 10-H2)

EXHIBIT 10-H2 COST PROPOSAL PAGE 1 OF 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant: Blair, Church & Flynn Consulting Engineers, Inc. Prime Consultant ✓ Subconsultant

Project No. Contract No. Leave Blank Date 11/19/2020

For Combined Rate Fringe Benefit %	+	Overhead %	+	General Administration %	=	Combined Indirect Cost Rate (ICR) %	
				OR			
For Home Office Rate Fringe Benefit %	+	Overhead %	+	General Administration % 0%	=	Home Office ICR %	136.00%
For Field Office Rate Fringe Benefit %	+	Overhead %	+	General Administration %	=	Field Office ICR %	
						FEE % =	15.00%

BILLING INFORMATION						CALCULATION INFORMATION		
Name/Job Title/Classification[1]	Hourly Billing Rates[2]			Effective date of hourly rate		Actual **or** Avg. hourly rate[3]	% or $ increase	Hourly range - for classifications only
	Straight	OT(1.5x)	OT(2x)	From	To			
	$188.68	$283.02	$377.35	1/1/2021	12/31/2021	$69.52	-	
Principal in Charge	$194.34	$291.51	$388.68	1/1/2022	12/31/2022	$71.61	3.00%	
Jeffrey D. Brians, PE	$200.17	$300.25	$400.34	1/1/2023	12/31/2023	$73.75	3.00%	
	$166.23	$249.35	$332.47	1/1/2021	12/31/2021	$61.25	-	
Project Manager	$171.22	$256.83	$342.44	1/1/2022	12/31/2022	$63.09	3.00%	
Bradley Kerner, PE	$176.36	$264.53	$352.71	1/1/2023	12/31/2023	$64.98	3.00%	
	$164.20	$246.30	$328.39	1/1/2021	12/31/2021	$60.50		
Civil Engineer	$169.12	$253.68	$338.25	1/1/2022	12/31/2022	$62.32	3.00%	
Luis Gonzalez, PE	$174.20	$261.29	$348.39	1/1/2023	12/31/2023	$64.18	3.00%	
	$161.51	$242.27	$323.02	1/1/2021	12/31/2021	$59.51	-	
Civil Engineer	$166.36	$249.53	$332.71	1/1/2022	12/31/2022	$61.30	3.00%	
Timothy Flynn, PE	$171.35	$257.02	$342.69	1/1/2023	12/31/2023	$63.13	3.00%	
	$89.56	$134.34	$179.12	1/1/2021	12/31/2021	$33.00	-	
Assistant Engineer	$92.25	$138.37	$184.50	1/1/2022	12/31/2022	$33.99	3.00%	
Zach Smith, EIT	$95.02	$142.52	$190.03	1/1/2023	12/31/2023	$35.01	3.00%	
	$122.13	$183.20	$244.26	1/1/2021	12/31/2021	$45.00	-	
Electrical Engineer	$125.79	$188.69	$251.59	1/1/2022	12/31/2022	$46.35	3.00%	
Steffan Kiefer, PE	$129.57	$194.35	$259.14	1/1/2023	12/31/2023	$47.74	3.00%	
	$145.88	$218.82	$291.76	1/1/2021	12/31/2021	$53.75	-	
Structural Enigneer	$150.25	$225.38	$300.51	1/1/2022	12/31/2022	$55.36	3.00%	
Brian Brooks, PE	$154.76	$232.14	$309.52	1/1/2023	12/31/2023	$57.02	3.00%	
	$134.02	$201.03	$268.03	1/1/2021	12/31/2021	$49.38	-	
Landscape Architect	$138.04	$207.06	$276.08	1/1/2022	12/31/2022	$50.86	3.00%	
David Briley, MLA	$142.18	$213.27	$284.36	1/1/2023	12/31/2023	$52.39	3.00%	

with the Federal cost principles. Subconsultants will provide their own cost proposals.

2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

NOTES:
1. Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

EXHIBIT 10-H2 COST PROPOSAL Page 2 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant _____ ☐ Prime Consultant ☐ Subconsultant

Project No. _____ Contract No. _____ Date _____

SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)				
Description of Item	**Quantity**	**Unit**	**Unit Cost**	**Total**
Mileage Costs				$ 0.00
Equipment Rental and Supplies				$ 0.00
Permit Fees				$ 0.00
Plan Sheets				$ 0.00
Test				$ 0.00
Vehicle				$ 0.00
Subconsultant 1:				
Subconsultant 2:				
Subconsultant 3:				
Subconsultant 4:				
Subconsultant 5:				

Note: Add additional pages if necessary.

NOTES:
1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.

7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

EXHIBIT 10-H2 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

7. Generally Accepted Accounting Principles (GAAP)
8. Terms and conditions of the contract
9. Title 23 United States Code Section 112 - Letting of Contracts
10. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
11. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
12. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: Jeffrey D. Brians

Title*: _____

Signature: _____

Date of Certification (mm/dd/yyyy): 02/17/2021

Email: jbrians@bcf-engr.com

Phone Number: (559) 326-1400

Address: 451 Clovis Avenue, Suite 200

* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Attachment: BCF-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT "B"

Consultants Fee Schedule

EXHIBIT "C"

Consultant's Proposal DBE Commitment

(LAPM form 10-O1: Consultant shall utilize form for specific Federal or State projects work orders requiring a DBE goal.)

EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____

3. Project Description: _____

4. Project Location: _____

5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %

Local Agency to Complete this Section

17. Local Agency Contract Number: _____

18. Federal-Aid Project Number: _____

19. Proposed Contract Execution Date: _____

20. Consultant's Ranking after Evaluation: _____

Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.

_____ _____

_____ _____

_____

11. TOTAL CLAIMED DBE PARTICIPATION %

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.

12. Preparer's Signature _____ 13. Date _____

14. Preparer's Name _____ 15. Phone _____

16. Preparer's Title _____

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

1. Local Agency - Enter the name of the local or regional agency that is funding the contract.
2. Contract DBE Goal - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. Project Location - Enter the project location as it appears on the project advertisement.
4. Project Description - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
5. Consultant's Name - Enter the consultant's firm name.
6. Prime Certified DBE - Check box if prime contractor is a certified DBE.
7. Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
8. DBE Certification Number - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
9. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
10. DBE % - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
11. Total Claimed DBE Participation % - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
12. Preparer's Signature - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
13. Date - Enter the date the DBE commitment form is signed by the consultant's preparer.
14. Preparer's Name - Enter the name of the person preparing and signing the consultant's DBE commitment form.
15. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
16. Preparer's Title - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

17. Local Agency Contract Number - Enter the Local Agency contract number or identifier.
18. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
19. Proposed Contract Execution Date - Enter the proposed contract execution date.
20. Consultant's Ranking after Evaluation – Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
21. Local Agency Representative's Signature - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
22. Date - Enter the date the DBE commitment form is signed by the Local Agency Representative.
23. Local Agency Representative's Name - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
24. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
25. Local Agency Representative Title - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

Attachment: BCF-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT "D"

Consultant Performance Evaluation Sheet

(for project closeout)

(LAPM form 10-B)

Attachment: BCF-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT 10-B SUGGESTED CONSULTANT EVALUATION SHEET *

CONSULTANT/FIRM NAME:		
Criteria	Max Points	Rating
Understanding of the work to be done	25	
Experience with similar kinds of work	20	
Quality of staff for work to be done	15	
Capability of developing innovative or advanced techniques	10	
Familiarity with state and federal procedures	10	
Financial responsibility	10	
Demonstrated Technical Ability	10	
Total	100	

Evaluator

Print Name: _____

Signature: _____

Date: _____

Contract Office

Initials: _____

Date: _____

*Notes:

1. To maintain the integrity of a competitive negotiation/qualifications based selection procurement, the total of all allowable non-qualifications based evaluation criterion (such as local presence or DBE participation) cannot exceed ten (10) percent of the total evaluation criteria. The ten percent limitation applies only to non-qualifications based evaluation criterion and should not be considered as a limitation for specific DBE contract goals established by a contracting agency in accordance with its approved DBE program. (see http://www.fhwa.dot.gov/programadmin/172qa_07.cfm).
2. For projects other than "Architectural & Engineering" services, as defined in Section 10.1, cost is one of the criteria, or may be the sole criterion. DBE participation by the consultant shall not be used as one of the criteria listed above.
3. The evaluation criteria and suggested maximum points shown above are not mandatory, but are recommended in the interest of maintaining consistency among the hundreds of agencies utilizing federal or state funds.
4. The evaluation criteria and weighted values must be identified in the RFP. If the RFP has different evaluation criteria or weighted values then the information above would have to be changed to match. The Contract Office is to initial and date in the space provided to verify that the criteria and weighted values used in the evaluation sheet are appropriate and that the sheet has been completed correctly.
5. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and requirements are met.

Distribution: Local Agency Project Files

EXHIBIT "E"

Consultant Annual Certification of Indirect Costs and Financial Management System

(LAPM form 10-K)

EXHIBIT 10-K CONSULTANT ANNUAL CERTIFICATION OF INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required.)

Consultant's Full Legal Name: Blair, Church & Flynn Consulting Engineers, Inc.

Important: Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

Indirect Cost Rate:

Combined Rate 136 **% OR**

Home Office Rate_____% and Field Office Rate (if applicable)_____%

Facilities Capital Cost of Money_____% (if applicable)

Fiscal period * 1/1/19 to 12/31/19

* Fiscal period is annual one year applicable accounting period that the Indirect Cost Rate was developed (not the contract period). The Indirect Cost Rate is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an Indirect Cost Rate(s) for the **fiscal period** as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the indirect cost rate(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31);
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31;
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on Exhibit 10-A.

Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in Title 23 United States Code (U.S.C.) Section 112(b)(2); 48 CFR Part 31.201-2(d); 23 CFR, Chapter 1, Part 172.11(a)(2); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost

Attachment: BCF-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirement

Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - 23 CFR Part 172.11(c)(4)
- False Claims Act - Title 31 U.S.C. Sections 3729-3733
- Statements or entries generally - Title 18 U.S.C. Section 1001
- Major Fraud Act - Title 18 U.S.C. Section 1031

All A&E Contract Information:

- Total participation amount $ 6,840,000 on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is 3.
- Years of consultant's experience with 48 CFR Part 31 is 20.
- Audit history of the consultant's current and prior years (if applicable)
  - ☐ Cognizant ICR Audit ☐ Local Gov't ICR Audit ☐ Caltrans ICR Audit
  - ☐ CPA ICR Audit ☐ Federal Gov't ICR Audit

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the Indirect Cost Rate Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with Title 23 U.S.C. Section 112(b)(2), 48 CFR Part 31, 23 CFR Part 172, and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name**: Adam K. Holt
Title**: CFO
Signature:
Date of Certification (mm/dd/yyyy): 08/11/2020
Email**: aholt@bcf-engr.com
Phone Number**: 559-326-1400

**An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate

Note: ***Both prime and subconsultants as parties of a contract must complete their own Exhibit 10-K forms. Caltrans will not process local agency's invoices until a complete Exhibit 10-K form is accepted and approved by Caltrans Audits and Investigations.***

Distribution: 1) Original - Local Agency Project File
2) Copy - Consultant
3) Copy - Caltrans Audits and Investigations

Attachment: BCF-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT "F"

Disclosure of Lobbying Activities

(LAPM form 10-Q)

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action:

- a. contract
- b. grant
- c. cooperative agreement
- d. loan
- e. loan guarantee
- f. loan insurance

2. Status of Federal Action:

- a. bid/offer/application
- b. initial award
- c. post-award

3. Report Type:

- a. initial
- b. material change

For Material Change Only:
year ____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity

Prime Subawardee
Tier _____, if known

Congressional District, if known

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, if known

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable _____

8. Federal Action Number, if known:

9. Award Amount, if known:

10. Name and Address of Lobby Entity
(If individual, last name, first name, MI)

11. Individuals Performing Services
(including address if different from No. 10)
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

12. Amount of Payment (check all that apply)

$ _____ actual planned

13. Form of Payment (check all that apply):

- a. cash
- b. in-kind; specify: nature _____
  Value _____

14. Type of Payment (check all that apply)

- a. retainer
- b. one-time fee
- c. commission
- d. contingent fee
- e deferred
- f. other, specify _____

15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:

(attach Continuation Sheet(s) if necessary)

16. Continuation Sheet(s) attached: **Yes** **No**

17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Authorized for Local Reproduction

Standard Form - LLL

Federal Use Only:

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

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INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity 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 a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (Ml).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

Attachment: BCF-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

LANE ENGINEERS, INC.

City of Hanford
900 S. 10th Avenue
Hanford, CA 93230

CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

(For Local Assistance Federal-aid Projects, based on Caltrans LAPM Form 10-R)

This exhibit contains fiscal requirements from 2 CFR 200 and may be used for state-only funded contracts as well.

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Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

AGREEMENT FOR PROFESSIONAL SERVICES FOR
ON-CALL ENGINEERING SERVICES

ARTICLE I: INTRODUCTION

This Agreement for Professional Services ("Agreement") is made and entered into this 6th day of April, 2021, by and between the City of Hanford, a Municipal Corporation ("CITY"), and **Lane Engineers, Inc.** ("CONSULTANT"), incorporated in the State of California.

The Project Manager for the "CONSULTANT" will be **John Atilano, PE, SE**.

The name of the "CITY" is as follows: City of Hanford.

The Contract Administrator for CITY will be the City Engineer and/or its assignees.

RECITALS

1. CONSULTANT represents to CITY that they are trained, experienced, licensed and competent to perform the services which will be required by this Agreement; and

2. CONSULTANT represents to CITY that they possess the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

3. CITY desires to retain CONSULTANT to render Professional Architectural and Engineering Consulting Services as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth herein for such other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

A. **RETENTION OF CONSULTANT.** Subject to the terms and conditions set forth herein, the CITY retains the CONSULTANT to perform the services identified in this Agreement, as an Independent Contractor and CONSULTANT hereby accepts this independent contractor appointment.

B. **SCOPE OF SERVICES.** The work to be performed under this AGREEMENT is described in Article III, Statement of Work, and the approved CONSULTANT's Cost Proposals. The approved CONSULTANT's Cost Proposals shall be attached hereto as Exhibit "A" and incorporated by reference. If there is any conflict between the approved Cost Proposals and this AGREEMENT, this AGREEMENT shall take precedence.

C. **INDEMNIFICATION.** 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 actions, injuries, claims, damages, demands, liabilities, costs, losses, and expenses, direct or indirect, including without limitation, any and all court costs, reasonable attorneys' fees, expert witness fees, and other expenses which the CITY may sustain or incur as a consequence of, or are in any way related to or arising out of any failure to the CONSULTANT 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 and services on the part of CONSULTANT, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statue of repose or statute of limitations; provided however, the duty to defend shall apply regardless of whether an application statute of limitations has lapsed.

D. **INDEPENDENT CONTRACTOR STATUS.** CONSULTANT, in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employee's), in the performance of the Services to be performed pursuant to this Agreement, is an Independent Contractor, and shall not act as an agent or employee of the CITY, and that no relationship of employer-employee exists between the Parties hereto. The CONSULTANT's assigned personnel shall not be entitled to, or obtain retirement benefits or other benefits which accrue to CITY employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. Nothing in the Agreement shall create or be construed as creating a partnership, joint venture, or any other relationship between the CITY and CONSULTANT.

E. **TAX WITHHOLDINGS**. 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.

F. **THIRD PARTY PERSONS EMPLOYED.** 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.

G. **AGREEMENT NOT TRANSFERABLE.** Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT 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 CITY under this AGREEMENT, 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.

H. **NEGLIGENT ACTS AND OMMISSIONS.** CONSULTANT shall be fully responsible to the CITY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons employed by them for whom CONSULTANT is legally liable, in the same manner as persons directly employed by CONSULTANT.

I. **ALTERATIONS APPROVED IN WRITING.** 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.

J. **PAYMENTS.** 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.

K. **INTEREST OF CONSULTANT**. CONSULTANT and its shareholders and covenants represent that they do not now have any investment or interest in real property, and shall not acquire any interest, direct or

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indirect in the area covered by this Agreement, or any other source of income, interest in real property, or investment which would be affected in any manner or degree by the performance of CONSULTANT's Services hereunder. CONSULTANT further covenants and represents that, in the performance of the Services hereunder, to the best of its knowledge no person having any such interest shall perform any Services under this Agreement.

CONSULTANT is not a designated employee within the meaning of the Political Reform Act because CONSULTANT:

1. Will conduct, research, and arrive at conclusions with respect to rendition of information, advice, recommendation, or counsel, independent of the control and direction of the CITY or of any CITY official, other than normal agreement monitoring; and
2. Shall possesses no authority with respect to any CITY decision beyond rendition of information, advice, recommendation, or counsel. FPPC Reg.18700, et seq.

L. **PROFESSIONAL ABILITY OF CONSULTANT**. CITY has relied upon CONSULTANT's representations regarding its training and professional ability to perform the Services hereunder as a material inducement to enter into this Agreement. CONSULTANT shall therefore provide properly skilled personnel to perform all Services under this Agreement. The primary provider of the Services

called for by this Agreement shall be _____**John Atilano, PE, SE**_____.
(Consult fill in employee name and title who will represent the agreement to the CITY)

who shall not be replaced without the written consent of the CITY. All work performed by the CONSULTANT under this Agreement shall be in accordance with the applicable professional standard of care, and shall meet the local professional standard of quality ordinarily to be expected of competent persons in CONSULTANT's field of expertise working in Kings County.

M. **COMPLIANCE WITH LAWS**. CONSULTANT shall use the proper standard of care in performing the Services, and shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations in effect at the time the Agreement is executed. In addition, if the request for proposal to provide professional services which are the subject of this Agreement cited any Federal or State Financial Assistance involved in the project for which the Services are provided, the CONSULTANT shall perform all services in accordance with all applicable federal and state laws, rates and regulations in effect at the time the agreement is executed.

N. **LICENSES**. CONSULTANT represents and warrants to CITY that it has all licenses, permits, qualifications, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT shall maintain a CITY of Hanford Business License.

ARTICLE II: CONSULTANT'S REPORTS OR MEETINGS

A. **PROGRESS REPORTS AND BILLINGS.** CONSULTANT shall submit progress reports and billings on EACH specific project in accordance with the Work Order at least once a month. CONSULTANT's bill shall include a brief description of the Services performed, the date the Services were performed, the number of hours spent, and by whom, and shall include a description of any authorized reimbursable expenditures. The report should be sufficiently detailed for the CITY's Contract Administrator or Project Coordinator: to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; to sufficiently address any difficulties or special problems encountered so remedies can be developed. The CITY shall pay the CONSULTANT no later than 60 days after the date of submittal of a complete invoice for completed tasks and approval of the invoice by CITY staff.

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B. **MEETINGS.** CONSULTANT's Project Manager shall meet with CITY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE III: STATEMENT OF WORK

A. **CONSULTANT SERVICES.** The CONSULTANT shall perform professional engineering and land surveying services, in accordance with all the provisions of this Agreement. The Scope of Work for each project will be determined by the CITY Engineer. For State and Federal Aid projects, the project scope will be incorporated into a streamlined (mini) RFP, and will be sent to the pre-qualified selected CONSULTANTS under agreement. The CONSULTANT shall submit their proposal to the CITY within the required timeframe, and the CITY shall select the top proposal using Qualifications Based Selection. Upon selection, the CITY will negotiate the cost based on the agreement labor price agreement. A work order will be assigned for each project after CONSULTANT determines an estimated cost for producing all necessary plans and documents to satisfy the Scope of Work. For Local Funded projects, the CONSULTANT will submit a scope of work with cost, and a Work Order will be prepared. The CONSULTANT shall correct any and all errors and/or omissions in the performance of the Services and any documents resulting therefrom even though CITY has accepted said Services or documents. CONSULTANT shall make such corrections upon CITY's request and at no cost or expense to CITY.

B. **ENVIRONMENTAL COMPLIANCE**. This AGREEMENT provides for CONSULTANT environmental services that result in CEQA or NEPA approval. Federal funded projects require NEPA clearance in addition to CEQA. NEPA Environmental documents are not considered complete until a Caltrans Official signs the Categorical Exclusion (CE), the Finding of No Significant Impact (FONSI), or the Record of Decision.

C. **RIGHT OF WAY.** Existing and proposed Right of Way requirements are to be determined and shown by the CONSULTANT. Land surveys and computations with metes and bounds descriptions shall be made by a California Licensed Land Surveyor. Projects shall be tied into recorded monumentation and bench marks. A bench mark map with record elevation data is available from the City. Services shall include preparation of Appraisal Map, Acquisition Maps, and Legal Descriptions used to acquire right of way or property.

D. **SURVEYS.** This AGREEMENT provides for CONSULTANT licensed surveying services for preliminary surveying, topographic surveys, monumentation mapping, construction staking, and monument setting and recording of corner records. Work under this service shall be performed or as directed by a California Licensed Land Surveyor.

E. **SUBSURFACE INVESTIGATIONS.** This AGREEMENT provides for CONSULTANT Sub-Surface Investigations as directed by the CITY for Environmental testing, topographic mapping, boring, construction staking, and other specialized sub surface investigation services, either by the CONSULTANT, or under the direction of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order.

F. **CONSTRUCTION MANAGEMENT.** This AGREEMENT does NOT provide for a CONSULTANT in a Management role.

G. **DESIGN PLANS, SPECIFICATIONS, AND ESTIMATES.** This AGREEMENT provides for CONSULTANT Design Plans, Specifications, and Estimates as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order. Design work shall meet City Standards.

H. **ARCHITECTURAL AND STRUCTURAL ENGINEERING.** This AGREEMENT provides for CONSULTANT Architectural and Structural Engineering as directed by the CITY and performed either by the CONSULTANT, or under the direction of the CONSULTANT, for structural design and analysis as determined

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in the Scope of Work of the assigned Work Order. All Architectural and Structural Engineering shall by performed by a Licensed Structural Engineer and shall meet all City and State Standards.

I. **TRAFFIC ENGINEERING AND TRAFFIC SIGNAL DESIGN.** This AGREEMENT provides for CONSULTANT Traffic Engineering and Traffic Signal Design as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for traffic engineering and traffic signal design as determined in the Scope of Work of the assigned Work Order. All Traffic Engineering shall by performed by a licensed Professional Engineer and shall meet all City and State Standards.

J. **MAPPING, INCLUDING GIS AND GPS.** This AGREEMENT provides for CONSULTANT Mapping, including GIS and GPS, as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for mapping as determined in the Scope of Work of the assigned Work Order.

K. **RAILROAD PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Railroad Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for railroad permitting and coordination as determined in the Scope of Work of the assigned Work Order.

L. **UTILITY PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Utility Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for utility permitting and coordination as determined in the Scope of Work of the assigned Work Order.

M. **CONFERENCES, SITE VISITS, AND INSPECTION OF WORK.** This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the CITY, County, State, and/or FHWA. Costs incurred by CONSULTANT for meetings subsequent to the initial meeting shall be included in the fee.

N. **CHECKING SHOP DRAWINGS.**
This AGREEMENT provides for the CONSULTANT to provide plan checking of shop drawings and contract documents. Payment for checking of drawings by CONSULTANT shall be paid at the hourly rate per the attached Fee Schedule. The total compensation paid to the CONSULTANT for all services in this agreement shall not exceed the maximum contract amount stated in Article V, Section P.

O. **CONSULTANT SERVICES DURING CONSTRUCTION.**
This AGREEMENT provides for CONSULTANT services during the course of construction, including resident engineering, construction surveys and construction staking. Payment for services shall be paid at the rates stated in the attached Fee Schedule, and shall not exceed the Work Order fee stated without an approved Change Order.

P. **DOCUMENTATION AND SCHEDULES.**
This AGREEMENT provides for the CONSULTANT to document the results of the work to the satisfaction of CITY, and if applicable, to the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Work Order objectives. All final construction documents shall be stamped and wet signed when completed.

Q. **CITY OBLIGATIONS.** Data applicable to the Work Order Scope of Work shall be made available to the CONSULTANT at the time of Work Order Execution. Data may include maps, plans, documents, and records that are in the possession of the CITY. Additional items to be made available to the CONSULTANT shall be noted specifically on the Work Order.

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R. **DELIVERABLES AND NUMBER OF COPIES.**
The number of copies or documents to be furnished with each submittal, such as reports, brochures, sets of plans, specifications, maps, etc., shall be two (2) copies minimum unless otherwise specified in the work order or as may be required for City Permitting. Final plans and maps shall be plotted on 20# vellum or on plastic film mylar, and shall have stamp and original wet signatures.

S. **DESIGN STANDARD.**
All work performed under this AGREEMENT shall conform to the most current City of Hanford Standards, Caltrans Standards, and all other Local, State, and FHWA requirements.

ARTICLE IV: PERFORMANCE PERIOD

A. This AGREEMENT shall go into effect on **April 6, 2021**, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY'S Contract Administrator. The AGREEMENT shall be in effect for 3 (three) years, and end on **April 6, 2024**, unless extended by AGREEMENT amendment. AGREEMENT amendments shall be limited to two separate ONE YEAR EXTENSIONS, and in no case shall the AGREEMENT exceed five years.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on CITY until the AGREEMENT is fully executed and approved by CITY.

C. The period of performance for each specific project shall be in accordance with the Work Order for that project. If work on a Work Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the Work Order in progress only. In no case shall the maximum term of this AGREEMENT exceed five (5) years.

ARTICLE V: ALLOWABLE COSTS AND PAYMENTS

A. **PAYMENT.** CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's attached approved 10H-2: Cost Proposal Fee Schedule (Exhibit B), subject to Prevailing Wage Requirements which are available at the office of the City Engineer. An estimate for cost of services for each project shall be submitted to the City Engineer before commencement of work. Payment by CITY under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment. An increase in the fee schedule for non-prevailing wage classifications will be allowed at the beginning of Year 2 (two) of this agreement and shall be made a part of an AGREEMENT extension, if said agreement is extended for a period. The CONSULTANT must notify the CITY thirty (30) days in advance of such increases. The CONSULTANT is limited to two (2) price increases during the three years contract period, and one increase per year for each year the contract is extended. An increase in fee schedule for prevailing wage classifications shall be allowed when the Prevailing Wage for said wage determination increases. The services included in this agreement shall increase by the same amount approved for increase by the Department of Industrial Relations. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within sixty (60) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate.

B. **DIRECT COSTS.** In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal, and identified in the approved Cost Proposal and in the executed Work Order.

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C. **WORK ORDERS.** Specific projects will be assigned to CONSULTANT after approval of the proposal for each specific project through the issuance of Work Orders. Work Orders shall be number consecutively for each specific project.

D. **DRAFT WORK ORDERS.** After a project to be performed under this AGREEMENT is identified by CITY, CITY will prepare a draft Work Order with Scope of Work; less the cost estimate. A draft Work Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a CITY Project Coordinator. The draft Work Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Work Order within ten (10) calendar days along with a Cost Estimate for requested services, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and the total dollar amount. After agreement has been reached on the negotiable items and total cost; a finalized Work Order shall be signed by both CITY and CONSULTANT.

E. **NOT TO EXCEED COMPENSATION**. Work Orders may be negotiated for specific rates of compensation Not to Exceed amount, of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT. Work Orders that are approved as "Flat Fee" must have any prevailing wage increase built into the cost proposal, and the CONSULTANT must pay the required prevailing wage rates to workers. Work Orders that are approved as "Time and Materials, Not to Exceed" will require prevailing wage rates be paid to workers, and the total amount "Not to Exceed" will be increased to accommodate said increases in the amount approved by the DIR.

F. **STATE RATE REIMBURSEMENTS.** Reimbursement for transportation and subsistence costs shall not exceed State rates. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

G. **CHANGE ORDERS.** When milestone cost estimates, or not to exceed estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment Change Order for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

H. **MONTHLY PAYMENTS.** Progress payments for each Work Order will be made monthly in arrears based on services provided and actual costs incurred.

I. **NOTICE TO PROCEED.** 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 or for any work performed prior to approval of this AGREEMENT, or for work done on a project Work Order prior to the City's issuance of a Notice to Proceed (NTP).

J. **EXECUTED WORK ORDERS.** A Work Order is of no force or effect until returned to CITY and signed by an authorized representative of CITY. No expenditures are authorized on a project and work shall not commence until a Work Order for that project has been executed by CITY.

K. **INVOICES.** CONSULTANT will be reimbursed within thirty (30) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Work Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Work Order. 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, the project title and the Work Order number. Credits due CITY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to CITY's Contract Administrator at the following address:

City of Hanford
Attn.: Finance Dept., Accounts Payable
315 N. Douty Street
Hanford CA 93230

L. **PERIOD OF PERFORMANCE FOR WORK ORDERS.** The period of performance for Work Orders shall be in accordance with dates specified in each individual Work Order. No Work Order will be written which extends beyond the expiration date of this AGREEMENT.

M. **AMOUNT PAYABLE FOR WORK ORDER.** The total amount payable by CITY for an individual Work Order shall not exceed the amount agreed to in the Work Order, unless authorized by amendment Change Order.

N. **PAYMENT FOR DELIVERABLES.** If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Work Order, no payment will be made until the deliverable has been satisfactorily completed.

O. **AMENDMENT TO AGREEMENT.** Work Orders may not be used to amend the language (or the terms) of this AGREEMENT, nor to exceed the scope of work under this AGREEMENT.

P. **AGREEMENT MAXIMIM PAYMENT.** The total amount payable by CITY for all Work Orders resulting from this AGREEMENT shall not exceed **$150,000 per year, or $ 450,000.00 for the total three-year agreement.** It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Work Orders.

Q. **EXTRA WORK.** At any time during the term of this Agreement, CITY may request that CONSULTANT perform Extra Work. As used herein, "Extra Work" means any work which is determined by CITY to be necessary for the proper completion of the Services, but which the parties did not include in the Scope of Work. Extra work will be performed on an hourly basis under the CONSULTANT's most current hourly fee schedule. CONSULTANT shall not perform, nor be compensated for Extra Work without written authorization from CITY.

ARTICLE VI: TERMINATION

A. This AGREEMENT may be terminated by CITY, provided that CITY gives not less than thirty (30) calendar days' written notice to CONSULTANT (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, and in accordance with Section 15, Property of CITY. Upon termination, CONSULTANT shall be entitled to compensation for Services performed up to the effective date of termination, unless this Agreement is terminated for cause, in which case, CITY may withhold compensation due

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CONSULTANT in order to reimburse CITY for any losses, damages or expenses caused by CONSULTANT's default under this Agreement

B. CITY may temporarily suspend this AGREEMENT, at no additional cost to 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 provided for in subsection A of this section.

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.

D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Section 11C. 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, and in accordance with Section 15, Property of CITY.

E. If the CITY is in breach of the payment terms or otherwise is in material breach of this AGREEMENT, the CONSULTANT may suspend performance of services upon ten (10) calendar days' notice to the CITY. The CONSULTANT shall have no liability to the CITY, and the CITY agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this AGREEMENT by the CITY. Upon receipt of payment in full of all outstanding sums due from the CITY, or curing of such other breach that caused the CONSULTANT to suspend services, the CONSULTANT shall resume services, and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension. If the CITY does not cure said material breach of AGREEMENT within thirty (30) calendar days of notice, the CONSULTANT may terminate the AGREEMENT upon written notice to the CITY.

ARTICLE VII: COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

Consulting Architectural & Engineering (A&E) firms providing engineering and design related services under a contract funded by a federal grant, are required by regulation (as specified in 2 CFR Part 200) to account for and bill costs in accordance with the Federal Cost Principles of 48 CFR 31. In efforts to comply with the Federal Cost Principles, A&E consulting firms that provide services on federal-aid highway projects are required to develop indirect cost rates in accordance with the Federal Cost Principles on an annual basis.

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.

F. 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.

Consultant shall provide all documents and files per Work Order to the City as required per Ownership of Data requirements in the Agreement.

ARTICLE VIII: RETENTION OF RECORD/AUDITS

A. For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and CITY shall maintain any and all books of account, ledgers, invoices, vouchers, canceled checks, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate work papers, and other evidence pertaining to the performance, services, expenditures, and disbursements 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 work papers 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. 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 CONSUTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, work paper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

B. CONSULTANT shall maintain all documents and records that demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the CITY. Copies of such documents shall be provided to the CITY for inspection at the CITY offices.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request, require that custody of the records be given to the CITY and that the records and documents be maintained in the CITY offices. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

ARTICLE IX: 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 thirty (30) calendar 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 AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, 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, CITY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall

be adjusted by CONSULTANT and approved by CITY 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 AGREEMENT 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, CITY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT 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 Caltrans Audits and Investigation (A&I). Caltrans A&I, 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 AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During Caltrans A&I's review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans A&I 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 Caltrans A&I 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 A&I.

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 Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I 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. Caltrans A&I 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 Caltrans A&I 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) Caltrans A&I 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) Caltrans A&I 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 X: SUBCONTRACTING

A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the CITY and any Subconsultants, and no sub-agreement 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 Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.

C. Any sub-agreement 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 the CONSULTANT by the CITY.

E. Any substitution of Subconsultants must be approved in writing by the CITY Contract Administrator in advance of assigning work to a substitute Subconsultant.

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

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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.

Method 3: The CITY shall 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. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the CITY. 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 subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other 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 noncompliance 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 XI: EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

A. Prior authorization in writing by 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 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 AGREEMENT 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, CITY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT 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.

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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 XII: STATE PREVAILING WAGE RATES

A. **D.I.R. REGISTRATION.** 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. **WAGE DETERMINATIONS (CALTRANS).** 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 (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). 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 RATES.** 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 representatives 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 to a representative of CITY, the Division of Labor Standards

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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.

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 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. **CERTIFIED PAYROLL.** 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.

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.

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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 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.

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 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 XIII: CONFLICT OF INTEREST

A. During the term of this AGREEMENT, the 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. The 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 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 AGREEMENT.

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 Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, 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.

E. CONSULTANT maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement.

F. Further CONSULTANT warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or result from the award or making of this Agreement.

G. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability.

H. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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ARTICLE XIV: REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT 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 AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV: PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING (for use when Federal funding will exceed $150,000)

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 AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the 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 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 subagreements, which exceed one hundred thousand dollars ($100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI: 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 AGREEMENT, CONSULTANT and its subconsultants represents that they are an Equal Opportunity Employer, and shall not deny the AGREEMENT's benefits or discriminate against 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. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of CITY's programs or guidelines currently in effect as identified and provided to Consultant by CITY.

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 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 AGREEMENT 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 subconsultant*s* 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 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

ARTICLE XVII: 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 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 XVIII: DISADVANTAGED BUSINESS ENTERPRISES (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 at https://dot.ca.gov/programs/civil-rights/dbe-search .

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. 49 CFR 26.55 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 enter into a federally-funded agreement, and proposes on a federal funded project RFP, 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 AGREEMENT is 0%.** Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Appendix "C": *Exhibit 10-O1: Consultant Proposal DBE Commitment* , 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 Appendix "D": 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 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 recipient 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 CONSULTANT from future proposing as non-responsible

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:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. 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.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. 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).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.

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7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. 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:
1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. 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 Page 24 of 32 September 2020 Local Assistance Procedures Manual EXHBIT 10-R A&E Boilerplate Agreement Language
3. Maintain records including:
- Name and business address of each 1st-tier subconsultant
- Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
- 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.

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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 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 AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, Appendix "E": *Exhibit 17-F1: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) for On-call Contracts*, 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 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.

M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX: INSURANCE

A. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies.

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1. Workers Compensation Coverage. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury or disease.

2. General Liability Coverage. Insurance Services Office (ISO) Form CG 0001, including products and completed operations, with limits of no less than TWO MILLION AND NO/100 DOLLARS ($2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be FOUR MILLION AND NO/100 DOLLARS ($4,000,000), twice the required occurrence limit.

3. Automobile Liability Coverage. ISO Form Number CA 0001 covering any auto (Code 1), with a limit no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury and property damage.

4. Professional Liability Coverage. Contractor will maintain Professional Liability coverage with limits no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per occurrence or claim, and TWO MILLION AND NO/100 DOLLARS ($2,000,000) policy aggregate.

B. If Consultant maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by Consultant.

C. Consultant's insurance policies shall be "occurrence" policies and not "claims-made" coverage except for Professional Liability Coverage.

D. Consultant may maintain an Umbrella policy in conjunction with the insurance policies referenced above. In such case, Consultant shall be deemed to have satisfied the insurance requirements of this contract as long as: (i) the coverage limits of the Umbrella policy and of the underlying liability policy(ies), when combined, satisfy each of the per occurrence and aggregate requirements identified in this subsection a.; and (ii) coverage under the Umbrella policy is as broad as and includes all incidents and events covered by the underlying insurance that it supplements.

E. Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Alternatively, the CITY may require Consultant to provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses within the retention**.**

F. The policies are to contain, or be endorsed to contain, the following provisions:

1. "The City and its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations; products used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. General liability coverage can be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2. For any claims related to this contract, Consultant's insurance coverage, with the exception of Professional Liability Insurance, shall be primary insurance as respects the City and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City and/or its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall be non-contributory.
3. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
4. These policies of insurance shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers, with the exception of Professional Liability Insurance. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with the policies of insurance obtained by Consultant.
5. With the exception of Professional Liability Insurance, these policies of insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
6. The insurer shall agree to waive all rights of subrogation against City, its officials, officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.
7. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.
8. The insurance provided by these policies shall not be canceled except after thirty (30) days written notice has been received by the City. The Consultant or its insurance agent shall, to the extent feasible, notify the City in writing thirty (30) days prior to the date on which any insurance policy required hereunder will be suspended voided, modified, or reduced. If such thirty (30) day prior notice is not feasible, notice will be promptly provided to the City upon Consultant's knowledge that a noticeable event will or has occurred.

G. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII and which are authorized to write business in California.

H. Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, true and correct copies of all required insurance policies, including endorsements required by these specifications, at any time. All forms and endorsements are to list the City of Hanford as additional insureds. The City reserves the right to require complete, true and correct copies of all required insurance policies, including endorsements required by these specifications, at any time. The policies can be redacted of personal information.

I. Consultant hereby grants to CITY and its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of Consultant may acquire against the CITY and/or its officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance. Consultant agrees to obtain endorsements necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

J. The CITY reserves the right to modify the insurance requirements contained in this contract, including, without limitation, coverage limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

K. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

ARTICLE XX: FUNDING REQUIREMENTS

A. It is mutually understood between the parties that this AGREEMENT 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 AGREEMENT were executed after that determination was made.

B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to 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 CITY 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 VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI: CHANGE IN TERMS

A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

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 CONSULTANT's Project Manager or members of the project team which shall not be unreasonable withheld, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by CITY's Contract Administrator.

ARTICLE XXII: CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT 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 AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII: DISPUTES

A. Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to resolve any dispute amicably between them through mediation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains

unresolved after mediation, and 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.

B. 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 AGREEMENT.

ARTICLE XXIV: INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit 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 XXV: 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 Vehicle Code §591, 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 XXVI: OWNERSHIP OF DATA

A. It is mutually agreed that all materials prepared by CONSULTANT, its officers, employees, agents, and subcontractors under this AGREEMENT, except working notes and internal documents, shall become the sole property of the CITY in its discretion without further compensation to the CONSULTANT or to any other party, and the 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 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. The CITY's use of completed documents for other projects and/or the use of uncompleted documents without the written

authorization of Consultant will be at the CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of, or changes to the Project Documents not performed by the Consultant.

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. Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for CITY to use, modify, reuse or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data electronic or otherwise recorded on computer diskettes which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that CITY is granted non-exclusive and perpetual license for any Documents & Data the subcontractor prepared under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. CITY shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purpose intended by this Agreement shall be at CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of or changes to the Project Documents not performed by the Consultant.

ARTICLE XXVII: CLAIMS FILED BY CITY's CONSTRUCTION CONTRACTOR

A. **CONSULTANT'S PERSONNEL AVAILABILITY.** 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 REIMBURSEMENT.** 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. **CONSULTANT'S PERSONNEL SERVICES.** 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.

D. **ATTORNEYS' FEES**. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court for the County of Kings, State of California for any proceeding arising hereunder.

E. **SOLE AND ONLY AGREEMENT.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this Agreement and no other agreement, statement or promise shall be valid or binding.

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

G. **AMENDMENT.** No change, amendment or modification of this Agreement shall be valid unless the same be in writing and signed by the parties hereto.

H. **GOVERNING LAW.** This Agreement shall be construed and governed pursuant to the laws of the State of California.

I. **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

ARTICLE XXVIII: CONFIDENTIALITY OF DATA

A. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information including financial, statistical, personal, technical, or other data, and other documents and data either created by or provided to CONSULTANT in connection with and relative to CITY's operations and CONSULTANTS performance of this agreement, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected and held confidential by CONSULTANT from unauthorized use and disclosure.

B. Such materials shall not, without the prior written consent of CITY, be used by Consultant for any purposes other than the performance of the Services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the Services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use CITY's name, insignia, photographs, or the project for which Consultant's Services are rendered, or any publicity pertaining to the Consultant's Services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent by CITY. Notwithstanding the foregoing, the CITY acknowledges that the Consultant may want/need to include projects performed under this agreement on proposals for similar work in the future. The CITY hereby grants permission to list any projects performed under this agreement for marketing purposes; provided however, Consultant will not make any representations regarding CITY's satisfaction with Consultant's work product unless Consultant receives a written statement or evaluation from CITY

C. Permission to disclose information on one occasion, or public hearing held by CITY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

D. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or CITY's actions on the same, except to CITY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.

E. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by CITY, and receipt of CITY'S written permission.

F. 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.

ARTICLE XXIX: 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 XXX: 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 records. The Consultant Performance Evaluation form and criteria is attached in Appendix "F".

ARTICLE XXXI 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.

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

ARTICLE XXXII NOTIFICATION

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

CONSULTANT:

LANE ENGINEERS, INC

JOHN ATILANO, PE, SE, Project Manager

P. O. BOX 1059

TULARE, CA 93275-1059

CITY:

CITY OF HANFORD

ATTN: CITY ENGINEER, Contract Administrator

900 S. 10TH AVENUE

HANFORD, CA 93230

ARTICLE XXXIII: CONTRACT

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.

ARTICLE XXXIV: SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and in the year first set forth above.

CITY OF HANFORD,
a Municipal Corporation

By: _____
MARIO CIFUENTEZ, City Manager

Consultant: LANE ENGINEERS, INC.

By: _____
JOHN ATILANO, President

APPROVED AS TO CONTENT:

By: _____
JOHNATHAN L. DOYEL
Public Works Director

ATTEST:

By: _____
NATALIE CORRAL
City Clerk

EXHIBIT "A"

Consultants Cost Proposal for On-Call Contract

(Approved Work Orders)

EXHIBIT "B"

Consultants Fee Schedule

(LAPM form 10-H2)

EXHIBIT 10-H2 COST PROPOSAL Page 1 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant Lane Engineers, Inc. ☒ Prime Consultant ☐ Subconsultant ☐ 2nd Tier Subconsultant

Project No. _____ Contract No. _____ Participation Amount $ TBD Date _____

For Combined Rate					
Fringe Benefit % 65.90	+ General &Administrative % 62.77	+ Overhead% 152.98		=281.65	Combined ICR%
OR					
For Home Office Rate					
Fringe Benefit %	+ General &Administrative %			=	Home Office ICR%
For Field Office Rate					
Fringe Benefit %	+ General &Administrative %			=	Field Office ICR%

Fee	=10	%

BILLING INFORMATION				CALCULATION INFORMATION				
Name/Job Title/Classification[1]	Hourly Billing Rates[2] Straight[3]	OT(1.5x)	OT(2x)	Effective Date of Hourly Rate From	To	Actual **or** Avg. Hourly Rate[4]	% or $ Increase	Hourly Range - for Classifications Only
John Atilano	$179.76	$179.76	$179.76	01/01/2020	12/31/2020	$42.82		Not Applicable
Principal Structural Engineer*	$186.02	$186.02	$186.02	01/01/2021	12/31/2021	$44.31	3.5%	
	$192.53	$192.53	$192.53	01/01/2022	12/31/2022	$45.86	3.5%	
Aaron Oliver–	$175.99	$175.99	$175.99	01/01/2020	12/31/2020	$41.92		Not Applicable
Principal Civil Engineer*	$182.12	$182.12	$182.12	01/01/2021	12/31/2021	$43.38	3.5%	
	$188.45	$188.45	$188.45	01/01/2022	12/31/2022	$44.89	3.5%	
Lawerence Simonetti –	$231.19	$346.79	$462.38	01/01/2020	12/31/2020	$55.07		Not Applicable
Principal Civil Engineer*	$239.25	$358.88	$478.51	01/01/2021	12/31/2021	$56.99	3.5%	
	$247.61	$371.41	$495.21	01/01/2022	12/31/2022	$58.98	3.5%	
Ben Mullins Principal	$155.92	$155.92	$155.92	01/01/2020	12/31/2020	$37.14		$00 - $00
Land Surveyor **	$161.33	$161.33	$161.33	01/01/2021	12/31/2021	$38.43	3.5%	$00 - $00
	$166.96	$166.96	$166.96	01/01/2022	12/31/2022	$39.77	3.5%	$00 - $00
Ron Snow	161.42	$242.13	$322.84	01/01/2020	12/31/2020	$38.45		$00 - $00
Senior Land Surveyor	$163.81	$245.72	$327.62	01/01/2021	12/31/2021	$39.02	3.5%	$00 - $00
	$169.52	$254.28	$339.04	01/01/2022	12/31/2022	$40.38	3.5%	$00 - $00

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Kevin Nunes/Civil Engineer	$137.24 $142.02 $146.98	$137.24 $142.02 $146.98	$137.24 $142.02 $146.98	01/01/2020 01/01/2021 01/01/2022	12/31/2020 12/31/2021 12/31/2022	$32.69 $33.83 $35.01	 3.5% 3.5%	
David Duffin/Engineering / Surveying Technician III	$132.33 $136.94 $141.73	$198.49 $205.42 $212.59	$264.65 $273.89 $283.46	01/01/2020 01/01/2021 01/01/2022	12/31/2020 12/31/2021 12/31/2022	$31.52 $32.62 $33.76	 3.5% 3.5%	
Wa Vang/Associate Civil Engineer	$159.03 $164.57 $170.32	$159.03 $164.57 $170.32	$159.03 $164.57 $170.32	01/01/2020 01/01/2021 01/01/2022	12/31/2020 12/31/2021 12/31/2022	$37.88 $39.20 $40.57	 3.5% 3.5%	
Tony Cabeje/Engineering / Surveying Technician III	$145.55 $150.63 $155.88	$218.32 $225.94 $233.82	$291.10 $301.26 $311.75	01/01/2020 01/01/2021 01/01/2022	12/31/2020 12/31/2021 12/31/2022	$34.67 $35.88 $37.13	 3.5% 3.5%	
Jose/ Lemus/Associate Civil Engineer	$137.24 $142.02 $146.98	$137.24 $142.02 $146.98	$137.24 $142.02 $146.98	01/01/2020 01/01/2021 01/01/2022	12/31/2020 12/31/2021 12/31/2022	$32.69 $33.83 $35.01	 3.5% 3.5%	
Dario B/Asst. Engineer / Surveyor I	$104.95 $108.61 $112.38	$104.95 $108.61 $112.38	$104.95 $108.61 $112.38	01/01/2020 01/01/2021 01/01/2022	12/31/2020 12/31/2021 12/31/2022	$25.00 $25.87 $26.77	 3.5% 3.5%	
Monica Perez/ Clerical - Office Manager	$111.00 $114.86 $118.85	$111.00 $114.86 $118.85	$111.00 $114.86 $118.85	01/01/2020 01/01/2021 01/01/2022	12/31/2020 12/31/2021 12/31/2022	$26.44 $27.36 $28.31	 3.5% 3.5%	
Jennifer Porath/ Clerical - Admin. Assistant	$62.97 $65.16 $67.42	$94.46 $97.73 $101.13	$125.94 $130.31 $134.84	01/01/2020 01/01/2021 01/01/2022	12/31/2020 12/31/2021 12/31/2022	$15.00 $15.52 $16.06	 3.5% 3.5%	
Ron Snow/ Land Surveying - Chief of Party**	$307.56 $318.30 $329.43	$461.33 $477.46 $494.14	$615.11 $636.61 $658.86	01/01/2020 01/01/2021 01/01/2022	12/31/2020 12/31/2021 12/31/2022	$73.26 $75.82 $78.47	 3.5% 3.5%	
David Duffin/ Land Surveying - Chief of Party**	$313.98 $324.94 $336.27	$470.97 $487.41 $504.41	$627.96 $649.87 $672.54	01/01/2020 01/01/2021 01/01/2022	12/31/2020 12/31/2021 12/31/2022	$74.79 $77.40 $80.10	 3.5% 3.5%	
David Duffin/ Land Surveying - Rodman**	$297.61 $308.02 $318.77	$446.41 $462.03 $478.15	$595.21 $616.04 $637.53	01/01/2020 01/01/2021 01/01/2022	12/31/2020 12/31/2021 12/31/2022	$70.89 $73.37 $75.93	 3.5% 3.5%	
Brandon/ Land Surveying - Rodman**	$315.70 $326.74 $338.16	$473.55 $490.11 $507.24	$631.40 $653.48 $676.32	01/01/2020 01/01/2021 01/01/2022	12/31/2020 12/31/2021 12/31/2022	$75.20 $77.83 $80.55	 3.5% 3.5%	
Tony Cabeje/Lane Surveying-Rodman**	$304.49 $315.11 $326.11	$456.74 $472.67 $489.17	$608.98 $630.23 $652.22	01/01/2020 01/01/2021 01/01/2022	12/31/2020 12/31/2021 12/31/2022	$72.53 $75.06 $77.68	 3.5% 3.5%	

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural

(Add pages as necessary)

NOTES:

1. Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**).All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

EXHIBIT 10-H2 COST PROPOSAL Page 2 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant _____Lane Engineers, Inc._____ ☒ Prime Consultant ☐ Subconsultant

Project No. _____ Contract No. _____ Date _____

SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)				
Description of Item	**Quantity**	**Unit**	**Unit Cost**	**Total**
Mileage Costs	TBD	Per MIle	$ 0.575	$ TBD
Equipment Rental and Supplies			$	$
Permit Fees			$	$
Plan Sheets	TBD		$	$ TBD
Test	TBD		$ Per Test	$ TBD
Vehicle			$	$
Subconsultant 1:				$
Subconsultant 2:				$
Subconsultant 3:				$
Subconsultant 4:				$
Subconsultant 5:				$

Note: Add additional pages if necessary.

NOTES:

1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural

4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.
7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural

14.C.c

EXHIBIT 10-H2 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

7. Generally Accepted Accounting Principles (GAAP)
8. Terms and conditions of the contract
9. Title 23 United States Code Section 112 - Letting of Contracts
10. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
11. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
12. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: John Atilano

Title *: President

Signature :

Date of Certification (03/12/2021):

Email: john@laneengineers.com

Phone Number: (559) 688-5263

Address: 979 N. Blackstone St, Tulare, CA 93274

* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Civil Engineering. Land Surveying, Structural Engineering

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT "C"

Consultant's Proposal DBE Commitment

(LAPM form 10-O1: Consultant shall utilize form for specific Federal or State projects work orders requiring a DBE goal.)

Reset Form

EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____

3. Project Description: _____

4. Project Location: _____

5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %

Local Agency to Complete this Section

17. Local Agency Contract Number: _____

18. Federal-Aid Project Number: _____

19. Proposed Contract Execution Date: _____

20. Consultant's Ranking after Evaluation: _____

Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.

_____ _____

_____ _____

_____

11. TOTAL CLAIMED DBE PARTICIPATION	**%**

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.

_____ _____
12. Preparer's Signature 13. Date

_____ _____
14. Preparer's Name 15. Phone

_____
16. Preparer's Title

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

1. Local Agency - Enter the name of the local or regional agency that is funding the contract.
2. Contract DBE Goal - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. Project Location - Enter the project location as it appears on the project advertisement.
4. Project Description - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
5. Consultant's Name - Enter the consultant's firm name.
6. Prime Certified DBE - Check box if prime contractor is a certified DBE.
7. Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
8. DBE Certification Number - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
9. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
10. DBE % - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
11. Total Claimed DBE Participation % - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
12. Preparer's Signature - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
13. Date - Enter the date the DBE commitment form is signed by the consultant's preparer.
14. Preparer's Name - Enter the name of the person preparing and signing the consultant's DBE commitment form.
15. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
16. Preparer's Title - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

17. Local Agency Contract Number - Enter the Local Agency contract number or identifier.
18. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
19. Proposed Contract Execution Date - Enter the proposed contract execution date.
20. Consultant's Ranking after Evaluation – Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
21. Local Agency Representative's Signature - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
22. Date - Enter the date the DBE commitment form is signed by the Local Agency Representative.
23. Local Agency Representative's Name - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
24. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
25. Local Agency Representative Title - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT "D"

Consultant Performance Evaluation Sheet

(for project closeout)

(LAPM form 10-S)

Exhibit 10-S Consultant Performance Evaluation

1. PROJECT DATA	2. CONSULTANT DATA
1a. Project (include title, location, and Activity/CIP No.)	2a. Consultant Name and Address
1b. Brief Description of Project (design, study, etc.)	2b. Consultant's Manager
1c. Budget Cost for Project: $_____	2c. Phone: _____

3. AGENCY DEPARTMENT/SECTION RESPONSIBLE

3a. Department (include section and division)	3b. Agency Project Manager (name & phone)

4. CONTRACT DATA (Engineering Services)

4a. Contract No.: _____ Termination date: _____ Base Fee: $ _____

Agreement date: _____ Date terminated: _____ Contingency: $ _____

4b. Amendment $ _____ / # _____ $ _____ / # _____
(Total Value) (Initiated by Agency) (Total Value) (Initiated by Agency)

4c. Change Order $ _____ / # _____ $ _____ / # _____
(Total Value) (Initiated by Agency) (Total Value) (Initiated by Agency)

4d. Total Fee per Agreement (4a. + 4b. + 4c.) $ _____ Total Fee Paid $ _____
(Do not include Contingency Listed in 4a.)

4e. Type of Services (Design, study, etc.)

4f. Historical Record of Key Submittal Dates (enter date or n/a if not applicable)

	Preliminary	30%	70%	90%	100%	Final
Per Agreement						
Delivery Date						
Acceptance Date						

4g. Notice To Proceed _____ (date)

4h. Number of Days _____ (number)

4i. Actual Number of Days (number)

4j. Reasons for Change Orders: (Indicate total for each reason)

Errors/Omissions $		% of Base Fee	0.00%
Unforeseen Conditions $		% of Base Fee	0.00%
Changed Scope $		% of Base Fee	0.00%
Changed Quantities $		% of Base Fee	0.00%
Program Task Options $		% of Base Fee	0.00%

5.OVERALL RATING (Complete Section II on reverse, include comments as appropriate.)

		Outstanding	Above Average	Average	Below Average	Poor	N/A
5a.	Plans/Specifications accuracy						
5b.	Consistency with budget						
5c.	Responsiveness to Agency Staff						
5d.	Overall Rating						

6. AUTHORIZING SIGNATURES

6a. Agency Design Team Leader _____ Date: _____

6b. Agency Project Manager _____ Date: _____

6c. Agency Public Works Manager Date:

6d. Consultant Representative Date:

See Reverse Side

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

PLANS/SPECIFICATIONS ACCURACY	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A	Responsiveness To Staff	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A
Plans Specifications clear and concise							Timely Responses						
Plans/Specs Coordination							Attitude toward Client and review bodies						
Plans/Specs properly formatted							Follows directions and Chain of responsibility						
Code Requirements covered							Work product delivered on time						
Adhered to Agency Standard Drawings/Specs							Timeliness in notifying Agency of major problems						
Drawings reflect existing conditions							Resolution of field Problems						
As-Built Drawings							Consistency with budget						
Quality Design							Reasonable Agreement negotiation						
Change Orders due to design deficiencies are minimized							Adherence to fee schedule						
							Adherence to project Budget						

Section III **EXPLANATIONS AND SUPPLEMENTAL INFORMATION**

(Attach additional documentation as needed)

Item _____: _____

_____

Item _____: _____

_____

Item _____: _____

Item _____: _____

_____

Item _____: _____

_____

Item _____: _____

_____

***Indicates supporting documentation attached.**

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT "E"

Consultant Annual Certification of Indirect Costs and Financial Management System

(LAPM form 10-K)

EXHIBIT 10-K CONSULTANT ANNUAL CERTIFICATION OF INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required.)

Consultant's Full Legal Name: Lane Engineers, Inc.

Important: Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

Indirect Cost Rate:

Combined Rate 152.98 **% OR**

Home Office Rate_____% and Field Office Rate (if applicable)_____%

Facilities Capital Cost of Money_____% (if applicable)

Fiscal period * 01/01/2019 - 12/31/2019

* Fiscal period is annual one year applicable accounting period that the Indirect Cost Rate was developed (not the contract period). The Indirect Cost Rate is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an Indirect Cost Rate(s) for the **fiscal period** as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the indirect cost rate(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31);
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31;
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on Exhibit 10-A.

Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in Title 23 United States Code (U.S.C.) Section 112(b)(2); 48 CFR Part 31.201-2(d); 23 CFR, Chapter 1, Part 172.11(a)(2); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirement

Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - 23 CFR Part 172.11(c)(4)
- False Claims Act - Title 31 U.S.C. Sections 3729-3733
- Statements or entries generally - Title 18 U.S.C. Section 1001
- Major Fraud Act - Title 18 U.S.C. Section 1031

All A&E Contract Information:

- Total participation amount $_____ on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is 27.
- Years of consultant's experience with 48 CFR Part 31 is 8.
- Audit history of the consultant's current and prior years (if applicable)

☐ Cognizant ICR Audit ☐ Local Gov't ICR Audit ☐ Caltrans ICR Audit
☐ CPA ICR Audit ☐ Federal Gov't ICR Audit

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the Indirect Cost Rate Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with Title 23 U.S.C. Section 112(b)(2), 48 CFR Part 31, 23 CFR Part 172, and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name**: John Atilano
Title**: President
Signature: _____
Date of Certification (mm/dd/yyyy): 11/16/2020
Email**: john@laneengineers.com
Phone Number**: 559-688-5263

**An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: ***Both prime and subconsultants as parties of a contract must complete their own Exhibit 10-K forms.*** *Caltrans will not process local agency's invoices until a complete Exhibit 10-K form is accepted and approved by Caltrans Audits and Investigations.*

Distribution: 1) Original - Local Agency Project File
2) Copy - Consultant
3) Copy - Caltrans Audits and Investigations

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

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EXHIBIT "F"

Disclosure of Lobbying Activities

(LAPM form 10-Q)

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action:

- ☐ a. contract
- ☐ b. grant
- ☐ c. cooperative agreement
- ☐ d. loan
- ☐ e. loan guarantee
- ☐ f. loan insurance

2. Status of Federal Action:

- ☐ a. bid/offer/application
- ☐ b. initial award
- ☐ c. post-award

3. Report Type:

- ☐ a. initial
- ☐ b. material change

For Material Change Only:
year ____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity

☐ Prime ☐ Subawardee
Tier _____, if known

Congressional District, if known

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, if known

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable _____

8. Federal Action Number, if known:

9. Award Amount, if known:

10. Name and Address of Lobby Entity
(If individual, last name, first name, MI)

11. Individuals Performing Services
(including address if different from No. 10)
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

12. Amount of Payment (check all that apply)

$ _____ ☐ actual ☐ planned

13. Form of Payment (check all that apply):

- ☐ a. cash
- ☐ b. in-kind; specify: nature _____
  Value _____

14. Type of Payment (check all that apply)

- ☐ a. retainer
- ☐ b. one-time fee
- ☐ c. commission
- ☐ d. contingent fee
- ☐ e deferred
- ☐ f. other, specify _____

15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:

(attach Continuation Sheet(s) if necessary)

16. Continuation Sheet(s) attached: **Yes** ☐ **No** ☐

17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Authorized for Local Reproduction

Standard Form - LLL

Federal Use Only:

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity 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 a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (Ml).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

Attachment: Lane-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

PETERS ENGINEERING GROUP

City of Hanford
900 S. 10th Avenue
Hanford, CA 93230

CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

(For Local Assistance Federal-aid Projects, based on Caltrans LAPM Form 10-R)

This exhibit contains fiscal requirements from 2 CFR 200 and may be used for state-only funded contracts as well.

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AGREEMENT FOR PROFESSIONAL SERVICES FOR ON-CALL ENGINEERING SERVICES

ARTICLE I: INTRODUCTION

This Agreement for Professional Services ("Agreement") is made and entered into this 6th day of April, 2021, by and between the City of Hanford, a Municipal Corporation ("CITY"), and **Peters Engineering Group** ("CONSULTANT"), incorporated in the State of California.

The Project Manager for the "CONSULTANT" will be **Will Washburn, PE**.

The name of the "CITY" is as follows: City of Hanford.

The Contract Administrator for CITY will be the City Engineer and/or its assignees.

RECITALS

1. CONSULTANT represents to CITY that they are trained, experienced, licensed and competent to perform the services which will be required by this Agreement; and

2. CONSULTANT represents to CITY that they possess the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

3. CITY desires to retain CONSULTANT to render Professional Architectural and Engineering Consulting Services as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth herein for such other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

A. **RETENTION OF CONSULTANT.** Subject to the terms and conditions set forth herein, the CITY retains the CONSULTANT to perform the services identified in this Agreement, as an Independent Contractor and CONSULTANT hereby accepts this independent contractor appointment.

B. **SCOPE OF SERVICES.** The work to be performed under this AGREEMENT is described in Article III, Statement of Work, and the approved CONSULTANT's Cost Proposals. The approved CONSULTANT's Cost Proposals shall be attached hereto as Exhibit "A" and incorporated by reference. If there is any conflict between the approved Cost Proposals and this AGREEMENT, this AGREEMENT shall take precedence.

C. **INDEMNIFICATION.** 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 actions, injuries, claims, damages, demands, liabilities, costs, losses, and expenses, direct or indirect, including without limitation, any and all court costs, reasonable attorneys' fees, expert witness fees, and other expenses which the CITY may sustain or incur as a consequence of, or are in any way related to or arising out of any failure to the CONSULTANT 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,

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recklessness or willful misconduct incident to the performance of this AGREEMENT and services on the part of CONSULTANT, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statue of repose or statute of limitations; provided however, the duty to defend shall apply regardless of whether an application statute of limitations has lapsed.

D. **INDEPENDENT CONTRACTOR STATUS.** CONSULTANT, in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employee's), in the performance of the Services to be performed pursuant to this Agreement, is an Independent Contractor, and shall not act as an agent or employee of the CITY, and that no relationship of employer-employee exists between the Parties hereto. The CONSULTANT's assigned personnel shall not be entitled to, or obtain retirement benefits or other benefits which accrue to CITY employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. Nothing in the Agreement shall create or be construed as creating a partnership, joint venture, or any other relationship between the CITY and CONSULTANT.

E. **TAX WITHHOLDINGS**. 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.

F. **THIRD PARTY PERSONS EMPLOYED.** 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.

G. **AGREEMENT NOT TRANSFERABLE.** Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT 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 CITY under this AGREEMENT, 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.

H. **NEGLIGENT ACTS AND OMMISSIONS.** CONSULTANT shall be fully responsible to the CITY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons employed by them for whom CONSULTANT is legally liable, in the same manner as persons directly employed by CONSULTANT.

I. **ALTERATIONS APPROVED IN WRITING.** 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.

J. **PAYMENTS.** 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.

K. **INTEREST OF CONSULTANT**. CONSULTANT and its shareholders and covenants represent that they do not now have any investment or interest in real property, and shall not acquire any interest, direct or

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indirect in the area covered by this Agreement, or any other source of income, interest in real property, or investment which would be affected in any manner or degree by the performance of CONSULTANT's Services hereunder. CONSULTANT further covenants and represents that, in the performance of the Services hereunder, to the best of its knowledge no person having any such interest shall perform any Services under this Agreement.

CONSULTANT is not a designated employee within the meaning of the Political Reform Act because CONSULTANT:

1. Will conduct, research, and arrive at conclusions with respect to rendition of information, advice, recommendation, or counsel, independent of the control and direction of the CITY or of any CITY official, other than normal agreement monitoring; and
2. Shall possesses no authority with respect to any CITY decision beyond rendition of information, advice, recommendation, or counsel. FPPC Reg.18700, et seq.

L. **PROFESSIONAL ABILITY OF CONSULTANT**. CITY has relied upon CONSULTANT's representations regarding its training and professional ability to perform the Services hereunder as a material inducement to enter into this Agreement. CONSULTANT shall therefore provide properly skilled personnel to perform all Services under this Agreement. The primary provider of the Services

called for by this Agreement shall be _____**Will Washburn, PE**_____**.**
(Consult fill in employee name and title who will represent the agreement to the CITY)

who shall not be replaced without the written consent of the CITY. All work performed by the CONSULTANT under this Agreement shall be in accordance with the applicable professional standard of care, and shall meet the local professional standard of quality ordinarily to be expected of competent persons in CONSULTANT's field of expertise working in Kings County.

M. **COMPLIANCE WITH LAWS**. CONSULTANT shall use the proper standard of care in performing the Services, and shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations in effect at the time the Agreement is executed. In addition, if the request for proposal to provide professional services which are the subject of this Agreement cited any Federal or State Financial Assistance involved in the project for which the Services are provided, the CONSULTANT shall perform all services in accordance with all applicable federal and state laws, rates and regulations in effect at the time the agreement is executed.

N. **LICENSES**. CONSULTANT represents and warrants to CITY that it has all licenses, permits, qualifications, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT shall maintain a CITY of Hanford Business License.

ARTICLE II: CONSULTANT'S REPORTS OR MEETINGS

A. **PROGRESS REPORTS AND BILLINGS.** CONSULTANT shall submit progress reports and billings on EACH specific project in accordance with the Work Order at least once a month. CONSULTANT's bill shall include a brief description of the Services performed, the date the Services were performed, the number of hours spent, and by whom, and shall include a description of any authorized reimbursable expenditures. The report should be sufficiently detailed for the CITY's Contract Administrator or Project Coordinator: to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; to sufficiently address any difficulties or special problems encountered so remedies can be developed. The CITY shall pay the CONSULTANT no later than 60 days after the date of submittal of a complete invoice for completed tasks and approval of the invoice by CITY staff.

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B. **MEETINGS.** CONSULTANT's Project Manager shall meet with CITY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE III: STATEMENT OF WORK

A. **CONSULTANT SERVICES.** The CONSULTANT shall perform professional engineering and land surveying services, in accordance with all the provisions of this Agreement. The Scope of Work for each project will be determined by the CITY Engineer. For State and Federal Aid projects, the project scope will be incorporated into a streamlined (mini) RFP, and will be sent to the pre-qualified selected CONSULTANTS under agreement. The CONSULTANT shall submit their proposal to the CITY within the required timeframe, and the CITY shall select the top proposal using Qualifications Based Selection. Upon selection, the CITY will negotiate the cost based on the agreement labor price agreement. A work order will be assigned for each project after CONSULTANT determines an estimated cost for producing all necessary plans and documents to satisfy the Scope of Work. For Local Funded projects, the CONSULTANT will submit a scope of work with cost, and a Work Order will be prepared. The CONSULTANT shall correct any and all errors and/or omissions in the performance of the Services and any documents resulting therefrom even though CITY has accepted said Services or documents. CONSULTANT shall make such corrections upon CITY's request and at no cost or expense to CITY.

B. **ENVIRONMENTAL COMPLIANCE**. This AGREEMENT provides for CONSULTANT environmental services that result in CEQA or NEPA approval. Federal funded projects require NEPA clearance in addition to CEQA. NEPA Environmental documents are not considered complete until a Caltrans Official signs the Categorical Exclusion (CE), the Finding of No Significant Impact (FONSI), or the Record of Decision.

C. **RIGHT OF WAY.** Existing and proposed Right of Way requirements are to be determined and shown by the CONSULTANT. Land surveys and computations with metes and bounds descriptions shall be made by a California Licensed Land Surveyor. Projects shall be tied into recorded monumentation and bench marks. A bench mark map with record elevation data is available from the City. Services shall include preparation of Appraisal Map, Acquisition Maps, and Legal Descriptions used to acquire right of way or property.

D. **SURVEYS.** This AGREEMENT provides for CONSULTANT licensed surveying services for preliminary surveying, topographic surveys, monumentation mapping, construction staking, and monument setting and recording of corner records. Work under this service shall be performed or as directed by a California Licensed Land Surveyor.

E. **SUBSURFACE INVESTIGATIONS.** This AGREEMENT provides for CONSULTANT Sub-Surface Investigations as directed by the CITY for Environmental testing, topographic mapping, boring, construction staking, and other specialized sub surface investigation services, either by the CONSULTANT, or under the direction of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order.

F. **CONSTRUCTION MANAGEMENT.** This AGREEMENT does NOT provide for a CONSULTANT in a Management role.

G. **DESIGN PLANS, SPECIFICATIONS, AND ESTIMATES.** This AGREEMENT provides for CONSULTANT Design Plans, Specifications, and Estimates as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order. Design work shall meet City Standards.

H. **ARCHITECTURAL AND STRUCTURAL ENGINEERING.** This AGREEMENT provides for CONSULTANT Architectural and Structural Engineering as directed by the CITY and performed either by the CONSULTANT, or under the direction of the CONSULTANT, for structural design and analysis as determined

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in the Scope of Work of the assigned Work Order. All Architectural and Structural Engineering shall by performed by a Licensed Structural Engineer and shall meet all City and State Standards.

I. **TRAFFIC ENGINEERING AND TRAFFIC SIGNAL DESIGN.** This AGREEMENT provides for CONSULTANT Traffic Engineering and Traffic Signal Design as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for traffic engineering and traffic signal design as determined in the Scope of Work of the assigned Work Order. All Traffic Engineering shall by performed by a licensed Professional Engineer and shall meet all City and State Standards.

J. **MAPPING, INCLUDING GIS AND GPS.** This AGREEMENT provides for CONSULTANT Mapping, including GIS and GPS, as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for mapping as determined in the Scope of Work of the assigned Work Order.

K. **RAILROAD PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Railroad Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for railroad permitting and coordination as determined in the Scope of Work of the assigned Work Order.

L. **UTILITY PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Utility Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for utility permitting and coordination as determined in the Scope of Work of the assigned Work Order.

M. **CONFERENCES, SITE VISITS, AND INSPECTION OF WORK.** This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the CITY, County, State, and/or FHWA. Costs incurred by CONSULTANT for meetings subsequent to the initial meeting shall be included in the fee.

N. **CHECKING SHOP DRAWINGS.**
This AGREEMENT provides for the CONSULTANT to provide plan checking of shop drawings and contract documents. Payment for checking of drawings by CONSULTANT shall be paid at the hourly rate per the attached Fee Schedule. The total compensation paid to the CONSULTANT for all services in this agreement shall not exceed the maximum contract amount stated in Article V, Section P.

O. **CONSULTANT SERVICES DURING CONSTRUCTION.**
This AGREEMENT provides for CONSULTANT services during the course of construction, including resident engineering, construction surveys and construction staking. Payment for services shall be paid at the rates stated in the attached Fee Schedule, and shall not exceed the Work Order fee stated without an approved Change Order.

P. **DOCUMENTATION AND SCHEDULES.**
This AGREEMENT provides for the CONSULTANT to document the results of the work to the satisfaction of CITY, and if applicable, to the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Work Order objectives. All final construction documents shall be stamped and wet signed when completed.

Q. **CITY OBLIGATIONS.** Data applicable to the Work Order Scope of Work shall be made available to the CONSULTANT at the time of Work Order Execution. Data may include maps, plans, documents, and records that are in the possession of the CITY. Additional items to be made available to the CONSULTANT shall be noted specifically on the Work Order.

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R. **DELIVERABLES AND NUMBER OF COPIES.**
The number of copies or documents to be furnished with each submittal, such as reports, brochures, sets of plans, specifications, maps, etc., shall be two (2) copies minimum unless otherwise specified in the work order or as may be required for City Permitting. Final plans and maps shall be plotted on 20# vellum or on plastic film mylar, and shall have stamp and original wet signatures.

S. **DESIGN STANDARD.**
All work performed under this AGREEMENT shall conform to the most current City of Hanford Standards, Caltrans Standards, and all other Local, State, and FHWA requirements.

ARTICLE IV: PERFORMANCE PERIOD

A. This AGREEMENT shall go into effect on **April 6, 2021**, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY'S Contract Administrator. The AGREEMENT shall be in effect for 3 (three) years, and end on **April 6, 2024**, unless extended by AGREEMENT amendment. AGREEMENT amendments shall be limited to two separate ONE YEAR EXTENSIONS, and in no case shall the AGREEMENT exceed five years.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on CITY until the AGREEMENT is fully executed and approved by CITY.

C. The period of performance for each specific project shall be in accordance with the Work Order for that project. If work on a Work Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the Work Order in progress only. In no case shall the maximum term of this AGREEMENT exceed five (5) years.

ARTICLE V: ALLOWABLE COSTS AND PAYMENTS

A. **PAYMENT.** CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's attached approved 10H-2: Cost Proposal Fee Schedule (Exhibit B), subject to Prevailing Wage Requirements which are available at the office of the City Engineer. An estimate for cost of services for each project shall be submitted to the City Engineer before commencement of work. Payment by CITY under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment. An increase in the fee schedule for non-prevailing wage classifications will be allowed at the beginning of Year 2 (two) of this agreement and shall be made a part of an AGREEMENT extension, if said agreement is extended for a period. The CONSULTANT must notify the CITY thirty (30) days in advance of such increases. The CONSULTANT is limited to two (2) price increases during the three years contract period, and one increase per year for each year the contract is extended. An increase in fee schedule for prevailing wage classifications shall be allowed when the Prevailing Wage for said wage determination increases. The services included in this agreement shall increase by the same amount approved for increase by the Department of Industrial Relations. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within sixty (60) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate.

B. **DIRECT COSTS.** In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal, and identified in the approved Cost Proposal and in the executed Work Order.

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C. **WORK ORDERS.** Specific projects will be assigned to CONSULTANT after approval of the proposal for each specific project through the issuance of Work Orders. Work Orders shall be number consecutively for each specific project.

D. **DRAFT WORK ORDERS.** After a project to be performed under this AGREEMENT is identified by CITY, CITY will prepare a draft Work Order with Scope of Work; less the cost estimate. A draft Work Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a CITY Project Coordinator. The draft Work Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Work Order within ten (10) calendar days along with a Cost Estimate for requested services, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and the total dollar amount. After agreement has been reached on the negotiable items and total cost; a finalized Work Order shall be signed by both CITY and CONSULTANT.

E. **NOT TO EXCEED COMPENSATION**. Work Orders may be negotiated for specific rates of compensation Not to Exceed amount, of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT. Work Orders that are approved as "Flat Fee" must have any prevailing wage increase built into the cost proposal, and the CONSULTANT must pay the required prevailing wage rates to workers. Work Orders that are approved as "Time and Materials, Not to Exceed" will require prevailing wage rates be paid to workers, and the total amount "Not to Exceed" will be increased to accommodate said increases in the amount approved by the DIR.

F. **STATE RATE REIMBURSEMENTS.** Reimbursement for transportation and subsistence costs shall not exceed State rates. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

G. **CHANGE ORDERS.** When milestone cost estimates, or not to exceed estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment Change Order for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

H. **MONTHLY PAYMENTS.** Progress payments for each Work Order will be made monthly in arrears based on services provided and actual costs incurred.

I. **NOTICE TO PROCEED.** 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 or for any work performed prior to approval of this AGREEMENT, or for work done on a project Work Order prior to the City's issuance of a Notice to Proceed (NTP).

J. **EXECUTED WORK ORDERS.** A Work Order is of no force or effect until returned to CITY and signed by an authorized representative of CITY. No expenditures are authorized on a project and work shall not commence until a Work Order for that project has been executed by CITY.

K. **INVOICES.** CONSULTANT will be reimbursed within thirty (30) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Work Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Work Order. 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, the project title and the Work Order number. Credits due CITY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to CITY's Contract Administrator at the following address:

City of Hanford
Attn.: Finance Dept., Accounts Payable
315 N. Douty Street
Hanford CA 93230

L. **PERIOD OF PERFORMANCE FOR WORK ORDERS.** The period of performance for Work Orders shall be in accordance with dates specified in each individual Work Order. No Work Order will be written which extends beyond the expiration date of this AGREEMENT.

M. **AMOUNT PAYABLE FOR WORK ORDER.** The total amount payable by CITY for an individual Work Order shall not exceed the amount agreed to in the Work Order, unless authorized by amendment Change Order.

N. **PAYMENT FOR DELIVERABLES.** If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Work Order, no payment will be made until the deliverable has been satisfactorily completed.

O. **AMENDMENT TO AGREEMENT.** Work Orders may not be used to amend the language (or the terms) of this AGREEMENT, nor to exceed the scope of work under this AGREEMENT.

P. **AGREEMENT MAXIMIM PAYMENT.** The total amount payable by CITY for all Work Orders resulting from this AGREEMENT shall not exceed **$150,000 per year, or $ 450,000.00 for the total three-year agreement.** It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Work Orders.

Q. **EXTRA WORK.** At any time during the term of this Agreement, CITY may request that CONSULTANT perform Extra Work. As used herein, "Extra Work" means any work which is determined by CITY to be necessary for the proper completion of the Services, but which the parties did not include in the Scope of Work. Extra work will be performed on an hourly basis under the CONSULTANT's most current hourly fee schedule. CONSULTANT shall not perform, nor be compensated for Extra Work without written authorization from CITY.

ARTICLE VI: TERMINATION

A. This AGREEMENT may be terminated by CITY, provided that CITY gives not less than thirty (30) calendar days' written notice to CONSULTANT (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, and in accordance with Section 15, Property of CITY. Upon termination, CONSULTANT shall be entitled to compensation for Services performed up to the effective date of termination, unless this Agreement is terminated for cause, in which case, CITY may withhold compensation due

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CONSULTANT in order to reimburse CITY for any losses, damages or expenses caused by CONSULTANT's default under this Agreement

B. CITY may temporarily suspend this AGREEMENT, at no additional cost to 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 provided for in subsection A of this section.

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.

D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Section 11C. 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, and in accordance with Section 15, Property of CITY.

E. If the CITY is in breach of the payment terms or otherwise is in material breach of this AGREEMENT, the CONSULTANT may suspend performance of services upon ten (10) calendar days' notice to the CITY. The CONSULTANT shall have no liability to the CITY, and the CITY agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this AGREEMENT by the CITY. Upon receipt of payment in full of all outstanding sums due from the CITY, or curing of such other breach that caused the CONSULTANT to suspend services, the CONSULTANT shall resume services, and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension. If the CITY does not cure said material breach of AGREEMENT within thirty (30) calendar days of notice, the CONSULTANT may terminate the AGREEMENT upon written notice to the CITY.

ARTICLE VII: COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

Consulting Architectural & Engineering (A&E) firms providing engineering and design related services under a contract funded by a federal grant, are required by regulation (as specified in 2 CFR Part 200) to account for and bill costs in accordance with the Federal Cost Principles of 48 CFR 31. In efforts to comply with the Federal Cost Principles, A&E consulting firms that provide services on federal-aid highway projects are required to develop indirect cost rates in accordance with the Federal Cost Principles on an annual basis.

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.

F. 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.

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Consultant shall provide all documents and files per Work Order to the City as required per Ownership of Data requirements in the Agreement.

ARTICLE VIII: RETENTION OF RECORD/AUDITS

A. For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and CITY shall maintain any and all books of account, ledgers, invoices, vouchers, canceled checks, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate work papers, and other evidence pertaining to the performance, services, expenditures, and disbursements 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 work papers 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. 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 CONSUTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, work paper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

B. CONSULTANT shall maintain all documents and records that demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the CITY. Copies of such documents shall be provided to the CITY for inspection at the CITY offices.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request, require that custody of the records be given to the CITY and that the records and documents be maintained in the CITY offices. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

ARTICLE IX: 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 thirty (30) calendar 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 AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, 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, CITY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall

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be adjusted by CONSULTANT and approved by CITY 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 AGREEMENT 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, CITY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT 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 Caltrans Audits and Investigation (A&I). Caltrans A&I, 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 AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During Caltrans A&I's review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans A&I 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 Caltrans A&I 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 A&I.

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 Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I 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. Caltrans A&I 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 Caltrans A&I 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) Caltrans A&I 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) Caltrans A&I 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 X: SUBCONTRACTING

A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the CITY and any Subconsultants, and no sub-agreement 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 Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.

C. Any sub-agreement 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 the CONSULTANT by the CITY.

E. Any substitution of Subconsultants must be approved in writing by the CITY Contract Administrator in advance of assigning work to a substitute Subconsultant.

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

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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.

Method 3: The CITY shall 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. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the CITY. 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 subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other 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 noncompliance 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 XI: EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

A. Prior authorization in writing by 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 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 AGREEMENT 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, CITY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT 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.

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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 XII: STATE PREVAILING WAGE RATES

A. **D.I.R. REGISTRATION.** 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. **WAGE DETERMINATIONS (CALTRANS).** 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 (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). 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 RATES.** 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 representatives 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 to a representative of CITY, the Division of Labor Standards

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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.

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 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. **CERTIFIED PAYROLL.** 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.

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.

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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 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.

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 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.

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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 XIII: CONFLICT OF INTEREST

A. During the term of this AGREEMENT, the 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. The 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 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 AGREEMENT.

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 Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, 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.

E. CONSULTANT maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement.

F. Further CONSULTANT warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or result from the award or making of this Agreement.

G. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability.

H. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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ARTICLE XIV: REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT 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 AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV: PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING (for use when Federal funding will exceed $150,000)

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 AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the 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 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 subagreements, which exceed one hundred thousand dollars ($100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI: 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 AGREEMENT, CONSULTANT and its subconsultants represents that they are an Equal Opportunity Employer, and shall not deny the AGREEMENT's benefits or discriminate against 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.

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CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of CITY's programs or guidelines currently in effect as identified and provided to Consultant by CITY.

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 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 AGREEMENT 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 subconsultant*s* 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 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

ARTICLE XVII: 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:

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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 List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII: DISADVANTAGED BUSINESS ENTERPRISES (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 at https://dot.ca.gov/programs/civil-rights/dbe-search .

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. 49 CFR 26.55 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 enter into a federally-funded agreement, and proposes on a federal funded project RFP, 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 AGREEMENT is 0%.** Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Appendix "C": *Exhibit 10-O1: Consultant Proposal DBE Commitment* , attached hereto and incorporated as part of the AGREEMENT.

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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 Appendix "D": 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 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 recipient 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 CONSULTANT from future proposing as non-responsible

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:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. 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.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. 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).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.

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7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. 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:
1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. 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 Page 24 of 32 September 2020 Local Assistance Procedures Manual EXHBIT 10-R A&E Boilerplate Agreement Language
3. Maintain records including:
- Name and business address of each 1st-tier subconsultant
- Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
- 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.

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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 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 AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, Appendix "E": *Exhibit 17-F1: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) for On-call Contracts*, 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 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.

M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX: INSURANCE

A. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies.

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1. Workers Compensation Coverage. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury or disease.

2. General Liability Coverage. Insurance Services Office (ISO) Form CG 0001, including products and completed operations, with limits of no less than TWO MILLION AND NO/100 DOLLARS ($2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be FOUR MILLION AND NO/100 DOLLARS ($4,000,000), twice the required occurrence limit.

3. Automobile Liability Coverage. ISO Form Number CA 0001 covering any auto (Code 1), with a limit no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury and property damage.

4. Professional Liability Coverage. Contractor will maintain Professional Liability coverage with limits no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per occurrence or claim, and TWO MILLION AND NO/100 DOLLARS ($2,000,000) policy aggregate.

B. If Consultant maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by Consultant.

C. Consultant's insurance policies shall be "occurrence" policies and not "claims-made" coverage except for Professional Liability Coverage.

D. Consultant may maintain an Umbrella policy in conjunction with the insurance policies referenced above. In such case, Consultant shall be deemed to have satisfied the insurance requirements of this contract as long as: (i) the coverage limits of the Umbrella policy and of the underlying liability policy(ies), when combined, satisfy each of the per occurrence and aggregate requirements identified in this subsection a.; and (ii) coverage under the Umbrella policy is as broad as and includes all incidents and events covered by the underlying insurance that it supplements.

E. Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Alternatively, the CITY may require Consultant to provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses within the retention**.**

F. The policies are to contain, or be endorsed to contain, the following provisions:

1. "The City and its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations; products used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. General liability coverage can be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

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2. For any claims related to this contract, Consultant's insurance coverage, with the exception of Professional Liability Insurance, shall be primary insurance as respects the City and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City and/or its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall be non-contributory.
3. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
4. These policies of insurance shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers, with the exception of Professional Liability Insurance. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with the policies of insurance obtained by Consultant.
5. With the exception of Professional Liability Insurance, these policies of insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
6. The insurer shall agree to waive all rights of subrogation against City, its officials, officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.
7. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.
8. The insurance provided by these policies shall not be canceled except after thirty (30) days written notice has been received by the City. The Consultant or its insurance agent shall, to the extent feasible, notify the City in writing thirty (30) days prior to the date on which any insurance policy required hereunder will be suspended voided, modified, or reduced. If such thirty (30) day prior notice is not feasible, notice will be promptly provided to the City upon Consultant's knowledge that a noticeable event will or has occurred.

G. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII and which are authorized to write business in California.

H. Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, true and correct copies of all required insurance policies, including endorsements required by these specifications, at any time. All forms and endorsements are to list the City of Hanford as additional insureds. The City reserves the right to require complete, true and correct copies of all required insurance policies, including endorsements required by these specifications, at any time. The policies can be redacted of personal information.

I. Consultant hereby grants to CITY and its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of Consultant may acquire against the CITY and/or its officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance. Consultant agrees to obtain endorsements necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

J. The CITY reserves the right to modify the insurance requirements contained in this contract, including, without limitation, coverage limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

K. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

ARTICLE XX: FUNDING REQUIREMENTS

A. It is mutually understood between the parties that this AGREEMENT 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 AGREEMENT were executed after that determination was made.

B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to 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 CITY 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 VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI: CHANGE IN TERMS

A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

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 CONSULTANT's Project Manager or members of the project team which shall not be unreasonable withheld, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by CITY's Contract Administrator.

ARTICLE XXII: CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT 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 AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII: DISPUTES

A. Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to resolve any dispute amicably between them through mediation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains

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unresolved after mediation, and 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.

B. 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 AGREEMENT.

ARTICLE XXIV: INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit 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 XXV: 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 Vehicle Code §591, 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 XXVI: OWNERSHIP OF DATA

A. It is mutually agreed that all materials prepared by CONSULTANT, its officers, employees, agents, and subcontractors under this AGREEMENT, except working notes and internal documents, shall become the sole property of the CITY in its discretion without further compensation to the CONSULTANT or to any other party, and the 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 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. The CITY's use of completed documents for other projects and/or the use of uncompleted documents without the written

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authorization of Consultant will be at the CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of, or changes to the Project Documents not performed by the Consultant.

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. Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for CITY to use, modify, reuse or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data electronic or otherwise recorded on computer diskettes which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that CITY is granted non-exclusive and perpetual license for any Documents & Data the subcontractor prepared under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. CITY shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purpose intended by this Agreement shall be at CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of or changes to the Project Documents not performed by the Consultant.

ARTICLE XXVII: CLAIMS FILED BY CITY's CONSTRUCTION CONTRACTOR

A. **CONSULTANT'S PERSONNEL AVAILABILITY.** 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 REIMBURSEMENT.** 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. **CONSULTANT'S PERSONNEL SERVICES.** 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.

D. **ATTORNEYS' FEES**. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court for the County of Kings, State of California for any proceeding arising hereunder.

Attachment: Peters-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

E. **SOLE AND ONLY AGREEMENT.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this Agreement and no other agreement, statement or promise shall be valid or binding.

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

G. **AMENDMENT.** No change, amendment or modification of this Agreement shall be valid unless the same be in writing and signed by the parties hereto.

H. **GOVERNING LAW.** This Agreement shall be construed and governed pursuant to the laws of the State of California.

I. **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

ARTICLE XXVIII: CONFIDENTIALITY OF DATA

A. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information including financial, statistical, personal, technical, or other data, and other documents and data either created by or provided to CONSULTANT in connection with and relative to CITY's operations and CONSULTANTS performance of this agreement, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected and held confidential by CONSULTANT from unauthorized use and disclosure.

B. Such materials shall not, without the prior written consent of CITY, be used by Consultant for any purposes other than the performance of the Services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the Services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use CITY's name, insignia, photographs, or the project for which Consultant's Services are rendered, or any publicity pertaining to the Consultant's Services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent by CITY. Notwithstanding the foregoing, the CITY acknowledges that the Consultant may want/need to include projects performed under this agreement on proposals for similar work in the future. The CITY hereby grants permission to list any projects performed under this agreement for marketing purposes; provided however, Consultant will not make any representations regarding CITY's satisfaction with Consultant's work product unless Consultant receives a written statement or evaluation from CITY

C. Permission to disclose information on one occasion, or public hearing held by CITY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

D. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or CITY's actions on the same, except to CITY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.

E. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by CITY, and receipt of CITY'S written permission.

F. 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.

ARTICLE XXIX: 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 XXX: 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 records. The Consultant Performance Evaluation form and criteria is attached in Appendix "F".

ARTICLE XXXI 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 XXXII NOTIFICATION

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

CONSULTANT:

PETERS ENGINEERING GROUP

WILL WASHBURN, PE, Project Manager

862 POLLASKY AVENEU

CLOVIS, CA 93612

CITY:

CITY OF HANFORD

ATTN: CITY ENGINEER, Contract Administrator

900 S. 10TH AVENUE

HANFORD, CA 93230

ARTICLE XXXIII: CONTRACT

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.

Attachment: Peters-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

ARTICLE XXXIV: SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and in the year first set forth above.

CITY OF HANFORD,
a Municipal Corporation

By: _____
MARIO CIFUENTEZ, City Manager

Consultant

By: _____
DAVID PETERS, PE, TE, Principal-In-Charge

APPROVED AS TO CONTENT:

By: _____
JOHNATHAN L. DOYEL
Public Works Director

ATTEST:

By: _____
NATALIE CORRAL
City Clerk

Attachment: Peters-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

EXHIBIT "A"

Consultants Cost Proposal for On-Call Contract

(Approved Work Orders)

EXHIBIT "B"

Consultants Fee Schedule

(LAPM form 10-H2)

EXHIBIT 10-H2 COST PROPOSAL Page 1 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)

(NON- PREVAILING WAGE CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant Peters Engineering Group ☐ Prime Consultant ☒ Subconsultant

Project No. TBD Contract No. TBD Participation Amount $ under 150,000 Date November 20, 2020

For Combined Rate	Fringe Benefit %	+ General &Administrative %	= 110	Combined ICR%
		OR		
For Home Office Rate	Fringe Benefit %	+ General &Administrative %	=	Home Office ICR%
For Field Office Rate	Fringe Benefit %	+ General &Administrative %	=	Field Office ICR%

Fee	=	10%

BILLING INFORMATION **CALCULATION INFORMATION**

Name/Job Title/Classification[1]	Hourly Billing Rates[2]			Effective date of hourly rate		Actual or Avg. hourly rate[3]	% or $ increase	Hourly range - for classifications only
	Straight	OT(1.5x)	OT(2x)	From	To			
David Peters Principal Engineer	$180.00 $185.00 $190.00			1/1/2021	12/31/2021	$76.00 $76.22 $78.51	0 3.00% 3.00%	Not Applicable
John Rowland Senior Traffic Engineer	$165.00 $170.00 $175.00			1/1/2021	12/31/2021	$72.00 $74.16 $76.38	0 3.00% 3.00%	Not Applicable
Will Washburn Senior Civil Engineer	$165.00 $170.00 $175.00			1/1/2021	12/31/2021	$72.00 $74.16 $76.38	0 3.00% 3.00%	Not Applicable
Assistant Engineer	$115.00 $118.00 $122.00			1/1/2021	12/31/2021	$52.00 $53.56 $55.17	0 3.00% 3.00%	$48-$54
Engineering Technician	$92.00 $95.00 $98.00	$114.00 $118.00 $121.00	$136.00 $140.00 $145.00	1/1/2021	12/31/2021	$44.00 $45.32 $46.68	0 3.00% 3.00%	$41-$48

NOTES:
1. All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Indirect cost rates should be based on the consultant's annual accounting period, established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

EXHIBIT 10-H2 COST PROPOSAL Page 2 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant Peters Engineering Group Prime Consultant X Subconsultant

Project No. TBD Contract No. TBD Date November 20, 2020

SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)				
Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs			$ 0.62	$
Equipment Rental and Supplies			$	$
Permit Fees			$	$
Plan Sheets			$	$
Test			$	$
Vehicle			$	$
Subconsultant 1:				$
Subconsultant 2:				$
Subconsultant 3:				$
Subconsultant 4:				$
Subconsultant 5:				$

Note: Add additional pages if necessary.

NOTES:

1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.

7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

EXHIBIT 10-H2 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

7. Generally Accepted Accounting Principles (GAAP)
8. Terms and conditions of the contract
9. Title 23 United States Code Section 112 - Letting of Contracts
10. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
11. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
12. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: David Peters

Title *: President

Signature :

Date of Certification (mm/dd/yyyy): November 20, 2020

Email: dpeters@peters-engineering.com

Phone Number: 559-299-1544 x 111

Address: 862 Pollasky Avenue, Clovis, CA 93612

* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Civil/Traffic Engineering Consulting

Attachment: Peters-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT "C"

Consultant's Proposal DBE Commitment

(LAPM form 10-O1: Consultant shall utilize form for specific Federal or State projects work orders requiring a DBE goal.)

Reset Form

EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____

3. Project Description: _____

4. Project Location: _____

5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %

Local Agency to Complete this Section

17. Local Agency Contract Number: _____

18. Federal-Aid Project Number: _____

19. Proposed Contract Execution Date: _____

20. Consultant's Ranking after Evaluation: _____

Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.

_____ _____

_____ _____

_____

11. TOTAL CLAIMED DBE PARTICIPATION	**%**

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.

_____ _____
12. Preparer's Signature 13. Date

_____ _____
14. Preparer's Name 15. Phone

_____
16. Preparer's Title

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Attachment: Peters-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

1. Local Agency - Enter the name of the local or regional agency that is funding the contract.
2. Contract DBE Goal - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. Project Location - Enter the project location as it appears on the project advertisement.
4. Project Description - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
5. Consultant's Name - Enter the consultant's firm name.
6. Prime Certified DBE - Check box if prime contractor is a certified DBE.
7. Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
8. DBE Certification Number - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
9. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
10. DBE % - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
11. Total Claimed DBE Participation % - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
12. Preparer's Signature - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
13. Date - Enter the date the DBE commitment form is signed by the consultant's preparer.
14. Preparer's Name - Enter the name of the person preparing and signing the consultant's DBE commitment form.
15. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
16. Preparer's Title - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

17. Local Agency Contract Number - Enter the Local Agency contract number or identifier.
18. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
19. Proposed Contract Execution Date - Enter the proposed contract execution date.
20. Consultant's Ranking after Evaluation – Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
21. Local Agency Representative's Signature - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
22. Date - Enter the date the DBE commitment form is signed by the Local Agency Representative.
23. Local Agency Representative's Name - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
24. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
25. Local Agency Representative Title - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

Attachment: Peters-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

EXHIBIT "D"

Consultant Performance Evaluation Sheet

(for project closeout)

(LAPM form 10-S)

Exhibit 10-S Consultant Performance Evaluation

1. PROJECT DATA	2. CONSULTANT DATA
1a. Project (include title, location, and Activity/CIP No.)	2a. Consultant Name and Address
1b. Brief Description of Project (design, study, etc.)	2b. Consultant's Manager
1c. Budget Cost for Project: $_____	2c. Phone: _____

3. AGENCY DEPARTMENT/SECTION RESPONSIBLE

3a. Department (include section and division)	3b. Agency Project Manager (name & phone)

4. CONTRACT DATA (Engineering Services)

4a. Contract No.: _____ Termination date: _____ Base Fee: $ _____

Agreement date: _____ Date terminated: _____ Contingency: $ _____

4b. Amendment $ _____ / # _____ $ _____ / # _____
(Total Value) (Initiated by Agency) (Total Value) (Initiated by Agency)

4c. Change Order $ _____ / # _____ $ _____ / # _____
(Total Value) (Initiated by Agency) (Total Value) (Initiated by Agency)

4d. Total Fee per Agreement (4a. + 4b. + 4c.) $ _____ Total Fee Paid $ _____
(Do not include Contingency Listed in 4a.)

4e. Type of Services (Design, study, etc.)

4f. Historical Record of Key Submittal Dates (enter date or n/a if not applicable)

	Preliminary	30%	70%	90%	100%	Final
Per Agreement						
Delivery Date						
Acceptance Date						

4g. Notice To Proceed _____ (date)

4h. Number of Days _____ (number)

4i. Actual Number of Days (number)

4j. Reasons for Change Orders: (Indicate total for each reason)

Errors/Omissions $		% of Base Fee	0.00%
Unforeseen Conditions $		% of Base Fee	0.00%
Changed Scope $		% of Base Fee	0.00%
Changed Quantities $		% of Base Fee	0.00%
Program Task Options $		% of Base Fee	0.00%

5.OVERALL RATING (Complete Section II on reverse, include comments as appropriate.)

		Outstanding	Above Average	Average	Below Average	Poor	N/A
5a.	Plans/Specifications accuracy						
5b.	Consistency with budget						
5c.	Responsiveness to Agency Staff						
5d.	Overall Rating						

6. AUTHORIZING SIGNATURES

6a. Agency Design Team Leader _____ Date: _____

6b. Agency Project Manager _____ Date: _____

6c. Agency Public Works Manager Date:

6d. Consultant Representative Date:

See Reverse Side

Attachment: Peters-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

PLANS/SPECIFICATIONS ACCURACY	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A	Responsiveness To Staff	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A
Plans Specifications clear and concise							Timely Responses						
Plans/Specs Coordination							Attitude toward Client and review bodies						
Plans/Specs properly formatted							Follows directions and Chain of responsibility						
Code Requirements covered							Work product delivered on time						
Adhered to Agency Standard Drawings/Specs							Timeliness in notifying Agency of major problems						
Drawings reflect existing conditions							Resolution of field Problems						
As-Built Drawings							Consistency with budget						
Quality Design							Reasonable Agreement negotiation						
Change Orders due to design deficiencies are minimized							Adherence to fee schedule						
							Adherence to project Budget						

Section III **EXPLANATIONS AND SUPPLEMENTAL INFORMATION**

(Attach additional documentation as needed)

Item _____: _____

_____

Item _____: _____

_____

Item _____: _____

Item _____: _____

_____

Item _____: _____

_____

Item _____: _____

_____

***Indicates supporting documentation attached.**

Attachment: Peters-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

EXHIBIT "E"

Consultant Annual Certification of Indirect Costs and Financial Management System

(LAPM form 10-K)

SAFE HARBOR RATE
CONSULTANT CERTIFICATION OF ELIGIBILITY; CONTRACT COSTS AND FINANCIAL MANAGEMENT SYSTEM

Consultant Firm Name: Peters Egnineering Group

Local Agency (if applicable): City of Hanford

Contract # (if applicable): TBD

Federal Project #: TBD

Contract Total: $ TBD

For Subconsultants - estimated % of work to be performed: TBD %

Safe Harbor Rate (Indirect Cost Rate): **110%**

CERTIFICATION OF ELIGIBILITY:

I, the undersigned, certify that I am eligible to use the safe harbor indirect cost rate as I:

1. Do not have relevant contract cost history to use as a base for developing a Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31 compliant indirect cost rate (ICR).

OR

1. Do not have a previously accepted ICR by a cognizant agency, or with an audited/accepted actual ICR, and do not have an existing contract with a provisional rate

2. Am not a Prime Consultant on a Caltrans' contract ≥ $3.5M OR Local Government contract ≥ $1M, regardless of the participation amount.

CERTIFICATION OF FINANCIAL MANAGEMENT SYSTEM:

I, the undersigned, certify that our financial management system in place for this contract and moving forward meets the standards for the Safe Harbor Rate requirements and financial reporting, accounting records, internal and budget control as set forth in the FAR of Title 49, CFR, Part 18.20. These standards require consulting firms have an accounting system adequate to accumulate, and track allowable, allocable, and reasonable direct labor and other direct costs by contract; segregate indirect costs, and remove unallowable costs.

* Consultant Certification Signature: David Peters
(Sign in blue ink only)

Digitally signed by David Peters
DN: cn=David Peters, o=Peters Engineering Gro;up, ou, email=dpeters@peters-engineering.com, c=US
Date: 2021.02.22 10:25:01 -08'00'

Consultant Certifying (Print): David Peters

Name: David Peters Title: President

Consultant Contact Information:

Email: dpeters@peters-engineering.com Phone: 559-299-1544

Business Mailing Address: 862 Pollasky Ave
Clovis, CA 93612

Date of Certification: 02-22-21

*An executive or financial officer of the contractor's organization who has authority to represent the financial information utilized to establish the proposal submitted in conjunction with the contract.

ALSO REQUIRED IF PARTICIPATING ON A CALTRANS' CONTRACT

Attach a copy of your completed:

Safe Harbor Rate Questionnaire for Evaluating Consultant's Financial Management System

EXHIBIT "F"

Disclosure of Lobbying Activities

(LAPM form 10-Q)

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action:

- ☐ a. contract
- ☐ b. grant
- ☐ c. cooperative agreement
- ☐ d. loan
- ☐ e. loan guarantee
- ☐ f. loan insurance

2. Status of Federal Action:

- ☐ a. bid/offer/application
- ☐ b. initial award
- ☐ c. post-award

3. Report Type:

- ☐ a. initial
- ☐ b. material change

For Material Change Only:
year ____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity

☐ Prime ☐ Subawardee
Tier _____, if known

Congressional District, if known

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, if known

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable _____

8. Federal Action Number, if known:

9. Award Amount, if known:

10. Name and Address of Lobby Entity
(If individual, last name, first name, MI)

11. Individuals Performing Services
(including address if different from No. 10)
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

12. Amount of Payment (check all that apply)

$ _____ ☐ actual ☐ planned

13. Form of Payment (check all that apply):

- ☐ a. cash
- ☐ b. in-kind; specify: nature _____
  Value _____

14. Type of Payment (check all that apply)

- ☐ a. retainer
- ☐ b. one-time fee
- ☐ c. commission
- ☐ d. contingent fee
- ☐ e deferred
- ☐ f. other, specify _____

15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:

(attach Continuation Sheet(s) if necessary)

16. Continuation Sheet(s) attached: **Yes** ☐ **No** ☐

17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Authorized for Local Reproduction

Standard Form - LLL

Federal Use Only:

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

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INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity 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 a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (Ml).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

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CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

PROVOST & PRITCHARD CONSULTING GROUP

City of Hanford
900 S. 10th Avenue
Hanford, CA 93230

CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

(For Local Assistance Federal-aid Projects, based on Caltrans LAPM Form 10-R)

This exhibit contains fiscal requirements from 2 CFR 200 and may be used for state-only funded contracts as well.

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AGREEMENT FOR PROFESSIONAL SERVICES FOR
ON-CALL ENGINEERING SERVICES

ARTICLE I: INTRODUCTION

This Agreement for Professional Services ("Agreement") is made and entered into this 6th day of April, 2021, by and between the City of Hanford, a Municipal Corporation ("CITY"), and **Provost & Pritchard Consulting Group** ("CONSULTANT"), incorporated in the State of California.

The Project Manager for the "CONSULTANT" will be **Matt Hamilton, PE**.

The name of the "CITY" is as follows: City of Hanford.

The Contract Administrator for CITY will be the City Engineer and/or its assignees.

RECITALS

1. CONSULTANT represents to CITY that they are trained, experienced, licensed and competent to perform the services which will be required by this Agreement; and

2. CONSULTANT represents to CITY that they possess the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

3. CITY desires to retain CONSULTANT to render Professional Architectural and Engineering Consulting Services as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth herein for such other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

A. **RETENTION OF CONSULTANT.** Subject to the terms and conditions set forth herein, the CITY retains the CONSULTANT to perform the services identified in this Agreement, as an Independent Contractor and CONSULTANT hereby accepts this independent contractor appointment.

B. **SCOPE OF SERVICES.** The work to be performed under this AGREEMENT is described in Article III, Statement of Work, and the approved CONSULTANT's Cost Proposals. The approved CONSULTANT's Cost Proposals shall be attached hereto as Exhibit "A" and incorporated by reference. If there is any conflict between the approved Cost Proposals and this AGREEMENT, this AGREEMENT shall take precedence.

C. **INDEMNIFICATION.** 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 actions, injuries, claims, damages, demands, liabilities, costs, losses, and expenses, direct or indirect, including without limitation, any and all court costs, reasonable attorneys' fees, expert witness fees, and other expenses which the CITY may sustain or incur as a consequence of, or are in any way related to or arising out of any failure to the CONSULTANT 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 and services on the part of CONSULTANT, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statue of repose or statute of limitations; provided however, the duty to defend shall apply regardless of whether an application statute of limitations has lapsed.

D. **INDEPENDENT CONTRACTOR STATUS.** CONSULTANT, in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employee's), in the performance of the Services to be performed pursuant to this Agreement, is an Independent Contractor, and shall not act as an agent or employee of the CITY, and that no relationship of employer-employee exists between the Parties hereto. The CONSULTANT's assigned personnel shall not be entitled to, or obtain retirement benefits or other benefits which accrue to CITY employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. Nothing in the Agreement shall create or be construed as creating a partnership, joint venture, or any other relationship between the CITY and CONSULTANT.

E. **TAX WITHHOLDINGS**. 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.

F. **THIRD PARTY PERSONS EMPLOYED.** 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.

G. **AGREEMENT NOT TRANSFERABLE.** Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT 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 CITY under this AGREEMENT, 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.

H. **NEGLIGENT ACTS AND OMMISSIONS.** CONSULTANT shall be fully responsible to the CITY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons employed by them for whom CONSULTANT is legally liable, in the same manner as persons directly employed by CONSULTANT.

I. **ALTERATIONS APPROVED IN WRITING.** 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.

J. **PAYMENTS.** 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.

K. **INTEREST OF CONSULTANT**. CONSULTANT and its shareholders and covenants represent that they do not now have any investment or interest in real property, and shall not acquire any interest, direct or

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indirect in the area covered by this Agreement, or any other source of income, interest in real property, or investment which would be affected in any manner or degree by the performance of CONSULTANT's Services hereunder. CONSULTANT further covenants and represents that, in the performance of the Services hereunder, to the best of its knowledge no person having any such interest shall perform any Services under this Agreement.

CONSULTANT is not a designated employee within the meaning of the Political Reform Act because CONSULTANT:

1. Will conduct, research, and arrive at conclusions with respect to rendition of information, advice, recommendation, or counsel, independent of the control and direction of the CITY or of any CITY official, other than normal agreement monitoring; and
2. Shall possesses no authority with respect to any CITY decision beyond rendition of information, advice, recommendation, or counsel. FPPC Reg.18700, et seq.

L. **PROFESSIONAL ABILITY OF CONSULTANT**. CITY has relied upon CONSULTANT's representations regarding its training and professional ability to perform the Services hereunder as a material inducement to enter into this Agreement. CONSULTANT shall therefore provide properly skilled personnel to perform all Services under this Agreement. The primary provider of the Services

called for by this Agreement shall be _____**Matt Hamilton, PE**_____.
(Consult fill in employee name and title who will represent the agreement to the CITY)

who shall not be replaced without the written consent of the CITY. All work performed by the CONSULTANT under this Agreement shall be in accordance with the applicable professional standard of care, and shall meet the local professional standard of quality ordinarily to be expected of competent persons in CONSULTANT's field of expertise working in Kings County.

M. **COMPLIANCE WITH LAWS**. CONSULTANT shall use the proper standard of care in performing the Services, and shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations in effect at the time the Agreement is executed. In addition, if the request for proposal to provide professional services which are the subject of this Agreement cited any Federal or State Financial Assistance involved in the project for which the Services are provided, the CONSULTANT shall perform all services in accordance with all applicable federal and state laws, rates and regulations in effect at the time the agreement is executed.

N. **LICENSES**. CONSULTANT represents and warrants to CITY that it has all licenses, permits, qualifications, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT shall maintain a CITY of Hanford Business License.

ARTICLE II: CONSULTANT'S REPORTS OR MEETINGS

A. **PROGRESS REPORTS AND BILLINGS.** CONSULTANT shall submit progress reports and billings on EACH specific project in accordance with the Work Order at least once a month. CONSULTANT's bill shall include a brief description of the Services performed, the date the Services were performed, the number of hours spent, and by whom, and shall include a description of any authorized reimbursable expenditures. The report should be sufficiently detailed for the CITY's Contract Administrator or Project Coordinator: to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; to sufficiently address any difficulties or special problems encountered so remedies can be developed. The CITY shall pay the CONSULTANT no later than 60 days after the date of submittal of a complete invoice for completed tasks and approval of the invoice by CITY staff.

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B. **MEETINGS.** CONSULTANT's Project Manager shall meet with CITY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE III: STATEMENT OF WORK

A. **CONSULTANT SERVICES.** The CONSULTANT shall perform professional engineering and land surveying services, in accordance with all the provisions of this Agreement. The Scope of Work for each project will be determined by the CITY Engineer. For State and Federal Aid projects, the project scope will be incorporated into a streamlined (mini) RFP, and will be sent to the pre-qualified selected CONSULTANTS under agreement. The CONSULTANT shall submit their proposal to the CITY within the required timeframe, and the CITY shall select the top proposal using Qualifications Based Selection. Upon selection, the CITY will negotiate the cost based on the agreement labor price agreement. A work order will be assigned for each project after CONSULTANT determines an estimated cost for producing all necessary plans and documents to satisfy the Scope of Work. For Local Funded projects, the CONSULTANT will submit a scope of work with cost, and a Work Order will be prepared. The CONSULTANT shall correct any and all errors and/or omissions in the performance of the Services and any documents resulting therefrom even though CITY has accepted said Services or documents. CONSULTANT shall make such corrections upon CITY's request and at no cost or expense to CITY.

B. **ENVIRONMENTAL COMPLIANCE**. This AGREEMENT provides for CONSULTANT environmental services that result in CEQA or NEPA approval. Federal funded projects require NEPA clearance in addition to CEQA. NEPA Environmental documents are not considered complete until a Caltrans Official signs the Categorical Exclusion (CE), the Finding of No Significant Impact (FONSI), or the Record of Decision.

C. **RIGHT OF WAY.** Existing and proposed Right of Way requirements are to be determined and shown by the CONSULTANT. Land surveys and computations with metes and bounds descriptions shall be made by a California Licensed Land Surveyor. Projects shall be tied into recorded monumentation and bench marks. A bench mark map with record elevation data is available from the City. Services shall include preparation of Appraisal Map, Acquisition Maps, and Legal Descriptions used to acquire right of way or property.

D. **SURVEYS.** This AGREEMENT provides for CONSULTANT licensed surveying services for preliminary surveying, topographic surveys, monumentation mapping, construction staking, and monument setting and recording of corner records. Work under this service shall be performed or as directed by a California Licensed Land Surveyor.

E. **SUBSURFACE INVESTIGATIONS.** This AGREEMENT provides for CONSULTANT Sub-Surface Investigations as directed by the CITY for Environmental testing, topographic mapping, boring, construction staking, and other specialized sub surface investigation services, either by the CONSULTANT, or under the direction of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order.

F. **CONSTRUCTION MANAGEMENT.** This AGREEMENT does NOT provide for a CONSULTANT in a Management role.

G. **DESIGN PLANS, SPECIFICATIONS, AND ESTIMATES.** This AGREEMENT provides for CONSULTANT Design Plans, Specifications, and Estimates as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order. Design work shall meet City Standards.

H. **ARCHITECTURAL AND STRUCTURAL ENGINEERING.** This AGREEMENT provides for CONSULTANT Architectural and Structural Engineering as directed by the CITY and performed either by the CONSULTANT, or under the direction of the CONSULTANT, for structural design and analysis as determined

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in the Scope of Work of the assigned Work Order. All Architectural and Structural Engineering shall by performed by a Licensed Structural Engineer and shall meet all City and State Standards.

I. **TRAFFIC ENGINEERING AND TRAFFIC SIGNAL DESIGN.** This AGREEMENT provides for CONSULTANT Traffic Engineering and Traffic Signal Design as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for traffic engineering and traffic signal design as determined in the Scope of Work of the assigned Work Order. All Traffic Engineering shall by performed by a licensed Professional Engineer and shall meet all City and State Standards.

J. **MAPPING, INCLUDING GIS AND GPS.** This AGREEMENT provides for CONSULTANT Mapping, including GIS and GPS, as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for mapping as determined in the Scope of Work of the assigned Work Order.

K. **RAILROAD PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Railroad Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for railroad permitting and coordination as determined in the Scope of Work of the assigned Work Order.

L. **UTILITY PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Utility Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for utility permitting and coordination as determined in the Scope of Work of the assigned Work Order.

M. **CONFERENCES, SITE VISITS, AND INSPECTION OF WORK.** This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the CITY, County, State, and/or FHWA. Costs incurred by CONSULTANT for meetings subsequent to the initial meeting shall be included in the fee.

N. **CHECKING SHOP DRAWINGS.**
This AGREEMENT provides for the CONSULTANT to provide plan checking of shop drawings and contract documents. Payment for checking of drawings by CONSULTANT shall be paid at the hourly rate per the attached Fee Schedule. The total compensation paid to the CONSULTANT for all services in this agreement shall not exceed the maximum contract amount stated in Article V, Section P.

O. **CONSULTANT SERVICES DURING CONSTRUCTION.**
This AGREEMENT provides for CONSULTANT services during the course of construction, including resident engineering, construction surveys and construction staking. Payment for services shall be paid at the rates stated in the attached Fee Schedule, and shall not exceed the Work Order fee stated without an approved Change Order.

P. **DOCUMENTATION AND SCHEDULES.**
This AGREEMENT provides for the CONSULTANT to document the results of the work to the satisfaction of CITY, and if applicable, to the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Work Order objectives. All final construction documents shall be stamped and wet signed when completed.

Q. **CITY OBLIGATIONS.** Data applicable to the Work Order Scope of Work shall be made available to the CONSULTANT at the time of Work Order Execution. Data may include maps, plans, documents, and records that are in the possession of the CITY. Additional items to be made available to the CONSULTANT shall be noted specifically on the Work Order.

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R. **DELIVERABLES AND NUMBER OF COPIES.**
The number of copies or documents to be furnished with each submittal, such as reports, brochures, sets of plans, specifications, maps, etc., shall be two (2) copies minimum unless otherwise specified in the work order or as may be required for City Permitting. Final plans and maps shall be plotted on 20# vellum or on plastic film mylar, and shall have stamp and original wet signatures.

S. **DESIGN STANDARD.**
All work performed under this AGREEMENT shall conform to the most current City of Hanford Standards, Caltrans Standards, and all other Local, State, and FHWA requirements.

ARTICLE IV: PERFORMANCE PERIOD

A. This AGREEMENT shall go into effect on **April 6, 2021**, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY'S Contract Administrator. The AGREEMENT shall be in effect for 3 (three) years, and end on **April 6, 2024**, unless extended by AGREEMENT amendment. AGREEMENT amendments shall be limited to two separate ONE YEAR EXTENSIONS, and in no case shall the AGREEMENT exceed five years.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on CITY until the AGREEMENT is fully executed and approved by CITY.

C. The period of performance for each specific project shall be in accordance with the Work Order for that project. If work on a Work Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the Work Order in progress only. In no case shall the maximum term of this AGREEMENT exceed five (5) years.

ARTICLE V: ALLOWABLE COSTS AND PAYMENTS

A. **PAYMENT.** CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's attached approved 10H-2: Cost Proposal Fee Schedule (Exhibit B), subject to Prevailing Wage Requirements which are available at the office of the City Engineer. An estimate for cost of services for each project shall be submitted to the City Engineer before commencement of work. Payment by CITY under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment. An increase in the fee schedule for non-prevailing wage classifications will be allowed at the beginning of Year 2 (two) of this agreement and shall be made a part of an AGREEMENT extension, if said agreement is extended for a period. The CONSULTANT must notify the CITY thirty (30) days in advance of such increases. The CONSULTANT is limited to two (2) price increases during the three years contract period, and one increase per year for each year the contract is extended. An increase in fee schedule for prevailing wage classifications shall be allowed when the Prevailing Wage for said wage determination increases. The services included in this agreement shall increase by the same amount approved for increase by the Department of Industrial Relations. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within sixty (60) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate.

B. **DIRECT COSTS.** In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal, and identified in the approved Cost Proposal and in the executed Work Order.

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C. **WORK ORDERS.** Specific projects will be assigned to CONSULTANT after approval of the proposal for each specific project through the issuance of Work Orders. Work Orders shall be number consecutively for each specific project.

D. **DRAFT WORK ORDERS.** After a project to be performed under this AGREEMENT is identified by CITY, CITY will prepare a draft Work Order with Scope of Work; less the cost estimate. A draft Work Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a CITY Project Coordinator. The draft Work Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Work Order within ten (10) calendar days along with a Cost Estimate for requested services, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and the total dollar amount. After agreement has been reached on the negotiable items and total cost; a finalized Work Order shall be signed by both CITY and CONSULTANT.

E. **NOT TO EXCEED COMPENSATION**. Work Orders may be negotiated for specific rates of compensation Not to Exceed amount, of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT. Work Orders that are approved as "Flat Fee" must have any prevailing wage increase built into the cost proposal, and the CONSULTANT must pay the required prevailing wage rates to workers. Work Orders that are approved as "Time and Materials, Not to Exceed" will require prevailing wage rates be paid to workers, and the total amount "Not to Exceed" will be increased to accommodate said increases in the amount approved by the DIR.

F. **STATE RATE REIMBURSEMENTS.** Reimbursement for transportation and subsistence costs shall not exceed State rates. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

G. **CHANGE ORDERS.** When milestone cost estimates, or not to exceed estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment Change Order for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

H. **MONTHLY PAYMENTS.** Progress payments for each Work Order will be made monthly in arrears based on services provided and actual costs incurred.

I. **NOTICE TO PROCEED.** 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 or for any work performed prior to approval of this AGREEMENT, or for work done on a project Work Order prior to the City's issuance of a Notice to Proceed (NTP).

J. **EXECUTED WORK ORDERS.** A Work Order is of no force or effect until returned to CITY and signed by an authorized representative of CITY. No expenditures are authorized on a project and work shall not commence until a Work Order for that project has been executed by CITY.

K. **INVOICES.** CONSULTANT will be reimbursed within thirty (30) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Work Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Work Order. 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, the project title and the Work Order number. Credits due CITY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to CITY's Contract Administrator at the following address:

City of Hanford
Attn.: Finance Dept., Accounts Payable
315 N. Douty Street
Hanford CA 93230

L. **PERIOD OF PERFORMANCE FOR WORK ORDERS.** The period of performance for Work Orders shall be in accordance with dates specified in each individual Work Order. No Work Order will be written which extends beyond the expiration date of this AGREEMENT.

M. **AMOUNT PAYABLE FOR WORK ORDER.** The total amount payable by CITY for an individual Work Order shall not exceed the amount agreed to in the Work Order, unless authorized by amendment Change Order.

N. **PAYMENT FOR DELIVERABLES.** If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Work Order, no payment will be made until the deliverable has been satisfactorily completed.

O. **AMENDMENT TO AGREEMENT.** Work Orders may not be used to amend the language (or the terms) of this AGREEMENT, nor to exceed the scope of work under this AGREEMENT.

P. **AGREEMENT MAXIMIM PAYMENT.** The total amount payable by CITY for all Work Orders resulting from this AGREEMENT shall not exceed **$150,000 per year, or $ 450,000.00 for the total three-year agreement.** It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Work Orders.

Q. **EXTRA WORK.** At any time during the term of this Agreement, CITY may request that CONSULTANT perform Extra Work. As used herein, "Extra Work" means any work which is determined by CITY to be necessary for the proper completion of the Services, but which the parties did not include in the Scope of Work. Extra work will be performed on an hourly basis under the CONSULTANT's most current hourly fee schedule. CONSULTANT shall not perform, nor be compensated for Extra Work without written authorization from CITY.

ARTICLE VI: TERMINATION

A. This AGREEMENT may be terminated by CITY, provided that CITY gives not less than thirty (30) calendar days' written notice to CONSULTANT (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, and in accordance with Section 15, Property of CITY. Upon termination, CONSULTANT shall be entitled to compensation for Services performed up to the effective date of termination, unless this Agreement is terminated for cause, in which case, CITY may withhold compensation due

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CONSULTANT in order to reimburse CITY for any losses, damages or expenses caused by CONSULTANT's default under this Agreement

B. CITY may temporarily suspend this AGREEMENT, at no additional cost to 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 provided for in subsection A of this section.

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.

D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Section 11C. 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, and in accordance with Section 15, Property of CITY.

E. If the CITY is in breach of the payment terms or otherwise is in material breach of this AGREEMENT, the CONSULTANT may suspend performance of services upon ten (10) calendar days' notice to the CITY. The CONSULTANT shall have no liability to the CITY, and the CITY agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this AGREEMENT by the CITY. Upon receipt of payment in full of all outstanding sums due from the CITY, or curing of such other breach that caused the CONSULTANT to suspend services, the CONSULTANT shall resume services, and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension. If the CITY does not cure said material breach of AGREEMENT within thirty (30) calendar days of notice, the CONSULTANT may terminate the AGREEMENT upon written notice to the CITY.

ARTICLE VII: COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

Consulting Architectural & Engineering (A&E) firms providing engineering and design related services under a contract funded by a federal grant, are required by regulation (as specified in 2 CFR Part 200) to account for and bill costs in accordance with the Federal Cost Principles of 48 CFR 31. In efforts to comply with the Federal Cost Principles, A&E consulting firms that provide services on federal-aid highway projects are required to develop indirect cost rates in accordance with the Federal Cost Principles on an annual basis.

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.

F. 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.

Consultant shall provide all documents and files per Work Order to the City as required per Ownership of Data requirements in the Agreement.

ARTICLE VIII: RETENTION OF RECORD/AUDITS

A. For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and CITY shall maintain any and all books of account, ledgers, invoices, vouchers, canceled checks, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate work papers, and other evidence pertaining to the performance, services, expenditures, and disbursements 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 work papers 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. 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 CONSUTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, work paper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

B. CONSULTANT shall maintain all documents and records that demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the CITY. Copies of such documents shall be provided to the CITY for inspection at the CITY offices.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request, require that custody of the records be given to the CITY and that the records and documents be maintained in the CITY offices. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

ARTICLE IX: 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 thirty (30) calendar 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 AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, 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, CITY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall

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be adjusted by CONSULTANT and approved by CITY 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 AGREEMENT 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, CITY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT 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 Caltrans Audits and Investigation (A&I). Caltrans A&I, 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 AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During Caltrans A&I's review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans A&I 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 Caltrans A&I 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 A&I.

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 Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I 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. Caltrans A&I 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 Caltrans A&I 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) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2)

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all work under this AGREEMENT has been completed to the satisfaction of CITY; and, (3) Caltrans A&I 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 X: SUBCONTRACTING

A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the CITY and any Subconsultants, and no sub-agreement 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 Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.

C. Any sub-agreement 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 the CONSULTANT by the CITY.

E. Any substitution of Subconsultants must be approved in writing by the CITY Contract Administrator in advance of assigning work to a substitute Subconsultant.

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

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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.

Method 3: The CITY shall 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. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the CITY. 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 subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other 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 noncompliance 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 XI: EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

A. Prior authorization in writing by 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 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 AGREEMENT 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, CITY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT 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.

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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 XII: STATE PREVAILING WAGE RATES

A. **D.I.R. REGISTRATION.** 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. **WAGE DETERMINATIONS (CALTRANS).** 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 (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). 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 RATES.** 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 representatives 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 to a representative of CITY, the Division of Labor Standards

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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.

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 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. **CERTIFIED PAYROLL.** 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.

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.

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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 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.

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 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 XIII: CONFLICT OF INTEREST

A. During the term of this AGREEMENT, the 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. The 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 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 AGREEMENT.

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 Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, 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.

E. CONSULTANT maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement.

F. Further CONSULTANT warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or result from the award or making of this Agreement.

G. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability.

H. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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ARTICLE XIV: REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT 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 AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV: PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING (for use when Federal funding will exceed $150,000)

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 AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the 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 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 subagreements, which exceed one hundred thousand dollars ($100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI: 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 AGREEMENT, CONSULTANT and its subconsultants represents that they are an Equal Opportunity Employer, and shall not deny the AGREEMENT's benefits or discriminate against 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. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of CITY's programs or guidelines currently in effect as identified and provided to Consultant by CITY.

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 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 AGREEMENT 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 subconsultant*s* 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 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

ARTICLE XVII: 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:

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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 List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII: DISADVANTAGED BUSINESS ENTERPRISES (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 at https://dot.ca.gov/programs/civil-rights/dbe-search .

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. 49 CFR 26.55 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 enter into a federally-funded agreement, and proposes on a federal funded project RFP, 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 AGREEMENT is 0%.** Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Appendix "C": *Exhibit 10-O1: Consultant Proposal DBE Commitment* , 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 Appendix "D": 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 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 recipient 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 CONSULTANT from future proposing as non-responsible

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:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. 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.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. 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).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.

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7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. 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:
1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. 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 Page 24 of 32 September 2020 Local Assistance Procedures Manual EXHBIT 10-R A&E Boilerplate Agreement Language
3. Maintain records including:
- Name and business address of each 1st-tier subconsultant
- Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
- 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.

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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 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 AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, Appendix "E": *Exhibit 17-F1: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) for On-call Contracts*, 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 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.

M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX: INSURANCE

A. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies.

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1. Workers Compensation Coverage. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury or disease.

2. General Liability Coverage. Insurance Services Office (ISO) Form CG 0001, including products and completed operations, with limits of no less than TWO MILLION AND NO/100 DOLLARS ($2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be FOUR MILLION AND NO/100 DOLLARS ($4,000,000), twice the required occurrence limit.

3. Automobile Liability Coverage. ISO Form Number CA 0001 covering any auto (Code 1), with a limit no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury and property damage.

4. Professional Liability Coverage. Contractor will maintain Professional Liability coverage with limits no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per occurrence or claim, and TWO MILLION AND NO/100 DOLLARS ($2,000,000) policy aggregate.

B. If Consultant maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by Consultant.

C. Consultant's insurance policies shall be "occurrence" policies and not "claims-made" coverage except for Professional Liability Coverage.

D. Consultant may maintain an Umbrella policy in conjunction with the insurance policies referenced above. In such case, Consultant shall be deemed to have satisfied the insurance requirements of this contract as long as: (i) the coverage limits of the Umbrella policy and of the underlying liability policy(ies), when combined, satisfy each of the per occurrence and aggregate requirements identified in this subsection a.; and (ii) coverage under the Umbrella policy is as broad as and includes all incidents and events covered by the underlying insurance that it supplements.

E. Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Alternatively, the CITY may require Consultant to provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses within the retention.

F. The policies are to contain, or be endorsed to contain, the following provisions:

1. "The City and its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations; products used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. General liability coverage can be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2. For any claims related to this contract, Consultant's insurance coverage, with the exception of Professional Liability Insurance, shall be primary insurance as respects the City and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City and/or its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall be non-contributory.
3. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
4. These policies of insurance shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers, with the exception of Professional Liability Insurance. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with the policies of insurance obtained by Consultant.
5. With the exception of Professional Liability Insurance, these policies of insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
6. The insurer shall agree to waive all rights of subrogation against City, its officials, officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.
7. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.
8. The insurance provided by these policies shall not be canceled except after thirty (30) days written notice has been received by the City. The Consultant or its insurance agent shall, to the extent feasible, notify the City in writing thirty (30) days prior to the date on which any insurance policy required hereunder will be suspended voided, modified, or reduced. If such thirty (30) day prior notice is not feasible, notice will be promptly provided to the City upon Consultant's knowledge that a noticeable event will or has occurred.

G. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII and which are authorized to write business in California.

H. Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, true and correct copies of all required insurance policies, including endorsements required by these specifications, at any time. All forms and endorsements are to list the City of Hanford as additional insureds. The City reserves the right to require complete, true and correct copies of all required insurance policies, including endorsements required by these specifications, at any time. The policies can be redacted of personal information.

I. Consultant hereby grants to CITY and its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of Consultant may acquire against the CITY and/or its officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance. Consultant agrees to obtain endorsements necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

J. The CITY reserves the right to modify the insurance requirements contained in this contract, including, without limitation, coverage limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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K. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

ARTICLE XX: FUNDING REQUIREMENTS

A. It is mutually understood between the parties that this AGREEMENT 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 AGREEMENT were executed after that determination was made.

B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to 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 CITY 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 VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI: CHANGE IN TERMS

A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

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 CONSULTANT's Project Manager or members of the project team which shall not be unreasonable withheld, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by CITY's Contract Administrator.

ARTICLE XXII: CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT 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 AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII: DISPUTES

A. Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to resolve any dispute amicably between them through mediation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

unresolved after mediation, and 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.

B. 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 AGREEMENT.

ARTICLE XXIV: INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit 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 XXV: 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 Vehicle Code §591, 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 XXVI: OWNERSHIP OF DATA

A. It is mutually agreed that all materials prepared by CONSULTANT, its officers, employees, agents, and subcontractors under this AGREEMENT, except working notes and internal documents, shall become the sole property of the CITY in its discretion without further compensation to the CONSULTANT or to any other party, and the 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 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. The CITY's use of completed documents for other projects and/or the use of uncompleted documents without the written

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

authorization of Consultant will be at the CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of, or changes to the Project Documents not performed by the Consultant.

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. Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for CITY to use, modify, reuse or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data electronic or otherwise recorded on computer diskettes which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that CITY is granted non-exclusive and perpetual license for any Documents & Data the subcontractor prepared under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. CITY shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purpose intended by this Agreement shall be at CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of or changes to the Project Documents not performed by the Consultant.

ARTICLE XXVII: CLAIMS FILED BY CITY's CONSTRUCTION CONTRACTOR

A. **CONSULTANT'S PERSONNEL AVAILABILITY.** 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 REIMBURSEMENT.** 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. **CONSULTANT'S PERSONNEL SERVICES.** 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.

D. **ATTORNEYS' FEES**. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court for the County of Kings, State of California for any proceeding arising hereunder.

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

E. **SOLE AND ONLY AGREEMENT.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this Agreement and no other agreement, statement or promise shall be valid or binding.

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

G. **AMENDMENT.** No change, amendment or modification of this Agreement shall be valid unless the same be in writing and signed by the parties hereto.

H. **GOVERNING LAW.** This Agreement shall be construed and governed pursuant to the laws of the State of California.

I. **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

ARTICLE XXVIII: CONFIDENTIALITY OF DATA

A. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information including financial, statistical, personal, technical, or other data, and other documents and data either created by or provided to CONSULTANT in connection with and relative to CITY's operations and CONSULTANTS performance of this agreement, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected and held confidential by CONSULTANT from unauthorized use and disclosure.

B. Such materials shall not, without the prior written consent of CITY, be used by Consultant for any purposes other than the performance of the Services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the Services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use CITY's name, insignia, photographs, or the project for which Consultant's Services are rendered, or any publicity pertaining to the Consultant's Services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent by CITY. Notwithstanding the foregoing, the CITY acknowledges that the Consultant may want/need to include projects performed under this agreement on proposals for similar work in the future. The CITY hereby grants permission to list any projects performed under this agreement for marketing purposes; provided however, Consultant will not make any representations regarding CITY's satisfaction with Consultant's work product unless Consultant receives a written statement or evaluation from CITY

C. Permission to disclose information on one occasion, or public hearing held by CITY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

D. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or CITY's actions on the same, except to CITY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.

E. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by CITY, and receipt of CITY'S written permission.

F. 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.

ARTICLE XXIX: 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 XXX: 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 records. The Consultant Performance Evaluation form and criteria is attached in Appendix "F".

ARTICLE XXXI 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.

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

ARTICLE XXXII NOTIFICATION

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

CONSULTANT:

PROVOST & PRITCHARD CONSULTING GROUP

MATTHEW KEMP, PE, Principal-in-Charge

130 N. GARDEN STREET

VISALIA, CA 93291-6362

CITY:

CITY OF HANFORD

ATTN: CITY ENGINEER, Contract Administrator

900 S. 10TH AVENUE

HANFORD, CA 93230

ARTICLE XXXIII: CONTRACT

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.

ARTICLE XXXIV: SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and in the year first set forth above.

CITY OF HANFORD,
a Municipal Corporation

By: _____
MARIO CIFUENTEZ, City Manager

Consultant

By: _____
MATTHEW KEMP, Principal-In-Charge

APPROVED AS TO CONTENT:

By: _____
JOHNATHAN L. DOYEL
Public Works Director

ATTEST:

By: _____
NATALIE CORRAL
City Clerk

EXHIBIT "A"

Consultants Cost Proposal for On-Call Contract

(Approved Work Orders)

EXHIBIT "B"

Consultants Fee Schedule

(LAPM form 10-H2)

EXHIBIT 10-H2 COST PROPOSAL Page 1 of 3
SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant Provost & Pritchard Engineering Group, Inc. [X] Prime Consultant [ ] Subconsultant [ ] 2nd Tier Subconsultant

Project No. _____ Contract No. _____ Participation Amount $ _____ Date 3/8/2021

For Combined Rate							
	Fringe Benefit % + General & Administrative %	49.25%	+	99.18%	=	148.43%	Combined ICR%
OR							
For Home Office Rate							
	Fringe Benefit % + General & Administrative %				=		Home Office ICR%
For Field Office Rate							
	Fringe Benefit % + General & Administrative %				=		Field Office ICR%

		Fee	=	10%	%

BILLING INFORMATION				CALCULATION INFORMATION				
Name/Job Title/Classification[1]	Hourly Billing Rates [2]			Effective Date of Hourly Rate		Actual or Avg.	% or $	Hourly Range -
	Straight[3]	OT (1.5x)	OT (2x)	From	To	Hourly Rate[4]	Increase	for Classifications Only
Matt Kemp, PE	$222.01	$0.00	$0.00	1/1/2020	12/31/2020	$81.25	0%	
Principal Engineer II	$228.67	$0.00	$0.00	1/1/2021	12/31/2021	$83.69	3%	
	$235.53	$0.00	$0.00	1/1/2022	12/31/2022	$86.20	3%	
Matt Hamilton, PE	$142.08	$0.00	$0.00	1/1/2020	12/31/2020	$52.00	0%	
Senior Engineer II	$146.35	$0.00	$0.00	1/1/2021	12/31/2021	$53.56	3%	
	$150.75	$0.00	$0.00	1/1/2022	12/31/2022	$55.17	3%	
Michael Taylor, PE	$243.03	$0.00	$0.00	1/1/2020	12/31/2020	$88.94	0%	
Principal Engineer IV	$250.32	$0.00	$0.00	1/1/2021	12/31/2021	$91.61	3%	
	$257.83	$0.00	$0.00	1/1/2022	12/31/2022	$94.36	3%	
Jeff Dorn, PE	$168.04	$0.00	$0.00	1/1/2020	12/31/2020	$61.50	0%	
Senior Engineer IV	$173.10	$0.00	$0.00	1/1/2021	12/31/2021	$63.35	3%	
	$178.29	$0.00	$0.00	1/1/2022	12/31/2022	$65.25	3%	
Tim Odom, PLS	$153.70	$0.00	$0.00	1/1/2020	12/31/2020	$56.25	0%	
Licensed Surveyor III	$158.32	$0.00	$0.00	1/1/2021	12/31/2021	$57.94	3%	
	$163.07	$0.00	$0.00	1/1/2022	12/31/2022	$59.68	3%	
Dawn Marple	$147.55	$0.00	$0.00	1/1/2020	12/31/2020	$54.00	0%	
Principal Planner I	$151.98	$0.00	$0.00	1/1/2021	12/31/2021	$55.62	3%	
	$156.54	$0.00	$0.00	1/1/2022	12/31/2022	$57.29	3%	
Nick Jacobson, PE	$144.13	$0.00	$0.00	1/1/2020	12/31/2020	$52.75	0%	
Associate Engineer V	$148.45	$0.00	$0.00	1/1/2021	12/31/2021	$54.33	3%	
	$152.91	$0.00	$0.00	1/1/2022	12/31/2022	$55.96	3%	
Gretchen Heisdorf, PE, QSD/QSP	$152.33	$0.00	$0.00	1/1/2020	12/31/2020	$55.75	0%	
Senior Engineer IV	$156.89	$0.00	$0.00	1/1/2021	12/31/2021	$57.42	3%	
	$161.62	$0.00	$0.00	1/1/2022	12/31/2022	$59.15	3%	
Chuck Armstrong, PE	$161.89	$0.00	$0.00	1/1/2020	12/31/2020	$59.25	0%	
Senior Engineer V	$166.76	$0.00	$0.00	1/1/2021	12/31/2021	$61.03	3%	
	$171.76	$0.00	$0.00	1/1/2022	12/31/2022	$62.86	3%	

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural

BILLING INFORMATION				CALCULATION INFORMATION				
Name/Job Title/Classification[1]	Hourly Billing Rates [2]			Effective Date of Hourly Rate		Actual or Avg.	% or $	Hourly Range -
	Straight[3]	OT (1.5x)	OT (2x)	From	To	Hourly Rate[4]	Increase	for Classifications Only
Soo Ho Park	$142.08	$0.00	$0.00	1/1/2020	12/31/2020	$52.00	0%	
Associate Engineer V	$146.35	$0.00	$0.00	1/1/2021	12/31/2021	$53.56	3%	
	$150.75	$0.00	$0.00	1/1/2022	12/31/2022	$55.17	3%	
Philip Slater	$120.23	$0.00	$0.00	1/1/2020	12/31/2020	$44.00	0%	
Senior GIS Specialist II	$123.83	$0.00	$0.00	1/1/2021	12/31/2021	$45.32	3%	
	$127.55	$0.00	$0.00	1/1/2022	12/31/2022	$46.68	3%	
Rick Darnley	$196.73	$0.00	$0.00	1/1/2020	12/31/2020	$72.00	0%	
Principal Construction Manager IV	$202.63	$0.00	$0.00	1/1/2021	12/31/2021	$74.16	3%	
	$208.70	$0.00	$0.00	1/1/2022	12/31/2022	$76.38	3%	
Rebekah Brechmann	$105.20	$0.00	$0.00	1/1/2020	12/31/2020	$38.50	0%	
Assistant Engineer III	$108.37	$0.00	$0.00	1/1/2021	12/31/2021	$39.66	3%	
	$111.59	$0.00	$0.00	1/1/2022	12/31/2022	$40.84	3%	
Annemarie Fox	$108.61	$0.00	$0.00	1/1/2020	12/31/2020	$39.75	0%	
Associate Engineer I	$111.86	$0.00	$0.00	1/1/2021	12/31/2021	$40.94	3%	
	$115.23	$0.00	$0.00	1/1/2022	12/31/2022	$42.17	3%	
Jason Staicer	$129.79	$0.00	$0.00	1/1/2020	12/31/2020	$47.50	0%	
Associate Engineer III	$133.70	$0.00	$0.00	1/1/2021	12/31/2021	$48.93	3%	
	$137.69	$0.00	$0.00	1/1/2022	12/31/2022	$50.39	3%	
Debora De La Torre	$92.90	$0.00	$0.00	1/1/2020	12/31/2020	$34.00	0%	
Assistant Engineer III	$95.69	$0.00	$0.00	1/1/2021	12/31/2021	$35.02	3%	
	$98.56	$0.00	$0.00	1/1/2022	12/31/2022	$36.07	3%	

(Add pages as necessary)

NOTES:

1. Key personnel must be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All cost must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate * (1 + ICR) * (1 + Fee). Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classification only, enter the Average Hourly Rate for that classification.

EXHIBIT 10-H2 COST PROPOSAL Page 2 of 3
SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant Provost & Pritchard Engineering Group, Inc. [X] Prime Consultant [ ] Subconsultant

Project No. _____ Contract No. _____ Date _____

SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)				
Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs			$0.00	$0.00
Equipment Rental and Supplies			$0.00	$0.00
Permit Fees			$0.00	$0.00
Plans Sheets			$0.00	$0.00
Test			$0.00	$0.00
Vehicle			$0.00	$0.00
Subconsultant 1:				$0.00
Subconsultant 2:				$0.00
Subconsultant 3:				$0.00
Subconsultant 4:				$0.00
Subconsultant 5:				$0.00

Note: Add additional pages if necessary.

NOTES:

1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency and shall not exceed currect State Department of Personnel Administration rules.
7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants myst provide their own cost proposals.

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural

EXHIBIT 10-H2 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in the contract are actual, resonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

7. Generally Acceptable Accounting Principles
8. Terms and conditions of the contract.
9. Title 23 United State Code Secion 112 - Letting of Contracts
10. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
11. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
12. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs myst be applied consistently and fairly to all contracts. All documentation of the compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: Matthew W. Kemp Title * : Vice President

Signature: Matthew W Kemp Date of Certification (mm/dd/yyyy): 03/08/2021

Email: mkemp@ppeng.com Phone Number: (559) 449-2700

Address: 286 W. Cromwell Avenue, Fresno, CA 93711

* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Finanacial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT "C"

Consultant's Proposal DBE Commitment

(LAPM form 10-O1: Consultant shall utilize form for specific Federal or State projects work orders requiring a DBE goal.)

Reset Form

EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____

3. Project Description: _____

4. Project Location: _____

5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %

Local Agency to Complete this Section

17. Local Agency Contract Number: _____

18. Federal-Aid Project Number: _____

19. Proposed Contract Execution Date: _____

20. Consultant's Ranking after Evaluation: _____

Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.

_____ _____

_____ _____

_____

11. TOTAL CLAIMED DBE PARTICIPATION **%**

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.

12. Preparer's Signature _____ 13. Date _____

14. Preparer's Name _____ 15. Phone _____

16. Preparer's Title _____

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

1. Local Agency - Enter the name of the local or regional agency that is funding the contract.
2. Contract DBE Goal - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. Project Location - Enter the project location as it appears on the project advertisement.
4. Project Description - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
5. Consultant's Name - Enter the consultant's firm name.
6. Prime Certified DBE - Check box if prime contractor is a certified DBE.
7. Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
8. DBE Certification Number - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
9. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
10. DBE % - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
11. Total Claimed DBE Participation % - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
12. Preparer's Signature - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
13. Date - Enter the date the DBE commitment form is signed by the consultant's preparer.
14. Preparer's Name - Enter the name of the person preparing and signing the consultant's DBE commitment form.
15. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
16. Preparer's Title - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

17. Local Agency Contract Number - Enter the Local Agency contract number or identifier.
18. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
19. Proposed Contract Execution Date - Enter the proposed contract execution date.
20. Consultant's Ranking after Evaluation – Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
21. Local Agency Representative's Signature - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
22. Date - Enter the date the DBE commitment form is signed by the Local Agency Representative.
23. Local Agency Representative's Name - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
24. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
25. Local Agency Representative Title - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT "D"

Consultant Performance Evaluation Sheet

(for project closeout)

(LAPM form 10-S)

Exhibit 10-S Consultant Performance Evaluation

1. PROJECT DATA	2. CONSULTANT DATA
1a. Project (include title, location, and Activity/CIP No.)	2a. Consultant Name and Address
1b. Brief Description of Project (design, study, etc.)	2b. Consultant's Manager
1c. Budget Cost for Project: $_____	2c. Phone: _____

3. AGENCY DEPARTMENT/SECTION RESPONSIBLE

3a. Department (include section and division)	3b. Agency Project Manager (name & phone)

4. CONTRACT DATA (Engineering Services)

4a. Contract No.: _____ Termination date: _____ Base Fee: $ _____

Agreement date: _____ Date terminated: _____ Contingency: $ _____

4b. Amendment $ _____ / # _____ $ _____ / # _____
(Total Value) (Initiated by Agency) (Total Value) (Initiated by Agency)

4c. Change Order $ _____ / # _____ $ _____ / # _____
(Total Value) (Initiated by Agency) (Total Value) (Initiated by Agency)

4d. Total Fee per Agreement (4a. + 4b. + 4c.) $ _____ Total Fee Paid $ _____
(Do not include Contingency Listed in 4a.)

4e. Type of Services (Design, study, etc.)

4f. Historical Record of Key Submittal Dates (enter date or n/a if not applicable)

	Preliminary	30%	70%	90%	100%	Final
Per Agreement						
Delivery Date						
Acceptance Date						

4g. Notice To Proceed _____ (date)

4h. Number of Days _____ (number)

4i. Actual Number of Days (number)

4j. Reasons for Change Orders: (Indicate total for each reason)

Errors/Omissions $		% of Base Fee	0.00%
Unforeseen Conditions $		% of Base Fee	0.00%
Changed Scope $		% of Base Fee	0.00%
Changed Quantities $		% of Base Fee	0.00%
Program Task Options $		% of Base Fee	0.00%

5.OVERALL RATING (Complete Section II on reverse, include comments as appropriate.)

		Outstanding	Above Average	Average	Below Average	Poor	N/A
5a.	Plans/Specifications accuracy						
5b.	Consistency with budget						
5c.	Responsiveness to Agency Staff						
5d.	Overall Rating						

6. AUTHORIZING SIGNATURES

6a. Agency Design Team Leader _____ Date: _____

6b. Agency Project Manager _____ Date: _____

6c. Agency Public Works Manager Date:

6d. Consultant Representative Date:

See Reverse Side

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

PLANS/SPECIFICATIONS ACCURACY	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A	Responsiveness To Staff	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A
Plans Specifications clear and concise							Timely Responses						
Plans/Specs Coordination							Attitude toward Client and review bodies						
Plans/Specs properly formatted							Follows directions and Chain of responsibility						
Code Requirements covered							Work product delivered on time						
Adhered to Agency Standard Drawings/Specs							Timeliness in notifying Agency of major problems						
Drawings reflect existing conditions							Resolution of field Problems						
As-Built Drawings							Consistency with budget						
Quality Design							Reasonable Agreement negotiation						
Change Orders due to design deficiencies are minimized							Adherence to fee schedule						
							Adherence to project Budget						

Section III **EXPLANATIONS AND SUPPLEMENTAL INFORMATION**

(Attach additional documentation as needed)

Item _____: _____

_____

Item _____: _____

_____

Item _____: _____

Item _____: _____

_____

Item _____: _____

_____

Item _____: _____

_____

***Indicates supporting documentation attached.**

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT "E"

Consultant Annual Certification of Indirect Costs and Financial Management System

(LAPM form 10-K)

EXHIBIT 10-K CONSULTANT ANNUAL CERTIFICATION OF INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required.)

Consultant's Full Legal Name: Provost & Pritchard Engineering Group dba Provost & Pritchard Consulting Group

Important: Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

Indirect Cost Rate:

Combined Rate 148.43 % **OR**

Home Office Rate_____% and Field Office Rate (if applicable)_____%

Facilities Capital Cost of Money_____% (if applicable)

Fiscal period * October 1, 2019 through September 30, 2020

* Fiscal period is annual one year applicable accounting period that the Indirect Cost Rate was developed (not the contract period). The Indirect Cost Rate is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an Indirect Cost Rate(s) for the **fiscal period** as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the indirect cost rate(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31);
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31;
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on Exhibit 10-A.

Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in Title 23 United States Code (U.S.C.) Section 112(b)(2); 48 CFR Part 31.201-2(d); 23 CFR, Chapter 1, Part 172.11(a)(2); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirement

Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - 23 CFR Part 172.11(c)(4)
- False Claims Act - Title 31 U.S.C. Sections 3729-3733
- Statements or entries generally - Title 18 U.S.C. Section 1001
- Major Fraud Act - Title 18 U.S.C. Section 1031

All A&E Contract Information:

- Total participation amount $_____ on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is_____.
- Years of consultant's experience with 48 CFR Part 31 is_____.
- Audit history of the consultant's current and prior years (if applicable)

☐ Cognizant ICR Audit ☐ Local Gov't ICR Audit ☐ Caltrans ICR Audit
☐ CPA ICR Audit ☐ Federal Gov't ICR Audit

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the Indirect Cost Rate Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with Title 23 U.S.C. Section 112(b)(2), 48 CFR Part 31, 23 CFR Part 172, and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name**: Matthew W. Kemp Title**: Vice President

Signature: Matthew W Kemp Date of Certification (mm/dd/yyyy): 03/08/2021

Email**: mkemp@ppeng.com Phone Number**: 559-449-2700

**An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: ***Both prime and subconsultants as parties of a contract must complete their own Exhibit 10-K** forms. Caltrans will not process local agency's invoices until a complete Exhibit 10-K form is accepted and approved by Caltrans Audits and Investigations.*

Distribution: 1) Original - Local Agency Project File
2) Copy - Consultant
3) Copy - Caltrans Audits and Investigations

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT "F"

Disclosure of Lobbying Activities

(LAPM form 10-Q)

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action:

- ☐ a. contract
- ☐ b. grant
- ☐ c. cooperative agreement
- ☐ d. loan
- ☐ e. loan guarantee
- ☐ f. loan insurance

2. Status of Federal Action:

- ☐ a. bid/offer/application
- ☐ b. initial award
- ☐ c. post-award

3. Report Type:

- ☐ a. initial
- ☐ b. material change

For Material Change Only:
year ____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity

☐ Prime ☐ Subawardee
Tier _____, if known

Congressional District, if known

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, if known

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable _____

8. Federal Action Number, if known:

9. Award Amount, if known:

10. Name and Address of Lobby Entity
(If individual, last name, first name, MI)

11. Individuals Performing Services
(including address if different from No. 10)
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

12. Amount of Payment (check all that apply)

$ _____ ☐ actual ☐ planned

13. Form of Payment (check all that apply):

- ☐ a. cash
- ☐ b. in-kind; specify: nature _____
  Value _____

14. Type of Payment (check all that apply)

- ☐ a. retainer
- ☐ b. one-time fee
- ☐ c. commission
- ☐ d. contingent fee
- ☐ e deferred
- ☐ f. other, specify _____

15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:

(attach Continuation Sheet(s) if necessary)

16. Continuation Sheet(s) attached: **Yes** ☐ **No** ☐

17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Authorized for Local Reproduction

Standard Form - LLL

Federal Use Only:

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity 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 a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (Ml).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

Attachment: P&P-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

QK

City of Hanford
900 S. 10th Avenue
Hanford, CA 93230

CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

(For Local Assistance Federal-aid Projects, based on Caltrans LAPM Form 10-R)

This exhibit contains fiscal requirements from 2 CFR 200 and may be used for state-only funded contracts as well.

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Attachment: QK-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

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Attachment: QK-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

AGREEMENT FOR PROFESSIONAL SERVICES FOR
ON-CALL ENGINEERING SERVICES

ARTICLE I: INTRODUCTION

This Agreement for Professional Services ("Agreement") is made and entered into this 6th day of April, 2021, by and between the City of Hanford, a Municipal Corporation ("CITY"), and _____**QK**_____ ("CONSULTANT"), incorporated in the State of California.

The Project Manager for the "CONSULTANT" will be **Lisa Wallis-Dutra, PE, TE, PTOE, RSP**.

The name of the "CITY" is as follows: City of Hanford.

The Contract Administrator for CITY will be the City Engineer and/or its assignees.

RECITALS

1. CONSULTANT represents to CITY that they are trained, experienced, licensed and competent to perform the services which will be required by this Agreement; and

2. CONSULTANT represents to CITY that they possess the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

3. CITY desires to retain CONSULTANT to render Professional Architectural and Engineering Consulting Services as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth herein for such other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

A. **RETENTION OF CONSULTANT.** Subject to the terms and conditions set forth herein, the CITY retains the CONSULTANT to perform the services identified in this Agreement, as an Independent Contractor and CONSULTANT hereby accepts this independent contractor appointment.

B. **SCOPE OF SERVICES.** The work to be performed under this AGREEMENT is described in Article III, Statement of Work, and the approved CONSULTANT's Cost Proposals. The approved CONSULTANT's Cost Proposals shall be attached hereto as Exhibit "A" and incorporated by reference. If there is any conflict between the approved Cost Proposals and this AGREEMENT, this AGREEMENT shall take precedence.

C. **INDEMNIFICATION.** 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 actions, injuries, claims, damages, demands, liabilities, costs, losses, and expenses, direct or indirect, including without limitation, any and all court costs, reasonable attorneys' fees, expert witness fees, and other expenses which the CITY may sustain or incur as a consequence of, or are in any way related to or arising out of any failure to the CONSULTANT 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 and services on the part of CONSULTANT, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statue of repose or statute of limitations; provided however, the duty to defend shall apply regardless of whether an application statute of limitations has lapsed.

D. **INDEPENDENT CONTRACTOR STATUS.** CONSULTANT, in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employee's), in the performance of the Services to be performed pursuant to this Agreement, is an Independent Contractor, and shall not act as an agent or employee of the CITY, and that no relationship of employer-employee exists between the Parties hereto. The CONSULTANT's assigned personnel shall not be entitled to, or obtain retirement benefits or other benefits which accrue to CITY employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. Nothing in the Agreement shall create or be construed as creating a partnership, joint venture, or any other relationship between the CITY and CONSULTANT.

E. **TAX WITHHOLDINGS**. 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.

F. **THIRD PARTY PERSONS EMPLOYED.** 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.

G. **AGREEMENT NOT TRANSFERABLE.** Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT 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 CITY under this AGREEMENT, 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.

H. **NEGLIGENT ACTS AND OMMISSIONS.** CONSULTANT shall be fully responsible to the CITY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons employed by them for whom CONSULTANT is legally liable, in the same manner as persons directly employed by CONSULTANT.

I. **ALTERATIONS APPROVED IN WRITING.** 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.

J. **PAYMENTS.** 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.

K. **INTEREST OF CONSULTANT**. CONSULTANT and its shareholders and covenants represent that they do not now have any investment or interest in real property, and shall not acquire any interest, direct or

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indirect in the area covered by this Agreement, or any other source of income, interest in real property, or investment which would be affected in any manner or degree by the performance of CONSULTANT's Services hereunder. CONSULTANT further covenants and represents that, in the performance of the Services hereunder, to the best of its knowledge no person having any such interest shall perform any Services under this Agreement.

CONSULTANT is not a designated employee within the meaning of the Political Reform Act because CONSULTANT:

1. Will conduct, research, and arrive at conclusions with respect to rendition of information, advice, recommendation, or counsel, independent of the control and direction of the CITY or of any CITY official, other than normal agreement monitoring; and
2. Shall possesses no authority with respect to any CITY decision beyond rendition of information, advice, recommendation, or counsel. FPPC Reg.18700, et seq.

L. **PROFESSIONAL ABILITY OF CONSULTANT**. CITY has relied upon CONSULTANT's representations regarding its training and professional ability to perform the Services hereunder as a material inducement to enter into this Agreement. CONSULTANT shall therefore provide properly skilled personnel to perform all Services under this Agreement. The primary provider of the Services

called for by this Agreement shall be _____**Lisa Wallis-Dutra, PE, TE, PTOE, RSP**_____.
(Consult fill in employee name and title who will represent the agreement to the CITY)

who shall not be replaced without the written consent of the CITY. All work performed by the CONSULTANT under this Agreement shall be in accordance with the applicable professional standard of care, and shall meet the local professional standard of quality ordinarily to be expected of competent persons in CONSULTANT's field of expertise working in Kings County.

M. **COMPLIANCE WITH LAWS**. CONSULTANT shall use the proper standard of care in performing the Services, and shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations in effect at the time the Agreement is executed. In addition, if the request for proposal to provide professional services which are the subject of this Agreement cited any Federal or State Financial Assistance involved in the project for which the Services are provided, the CONSULTANT shall perform all services in accordance with all applicable federal and state laws, rates and regulations in effect at the time the agreement is executed.

N. **LICENSES**. CONSULTANT represents and warrants to CITY that it has all licenses, permits, qualifications, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT shall maintain a CITY of Hanford Business License.

ARTICLE II: CONSULTANT'S REPORTS OR MEETINGS

A. **PROGRESS REPORTS AND BILLINGS.** CONSULTANT shall submit progress reports and billings on EACH specific project in accordance with the Work Order at least once a month. CONSULTANT's bill shall include a brief description of the Services performed, the date the Services were performed, the number of hours spent, and by whom, and shall include a description of any authorized reimbursable expenditures. The report should be sufficiently detailed for the CITY's Contract Administrator or Project Coordinator: to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; to sufficiently address any difficulties or special problems encountered so remedies can be developed. The CITY shall pay the CONSULTANT no later than 60 days after the date of submittal of a complete invoice for completed tasks and approval of the invoice by CITY staff.

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B. **MEETINGS.** CONSULTANT's Project Manager shall meet with CITY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE III: STATEMENT OF WORK

A. **CONSULTANT SERVICES.** The CONSULTANT shall perform professional engineering and land surveying services, in accordance with all the provisions of this Agreement. The Scope of Work for each project will be determined by the CITY Engineer. For State and Federal Aid projects, the project scope will be incorporated into a streamlined (mini) RFP, and will be sent to the pre-qualified selected CONSULTANTS under agreement. The CONSULTANT shall submit their proposal to the CITY within the required timeframe, and the CITY shall select the top proposal using Qualifications Based Selection. Upon selection, the CITY will negotiate the cost based on the agreement labor price agreement. A work order will be assigned for each project after CONSULTANT determines an estimated cost for producing all necessary plans and documents to satisfy the Scope of Work. For Local Funded projects, the CONSULTANT will submit a scope of work with cost, and a Work Order will be prepared. The CONSULTANT shall correct any and all errors and/or omissions in the performance of the Services and any documents resulting therefrom even though CITY has accepted said Services or documents. CONSULTANT shall make such corrections upon CITY's request and at no cost or expense to CITY.

B. **ENVIRONMENTAL COMPLIANCE**. This AGREEMENT provides for CONSULTANT environmental services that result in CEQA or NEPA approval. Federal funded projects require NEPA clearance in addition to CEQA. NEPA Environmental documents are not considered complete until a Caltrans Official signs the Categorical Exclusion (CE), the Finding of No Significant Impact (FONSI), or the Record of Decision.

C. **RIGHT OF WAY.** Existing and proposed Right of Way requirements are to be determined and shown by the CONSULTANT. Land surveys and computations with metes and bounds descriptions shall be made by a California Licensed Land Surveyor. Projects shall be tied into recorded monumentation and bench marks. A bench mark map with record elevation data is available from the City. Services shall include preparation of Appraisal Map, Acquisition Maps, and Legal Descriptions used to acquire right of way or property.

D. **SURVEYS.** This AGREEMENT provides for CONSULTANT licensed surveying services for preliminary surveying, topographic surveys, monumentation mapping, construction staking, and monument setting and recording of corner records. Work under this service shall be performed or as directed by a California Licensed Land Surveyor.

E. **SUBSURFACE INVESTIGATIONS.** This AGREEMENT provides for CONSULTANT Sub-Surface Investigations as directed by the CITY for Environmental testing, topographic mapping, boring, construction staking, and other specialized sub surface investigation services, either by the CONSULTANT, or under the direction of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order.

F. **CONSTRUCTION MANAGEMENT.** This AGREEMENT does NOT provide for a CONSULTANT in a Management role.

G. **DESIGN PLANS, SPECIFICATIONS, AND ESTIMATES.** This AGREEMENT provides for CONSULTANT Design Plans, Specifications, and Estimates as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order. Design work shall meet City Standards.

H. **ARCHITECTURAL AND STRUCTURAL ENGINEERING.** This AGREEMENT provides for CONSULTANT Architectural and Structural Engineering as directed by the CITY and performed either by the CONSULTANT, or under the direction of the CONSULTANT, for structural design and analysis as determined

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in the Scope of Work of the assigned Work Order. All Architectural and Structural Engineering shall by performed by a Licensed Structural Engineer and shall meet all City and State Standards.

I. **TRAFFIC ENGINEERING AND TRAFFIC SIGNAL DESIGN.** This AGREEMENT provides for CONSULTANT Traffic Engineering and Traffic Signal Design as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for traffic engineering and traffic signal design as determined in the Scope of Work of the assigned Work Order. All Traffic Engineering shall by performed by a licensed Professional Engineer and shall meet all City and State Standards.

J. **MAPPING, INCLUDING GIS AND GPS.** This AGREEMENT provides for CONSULTANT Mapping, including GIS and GPS, as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for mapping as determined in the Scope of Work of the assigned Work Order.

K. **RAILROAD PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Railroad Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for railroad permitting and coordination as determined in the Scope of Work of the assigned Work Order.

L. **UTILITY PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Utility Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for utility permitting and coordination as determined in the Scope of Work of the assigned Work Order.

M. **CONFERENCES, SITE VISITS, AND INSPECTION OF WORK.** This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the CITY, County, State, and/or FHWA. Costs incurred by CONSULTANT for meetings subsequent to the initial meeting shall be included in the fee.

N. **CHECKING SHOP DRAWINGS.**
This AGREEMENT provides for the CONSULTANT to provide plan checking of shop drawings and contract documents. Payment for checking of drawings by CONSULTANT shall be paid at the hourly rate per the attached Fee Schedule. The total compensation paid to the CONSULTANT for all services in this agreement shall not exceed the maximum contract amount stated in Article V, Section P.

O. **CONSULTANT SERVICES DURING CONSTRUCTION.**
This AGREEMENT provides for CONSULTANT services during the course of construction, including resident engineering, construction surveys and construction staking. Payment for services shall be paid at the rates stated in the attached Fee Schedule, and shall not exceed the Work Order fee stated without an approved Change Order.

P. **DOCUMENTATION AND SCHEDULES.**
This AGREEMENT provides for the CONSULTANT to document the results of the work to the satisfaction of CITY, and if applicable, to the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Work Order objectives. All final construction documents shall be stamped and wet signed when completed.

Q. **CITY OBLIGATIONS.** Data applicable to the Work Order Scope of Work shall be made available to the CONSULTANT at the time of Work Order Execution. Data may include maps, plans, documents, and records that are in the possession of the CITY. Additional items to be made available to the CONSULTANT shall be noted specifically on the Work Order.

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R. **DELIVERABLES AND NUMBER OF COPIES.**
The number of copies or documents to be furnished with each submittal, such as reports, brochures, sets of plans, specifications, maps, etc., shall be two (2) copies minimum unless otherwise specified in the work order or as may be required for City Permitting. Final plans and maps shall be plotted on 20# vellum or on plastic film mylar, and shall have stamp and original wet signatures.

S. **DESIGN STANDARD.**
All work performed under this AGREEMENT shall conform to the most current City of Hanford Standards, Caltrans Standards, and all other Local, State, and FHWA requirements.

ARTICLE IV: PERFORMANCE PERIOD

A. This AGREEMENT shall go into effect on **April 6, 2021**, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY'S Contract Administrator. The AGREEMENT shall be in effect for 3 (three) years, and end on **April 6, 2024**, unless extended by AGREEMENT amendment. AGREEMENT amendments shall be limited to two separate ONE YEAR EXTENSIONS, and in no case shall the AGREEMENT exceed five years.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on CITY until the AGREEMENT is fully executed and approved by CITY.

C. The period of performance for each specific project shall be in accordance with the Work Order for that project. If work on a Work Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the Work Order in progress only. In no case shall the maximum term of this AGREEMENT exceed five (5) years.

ARTICLE V: ALLOWABLE COSTS AND PAYMENTS

A. **PAYMENT.** CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's attached approved 10H-2: Cost Proposal Fee Schedule (Exhibit B), subject to Prevailing Wage Requirements which are available at the office of the City Engineer. An estimate for cost of services for each project shall be submitted to the City Engineer before commencement of work. Payment by CITY under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment. An increase in the fee schedule for non-prevailing wage classifications will be allowed at the beginning of Year 2 (two) of this agreement and shall be made a part of an AGREEMENT extension, if said agreement is extended for a period. The CONSULTANT must notify the CITY thirty (30) days in advance of such increases. The CONSULTANT is limited to two (2) price increases during the three years contract period, and one increase per year for each year the contract is extended. An increase in fee schedule for prevailing wage classifications shall be allowed when the Prevailing Wage for said wage determination increases. The services included in this agreement shall increase by the same amount approved for increase by the Department of Industrial Relations. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within sixty (60) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate.

B. **DIRECT COSTS.** In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal, and identified in the approved Cost Proposal and in the executed Work Order.

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C. **WORK ORDERS.** Specific projects will be assigned to CONSULTANT after approval of the proposal for each specific project through the issuance of Work Orders. Work Orders shall be number consecutively for each specific project.

D. **DRAFT WORK ORDERS.** After a project to be performed under this AGREEMENT is identified by CITY, CITY will prepare a draft Work Order with Scope of Work; less the cost estimate. A draft Work Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a CITY Project Coordinator. The draft Work Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Work Order within ten (10) calendar days along with a Cost Estimate for requested services, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and the total dollar amount. After agreement has been reached on the negotiable items and total cost; a finalized Work Order shall be signed by both CITY and CONSULTANT.

E. **NOT TO EXCEED COMPENSATION**. Work Orders may be negotiated for specific rates of compensation Not to Exceed amount, of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT. Work Orders that are approved as "Flat Fee" must have any prevailing wage increase built into the cost proposal, and the CONSULTANT must pay the required prevailing wage rates to workers. Work Orders that are approved as "Time and Materials, Not to Exceed" will require prevailing wage rates be paid to workers, and the total amount "Not to Exceed" will be increased to accommodate said increases in the amount approved by the DIR.

F. **STATE RATE REIMBURSEMENTS.** Reimbursement for transportation and subsistence costs shall not exceed State rates. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

G. **CHANGE ORDERS.** When milestone cost estimates, or not to exceed estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment Change Order for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

H. **MONTHLY PAYMENTS.** Progress payments for each Work Order will be made monthly in arrears based on services provided and actual costs incurred.

I. **NOTICE TO PROCEED.** 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 or for any work performed prior to approval of this AGREEMENT, or for work done on a project Work Order prior to the City's issuance of a Notice to Proceed (NTP).

J. **EXECUTED WORK ORDERS.** A Work Order is of no force or effect until returned to CITY and signed by an authorized representative of CITY. No expenditures are authorized on a project and work shall not commence until a Work Order for that project has been executed by CITY.

K. **INVOICES.** CONSULTANT will be reimbursed within thirty (30) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Work Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Work Order. 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, the project title and the Work Order number. Credits due CITY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to CITY's Contract Administrator at the following address:

City of Hanford
Attn.: Finance Dept., Accounts Payable
315 N. Douty Street
Hanford CA 93230

L. **PERIOD OF PERFORMANCE FOR WORK ORDERS.** The period of performance for Work Orders shall be in accordance with dates specified in each individual Work Order. No Work Order will be written which extends beyond the expiration date of this AGREEMENT.

M. **AMOUNT PAYABLE FOR WORK ORDER.** The total amount payable by CITY for an individual Work Order shall not exceed the amount agreed to in the Work Order, unless authorized by amendment Change Order.

N. **PAYMENT FOR DELIVERABLES.** If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Work Order, no payment will be made until the deliverable has been satisfactorily completed.

O. **AMENDMENT TO AGREEMENT.** Work Orders may not be used to amend the language (or the terms) of this AGREEMENT, nor to exceed the scope of work under this AGREEMENT.

P. **AGREEMENT MAXIMIM PAYMENT.** The total amount payable by CITY for all Work Orders resulting from this AGREEMENT shall not exceed **$150,000 per year, or $ 450,000.00 for the total three-year agreement.** It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Work Orders.

Q. **EXTRA WORK.** At any time during the term of this Agreement, CITY may request that CONSULTANT perform Extra Work. As used herein, "Extra Work" means any work which is determined by CITY to be necessary for the proper completion of the Services, but which the parties did not include in the Scope of Work. Extra work will be performed on an hourly basis under the CONSULTANT's most current hourly fee schedule. CONSULTANT shall not perform, nor be compensated for Extra Work without written authorization from CITY.

ARTICLE VI: TERMINATION

A. This AGREEMENT may be terminated by CITY, provided that CITY gives not less than thirty (30) calendar days' written notice to CONSULTANT (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, and in accordance with Section 15, Property of CITY. Upon termination, CONSULTANT shall be entitled to compensation for Services performed up to the effective date of termination, unless this Agreement is terminated for cause, in which case, CITY may withhold compensation due

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CONSULTANT in order to reimburse CITY for any losses, damages or expenses caused by CONSULTANT's default under this Agreement

B. CITY may temporarily suspend this AGREEMENT, at no additional cost to 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 provided for in subsection A of this section.

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.

D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Section 11C. 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, and in accordance with Section 15, Property of CITY.

E. If the CITY is in breach of the payment terms or otherwise is in material breach of this AGREEMENT, the CONSULTANT may suspend performance of services upon ten (10) calendar days' notice to the CITY. The CONSULTANT shall have no liability to the CITY, and the CITY agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this AGREEMENT by the CITY. Upon receipt of payment in full of all outstanding sums due from the CITY, or curing of such other breach that caused the CONSULTANT to suspend services, the CONSULTANT shall resume services, and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension. If the CITY does not cure said material breach of AGREEMENT within thirty (30) calendar days of notice, the CONSULTANT may terminate the AGREEMENT upon written notice to the CITY.

ARTICLE VII: COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

Consulting Architectural & Engineering (A&E) firms providing engineering and design related services under a contract funded by a federal grant, are required by regulation (as specified in 2 CFR Part 200) to account for and bill costs in accordance with the Federal Cost Principles of 48 CFR 31. In efforts to comply with the Federal Cost Principles, A&E consulting firms that provide services on federal-aid highway projects are required to develop indirect cost rates in accordance with the Federal Cost Principles on an annual basis.

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.

F. 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.

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Consultant shall provide all documents and files per Work Order to the City as required per Ownership of Data requirements in the Agreement.

ARTICLE VIII: RETENTION OF RECORD/AUDITS

A. For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and CITY shall maintain any and all books of account, ledgers, invoices, vouchers, canceled checks, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate work papers, and other evidence pertaining to the performance, services, expenditures, and disbursements 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 work papers 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. 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 CONSUTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, work paper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

B. CONSULTANT shall maintain all documents and records that demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the CITY. Copies of such documents shall be provided to the CITY for inspection at the CITY offices.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request, require that custody of the records be given to the CITY and that the records and documents be maintained in the CITY offices. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

ARTICLE IX: 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 thirty (30) calendar 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 AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, 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, CITY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall

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be adjusted by CONSULTANT and approved by CITY 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 AGREEMENT 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, CITY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT 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 Caltrans Audits and Investigation (A&I). Caltrans A&I, 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 AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During Caltrans A&I's review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans A&I 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 Caltrans A&I 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 A&I.

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 Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I 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. Caltrans A&I 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 Caltrans A&I 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) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2)

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all work under this AGREEMENT has been completed to the satisfaction of CITY; and, (3) Caltrans A&I 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 X: SUBCONTRACTING

A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the CITY and any Subconsultants, and no sub-agreement 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 Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.

C. Any sub-agreement 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 the CONSULTANT by the CITY.

E. Any substitution of Subconsultants must be approved in writing by the CITY Contract Administrator in advance of assigning work to a substitute Subconsultant.

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

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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.

Method 3: The CITY shall 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. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the CITY. 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 subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other 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 noncompliance 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 XI: EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

A. Prior authorization in writing by 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 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 AGREEMENT 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, CITY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT 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.

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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 XII: STATE PREVAILING WAGE RATES

A. **D.I.R. REGISTRATION.** 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. **WAGE DETERMINATIONS (CALTRANS).** 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 (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). 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 RATES.** 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 representatives 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 to a representative of CITY, the Division of Labor Standards

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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.

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 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. **CERTIFIED PAYROLL.** 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.

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.

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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 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.

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 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 XIII: CONFLICT OF INTEREST

A. During the term of this AGREEMENT, the 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. The 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 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 AGREEMENT.

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 Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, 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.

E. CONSULTANT maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement.

F. Further CONSULTANT warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or result from the award or making of this Agreement.

G. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability.

H. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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ARTICLE XIV: REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT 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 AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV: PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING (for use when Federal funding will exceed $150,000)

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 AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the 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 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 subagreements, which exceed one hundred thousand dollars ($100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI: 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 AGREEMENT, CONSULTANT and its subconsultants represents that they are an Equal Opportunity Employer, and shall not deny the AGREEMENT's benefits or discriminate against 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. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of CITY's programs or guidelines currently in effect as identified and provided to Consultant by CITY.

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 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 AGREEMENT 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 subconsultant*s* 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 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

ARTICLE XVII: 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:

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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 List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII: DISADVANTAGED BUSINESS ENTERPRISES (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 at https://dot.ca.gov/programs/civil-rights/dbe-search .

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. 49 CFR 26.55 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 enter into a federally-funded agreement, and proposes on a federal funded project RFP, 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 AGREEMENT is 0%.** Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Appendix "C": *Exhibit 10-O1: Consultant Proposal DBE Commitment* , 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 Appendix "D": 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 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 recipient 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 CONSULTANT from future proposing as non-responsible

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:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. 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.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. 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).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.

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7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. 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:
1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. 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 Page 24 of 32 September 2020 Local Assistance Procedures Manual EXHBIT 10-R A&E Boilerplate Agreement Language
3. Maintain records including:
- Name and business address of each 1st-tier subconsultant
- Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
- 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.

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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 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 AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, Appendix "E": *Exhibit 17-F1: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) for On-call Contracts*, 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 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.

M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX: INSURANCE

A. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies.

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1. Workers Compensation Coverage. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury or disease.

2. General Liability Coverage. Insurance Services Office (ISO) Form CG 0001, including products and completed operations, with limits of no less than TWO MILLION AND NO/100 DOLLARS ($2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be FOUR MILLION AND NO/100 DOLLARS ($4,000,000), twice the required occurrence limit.

3. Automobile Liability Coverage. ISO Form Number CA 0001 covering any auto (Code 1), with a limit no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury and property damage.

4. Professional Liability Coverage. Contractor will maintain Professional Liability coverage with limits no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per occurrence or claim, and TWO MILLION AND NO/100 DOLLARS ($2,000,000) policy aggregate.

B. If Consultant maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by Consultant.

C. Consultant's insurance policies shall be "occurrence" policies and not "claims-made" coverage except for Professional Liability Coverage.

D. Consultant may maintain an Umbrella policy in conjunction with the insurance policies referenced above. In such case, Consultant shall be deemed to have satisfied the insurance requirements of this contract as long as: (i) the coverage limits of the Umbrella policy and of the underlying liability policy(ies), when combined, satisfy each of the per occurrence and aggregate requirements identified in this subsection a.; and (ii) coverage under the Umbrella policy is as broad as and includes all incidents and events covered by the underlying insurance that it supplements.

E. Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Alternatively, the CITY may require Consultant to provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses within the retention**.**

F. The policies are to contain, or be endorsed to contain, the following provisions:

1. "The City and its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations; products used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. General liability coverage can be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2. For any claims related to this contract, Consultant's insurance coverage, with the exception of Professional Liability Insurance, shall be primary insurance as respects the City and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City and/or its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall be non-contributory.
3. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
4. These policies of insurance shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers, with the exception of Professional Liability Insurance. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with the policies of insurance obtained by Consultant.
5. With the exception of Professional Liability Insurance, these policies of insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
6. The insurer shall agree to waive all rights of subrogation against City, its officials, officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.
7. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.
8. The insurance provided by these policies shall not be canceled except after thirty (30) days written notice has been received by the City. The Consultant or its insurance agent shall, to the extent feasible, notify the City in writing thirty (30) days prior to the date on which any insurance policy required hereunder will be suspended voided, modified, or reduced. If such thirty (30) day prior notice is not feasible, notice will be promptly provided to the City upon Consultant's knowledge that a noticeable event will or has occurred.

G. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII and which are authorized to write business in California.

H. Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, true and correct copies of all required insurance policies, including endorsements required by these specifications, at any time. All forms and endorsements are to list the City of Hanford as additional insureds. The City reserves the right to require complete, true and correct copies of all required insurance policies, including endorsements required by these specifications, at any time. The policies can be redacted of personal information.

I. Consultant hereby grants to CITY and its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of Consultant may acquire against the CITY and/or its officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance. Consultant agrees to obtain endorsements necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

J. The CITY reserves the right to modify the insurance requirements contained in this contract, including, without limitation, coverage limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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K. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

ARTICLE XX: FUNDING REQUIREMENTS

A. It is mutually understood between the parties that this AGREEMENT 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 AGREEMENT were executed after that determination was made.

B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to 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 CITY 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 VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI: CHANGE IN TERMS

A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

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 CONSULTANT's Project Manager or members of the project team which shall not be unreasonable withheld, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by CITY's Contract Administrator.

ARTICLE XXII: CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT 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 AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII: DISPUTES

A. Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to resolve any dispute amicably between them through mediation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains

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unresolved after mediation, and 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.

B. 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 AGREEMENT.

ARTICLE XXIV: INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit 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 XXV: 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 Vehicle Code §591, 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 XXVI: OWNERSHIP OF DATA

A. It is mutually agreed that all materials prepared by CONSULTANT, its officers, employees, agents, and subcontractors under this AGREEMENT, except working notes and internal documents, shall become the sole property of the CITY in its discretion without further compensation to the CONSULTANT or to any other party, and the 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 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. The CITY's use of completed documents for other projects and/or the use of uncompleted documents without the written

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authorization of Consultant will be at the CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of, or changes to the Project Documents not performed by the Consultant.

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. Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for CITY to use, modify, reuse or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data electronic or otherwise recorded on computer diskettes which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that CITY is granted non-exclusive and perpetual license for any Documents & Data the subcontractor prepared under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. CITY shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purpose intended by this Agreement shall be at CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of or changes to the Project Documents not performed by the Consultant.

ARTICLE XXVII: CLAIMS FILED BY CITY's CONSTRUCTION CONTRACTOR

A. **CONSULTANT'S PERSONNEL AVAILABILITY.** 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 REIMBURSEMENT.** 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. **CONSULTANT'S PERSONNEL SERVICES.** 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.

D. **ATTORNEYS' FEES**. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court for the County of Kings, State of California for any proceeding arising hereunder.

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E. **SOLE AND ONLY AGREEMENT.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this Agreement and no other agreement, statement or promise shall be valid or binding.

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

G. **AMENDMENT.** No change, amendment or modification of this Agreement shall be valid unless the same be in writing and signed by the parties hereto.

H. **GOVERNING LAW.** This Agreement shall be construed and governed pursuant to the laws of the State of California.

I. **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

ARTICLE XXVIII: CONFIDENTIALITY OF DATA

A. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information including financial, statistical, personal, technical, or other data, and other documents and data either created by or provided to CONSULTANT in connection with and relative to CITY's operations and CONSULTANTS performance of this agreement, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected and held confidential by CONSULTANT from unauthorized use and disclosure.

B. Such materials shall not, without the prior written consent of CITY, be used by Consultant for any purposes other than the performance of the Services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the Services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use CITY's name, insignia, photographs, or the project for which Consultant's Services are rendered, or any publicity pertaining to the Consultant's Services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent by CITY. Notwithstanding the foregoing, the CITY acknowledges that the Consultant may want/need to include projects performed under this agreement on proposals for similar work in the future. The CITY hereby grants permission to list any projects performed under this agreement for marketing purposes; provided however, Consultant will not make any representations regarding CITY's satisfaction with Consultant's work product unless Consultant receives a written statement or evaluation from CITY

C. Permission to disclose information on one occasion, or public hearing held by CITY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

D. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or CITY's actions on the same, except to CITY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.

E. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by CITY, and receipt of CITY'S written permission.

F. 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.

ARTICLE XXIX: 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 XXX: 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 records. The Consultant Performance Evaluation form and criteria is attached in Appendix "F".

ARTICLE XXXI 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.

Attachment: QK-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

ARTICLE XXXII NOTIFICATION

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

CONSULTANT:

QK

JEFF COWART, PE, VICE PRESIDENT

901 EAST MAIN STREET

VISALIA, CA 93292

CITY:

CITY OF HANFORD

ATTN: CITY ENGINEER, Contract Administrator

900 S. 10TH AVENUE

HANFORD, CA 93230

ARTICLE XXXIII: CONTRACT

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.

ARTICLE XXXIV: SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and in the year first set forth above.

CITY OF HANFORD,
a Municipal Corporation

By: _____
MARIO CIFUENTEZ, City Manager

QK
Consultant

By: _____ P.E.#58690
RONALD J. WATHEN, President

APPROVED AS TO CONTENT:

By: _____
JOHNATHAN L. DOYEL
Public Works Director

ATTEST:

By: _____
NATALIE CORRAL
City Clerk

EXHIBIT "A"

Consultants Cost Proposal for On-Call Contract

(Approved Work Orders)

EXHIBIT "B"

Consultants Fee Schedule

(LAPM form 10-H2)

11/13/2020

EXHIBIT 10-H2
Cost Proposal

EXHIBIT 10-H2 COST PROPOSAL
SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

CITY OF HANFORD ON-CALL ARCHITECTURE AND ENGINEERING SERVICES

Note: Mark-ups are Not Allowed

Consultant	Quad Knopf, Inc., dba QK	**Prime Consultant**	Subconsultant		2nd Tier Subconsultant		
Project No.	TBD	Contract No. TBD	Participaton Amount $	450,000		Date	13-Nov-20

	Fringe Benefit %	Overhead %	General Administration %	Combined IRC%
For Combined Rate	54.45%	58.10%	76.57%	189.12%
	FEE %	10.00%		

BILLING INFORMATION			CALCULATION INFORMATION				
Name/Job Title/Classification	Loaded Hourly Billing Rates Straight	Overtime	Effective Date of Hourly Rate From	To	% Escalation Increase	Actual Hourly Rate and/or Average Hourly Rate[2]	Hourly Range for Class
Jeff Cowart, PE	$267.72	N/C	1/1/2021	12/31/2021	0%	$84.18	N/A
Principal Engineer	$275.75	N/C	1/1/2022	12/31/2022	3.00%	$86.71	N/A
	$284.02	N/C	1/1/2023	12/31/2023	3.00%	$89.31	N/A
	$292.54	N/C	1/1/2024	12/31/2024	3.00%	$91.99	N/A
	$301.32	N/C	1/1/2025	12/31/2025	3.00%	$94.75	N/A
Lisa Wallis Dutra, PE, TE, PTOE, RSP	$191.14	N/C	1/1/2021	12/31/2021	0%	$60.10	N/A
Senior Traffic Engineer	$196.87	N/C	1/1/2022	12/31/2022	3.00%	$61.90	N/A
	$202.78	N/C	1/1/2023	12/31/2023	3.00%	$63.76	N/A
	$208.86	N/C	1/1/2024	12/31/2024	3.00%	$65.67	N/A
	$215.13	N/C	1/1/2025	12/31/2025	3.00%	$67.64	N/A
Brian Shoener, PE	$183.47	N/C	1/1/2021	12/31/2021	0%	$57.69	N/A
Senior Engineer	$188.98	N/C	1/1/2022	12/31/2022	3.00%	$59.42	N/A
	$194.65	N/C	1/1/2023	12/31/2023	3.00%	$61.20	N/A
	$200.49	N/C	1/1/2024	12/31/2024	3.00%	$63.04	N/A
	$206.50	N/C	1/1/2025	12/31/2025	3.00%	$64.93	N/A
Monique Mello, PE, QSD/QSP	$175.84	N/C	1/1/2021	12/31/2021	0%	$55.29	N/A
Senior Project Manager	$181.12	N/C	1/1/2022	12/31/2022	3.00%	$56.95	N/A
	$186.55	N/C	1/1/2023	12/31/2023	3.00%	$58.66	N/A
	$192.14	N/C	1/1/2024	12/31/2024	3.00%	$60.42	N/A
	$197.91	N/C	1/1/2025	12/31/2025	3.00%	$62.23	N/A
Cathy Williams, PE, QSD/QSP, ENV SP	$183.47	N/C	1/1/2021	12/31/2021	0%	$57.69	N/A
Senior Project Manager	$188.98	N/C	1/1/2022	12/31/2022	3.00%	$59.42	N/A
	$194.65	N/C	1/1/2023	12/31/2023	3.00%	$61.20	N/A
	$200.49	N/C	1/1/2024	12/31/2024	3.00%	$63.04	N/A
	$206.50	N/C	1/1/2025	12/31/2025	3.00%	$64.93	N/A

BILLING INFORMATION			CALCULATION INFORMATION				
Name/Job Title/Classification	Loaded Hourly Billing Rates Straight	Overtime	Effective Date of Hourly Rate From	To	% Escalation Increase	Actual Hourly Rate and/or Average Hourly Rate[2]	Hourly Range for Class
Spencer Supinger, PE, ENV SP	$191.14	N/C	1/1/2021	12/31/2021	0%	$60.10	N/A
Senior Project Manager	$196.87	N/C	1/1/2022	12/31/2022	3.00%	$61.90	N/A
	$202.78	N/C	1/1/2023	12/31/2023	3.00%	$63.76	N/A
	$208.86	N/C	1/1/2024	12/31/2024	3.00%	$65.67	N/A
	$215.13	N/C	1/1/2025	12/31/2025	3.00%	$67.64	N/A
Stephen Bahr, PE, QSD/QSP	$168.18	N/C	1/1/2021	12/31/2021	0%	$52.88	N/A
Senior Associate Engineer	$173.22	N/C	1/1/2022	12/31/2022	3.00%	$54.47	N/A
	$178.42	N/C	1/1/2023	12/31/2023	3.00%	$56.10	N/A
	$183.77	N/C	1/1/2024	12/31/2024	3.00%	$57.78	N/A
	$189.28	N/C	1/1/2025	12/31/2025	3.00%	$59.52	N/A
Rebekah Godett, PE	$149.86	N/C	1/1/2021	12/31/2021	0%	$47.12	
Senior Associate Engineer	$154.35	N/C	1/1/2022	12/31/2022	3.00%	$48.53	N/A
	$158.98	N/C	1/1/2023	12/31/2023	3.00%	$49.99	N/A
	$163.75	N/C	1/1/2024	12/31/2024	3.00%	$51.49	N/A
	$168.67	N/C	1/1/2025	12/31/2025	3.00%	$53.03	N/A
James Cozad, PE	$163.60	N/C	1/1/2021	12/31/2021	0%	$51.44	
Senior Associate Engineer	$168.50	N/C	1/1/2022	12/31/2022	3.00%	$52.98	N/A
	$173.56	N/C	1/1/2023	12/31/2023	3.00%	$54.57	N/A
	$178.77	N/C	1/1/2024	12/31/2024	3.00%	$56.21	N/A
	$184.13	N/C	1/1/2025	12/31/2025	3.00%	$57.90	N/A
Greg Thompson, PE, QSD/QSP, CASp	$162.07	N/C	1/1/2021	12/31/2021	0%	$50.96	
Senior Construction Manager	$166.93	N/C	1/1/2022	12/31/2022	3.00%	$52.49	N/A
	$171.94	N/C	1/1/2023	12/31/2023	3.00%	$54.06	N/A
	$177.10	N/C	1/1/2024	12/31/2024	3.00%	$55.69	N/A
	$182.41	N/C	1/1/2025	12/31/2025	3.00%	$57.36	N/A
John McGee, Jr.	$160.54	N/C	1/1/2021	12/31/2021	0%	$50.48	
Senior Landscape Architect	$165.36	N/C	1/1/2022	12/31/2022	3.00%	$51.99	N/A
	$170.32	N/C	1/1/2023	12/31/2023	3.00%	$53.55	N/A
	$175.43	N/C	1/1/2024	12/31/2024	3.00%	$55.16	N/A
	$180.69	N/C	1/1/2025	12/31/2025	3.00%	$56.82	N/A
Kristie Achee, PLS	$168.18	N/C	1/1/2021	12/31/2021	0%	$52.88	
Senior Project Manager	$173.22	N/C	1/1/2022	12/31/2022	3.00%	$54.47	N/A
	$178.42	N/C	1/1/2023	12/31/2023	3.00%	$56.10	N/A
	$183.77	N/C	1/1/2024	12/31/2024	3.00%	$57.78	N/A
	$189.28	N/C	1/1/2025	12/31/2025	3.00%	$59.52	N/A
Antonio Westerlund, PLS	$155.96	N/C	1/1/2021	12/31/2021	0%	$49.04	
Senior Associate Surveyor	$160.64	N/C	1/1/2022	12/31/2022	3.00%	$50.51	N/A
	$165.46	N/C	1/1/2023	12/31/2023	3.00%	$52.03	N/A
	$170.42	N/C	1/1/2024	12/31/2024	3.00%	$53.59	N/A
	$175.54	N/C	1/1/2025	12/31/2025	3.00%	$55.19	N/A
Brandon Walker, PLS	$149.86	N/C	1/1/2021	12/31/2021	0%	$47.12	
Senior Associate Surveyor	$154.35	N/C	1/1/2022	12/31/2022	3.00%	$48.53	N/A
	$158.98	N/C	1/1/2023	12/31/2023	3.00%	$49.99	N/A
	$163.75	N/C	1/1/2024	12/31/2024	3.00%	$51.49	N/A
	$168.67	N/C	1/1/2025	12/31/2025	3.00%	$53.03	N/A

BILLING INFORMATION			CALCULATION INFORMATION				
Name/Job Title/Classification	Loaded Hourly Billing Rates Straight	Overtime	Effective Date of Hourly Rate From	To	% Escalation Increase	Actual Hourly Rate and/or Average Hourly Rate[2]	Hourly Range for Class
Jaymie Brauer	$171.26	N/C	1/1/2021	12/31/2021	0%	$53.85	
Principal Environmental Planner	$176.40	N/C	1/1/2022	12/31/2022	3.00%	$55.47	N/A
	$181.69	N/C	1/1/2023	12/31/2023	3.00%	$57.13	N/A
	$187.14	N/C	1/1/2024	12/31/2024	3.00%	$58.84	N/A
	$192.75	N/C	1/1/2025	12/31/2025	3.00%	$60.61	N/A
Steve Brandt, AICP	$171.77	N/C	1/1/2021	12/31/2021	0%	$54.01	
Principal Planner	$176.92	N/C	1/1/2022	12/31/2022	3.00%	$55.63	N/A
	$182.23	N/C	1/1/2023	12/31/2023	3.00%	$57.30	N/A
	$187.70	N/C	1/1/2024	12/31/2024	3.00%	$59.02	N/A
	$193.33	N/C	1/1/2025	12/31/2025	3.00%	$60.79	N/A
Curtis Uptain	$183.47	N/C	1/1/2021	12/31/2021	0%	$57.69	
Principal Environmental Scientist	$188.98	N/C	1/1/2022	12/31/2022	3.00%	$59.42	N/A
	$194.65	N/C	1/1/2023	12/31/2023	3.00%	$61.20	N/A
	$200.49	N/C	1/1/2024	12/31/2024	3.00%	$63.04	N/A
	$206.50	N/C	1/1/2025	12/31/2025	3.00%	$64.93	N/A
Senior Engineer	$182.87	N/C	1/1/2021	12/31/2021	0%	$57.50	55-60
	$188.35	N/C	1/1/2022	12/31/2022	3.00%	$59.23	N/A
	$194.01	N/C	1/1/2023	12/31/2023	3.00%	$61.00	N/A
	$199.83	N/C	1/1/2024	12/31/2024	3.00%	$62.83	N/A
	$205.82	N/C	1/1/2025	12/31/2025	3.00%	$64.72	N/A
Senior Associate Engineer	$159.02	N/C	1/1/2021	12/31/2021	0%	$50.00	47-53
	$163.79	N/C	1/1/2022	12/31/2022	3.00%	$51.50	N/A
	$168.70	N/C	1/1/2023	12/31/2023	3.00%	$53.05	N/A
	$173.76	N/C	1/1/2024	12/31/2024	3.00%	$54.64	N/A
	$178.97	N/C	1/1/2025	12/31/2025	3.00%	$56.28	N/A
Associate Engineer	$133.57	N/C	1/1/2021	12/31/2021	0%	$42.00	37-47
	$137.58	N/C	1/1/2022	12/31/2022	3.00%	$43.26	N/A
	$141.71	N/C	1/1/2023	12/31/2023	3.00%	$44.56	N/A
	$145.96	N/C	1/1/2024	12/31/2024	3.00%	$45.89	N/A
	$150.34	N/C	1/1/2025	12/31/2025	3.00%	$47.27	N/A
Assistant Engineer	$104.95	$121.45	1/1/2021	12/31/2021	0%	$33.00	
	$108.10	$125.10	1/1/2022	12/31/2022	3.00%	$33.99	N/A
	$111.34	$128.84	1/1/2023	12/31/2023	3.00%	$35.01	N/A
	$114.68	$132.71	1/1/2024	12/31/2024	3.00%	$36.06	N/A
	$118.12	$136.69	1/1/2025	12/31/2025	3.00%	$37.14	N/A
Senior Associate Surveyor	$146.29	N/C	1/1/2021	12/31/2021	0%	$46.00	41-50
	$150.68	N/C	1/1/2022	12/31/2022	3.00%	$47.38	N/A
	$155.20	N/C	1/1/2023	12/31/2023	3.00%	$48.80	N/A
	$159.86	N/C	1/1/2024	12/31/2024	3.00%	$50.27	N/A
	$164.66	N/C	1/1/2025	12/31/2025	3.00%	$51.77	N/A
Associate Surveyor	$116.08	$134.33	1/1/2021	12/31/2021	0%	$36.50	33-38
	$119.56	$138.36	1/1/2022	12/31/2022	3.00%	$37.60	N/A
	$123.15	$142.51	1/1/2023	12/31/2023	3.00%	$38.72	N/A
	$126.85	$146.79	1/1/2024	12/31/2024	3.00%	$39.88	N/A
	$130.65	$151.19	1/1/2025	12/31/2025	3.00%	$41.08	N/A

BILLING INFORMATION			CALCULATION INFORMATION				
Name/Job Title/Classification	Loaded Hourly Billing Rates Straight	Overtime	Effective Date of Hourly Rate From	To	% Escalation Increase	Actual Hourly Rate and/or Average Hourly Rate[2]	Hourly Range for Class
Assistant Surveyor	$84.28	$97.53	1/1/2021	12/31/2021	0%	$26.50	25-28
	$86.81	$100.46	1/1/2022	12/31/2022	3.00%	$27.30	N/A
	$89.41	$103.47	1/1/2023	12/31/2023	3.00%	$28.11	N/A
	$92.09	$106.57	1/1/2024	12/31/2024	3.00%	$28.96	N/A
	$94.86	$109.77	1/1/2025	12/31/2025	3.00%	$29.83	N/A
Senior Planner	$149.48	N/C	1/1/2021	12/31/2021	0%	$47.00	46-48
	$153.96	N/C	1/1/2022	12/31/2022	3.00%	$48.41	N/A
	$158.58	N/C	1/1/2023	12/31/2023	3.00%	$49.86	N/A
	$163.34	N/C	1/1/2024	12/31/2024	3.00%	$51.36	N/A
	$168.24	N/C	1/1/2025	12/31/2025	3.00%	$52.90	N/A
Senior Associate Planner	$136.75	N/C	1/1/2021	12/31/2021	0%	$43.00	38-44
	$140.86	N/C	1/1/2022	12/31/2022	3.00%	$44.29	N/A
	$145.08	N/C	1/1/2023	12/31/2023	3.00%	$45.62	N/A
	$149.43	N/C	1/1/2024	12/31/2024	3.00%	$46.99	N/A
	$153.92	N/C	1/1/2025	12/31/2025	3.00%	$48.40	N/A
Associate Planner	$104.95	N/C	1/1/2021	12/31/2021	0%	$33.00	32-34
	$108.10	N/C	1/1/2022	12/31/2022	3.00%	$33.99	N/A
	$111.34	N/C	1/1/2023	12/31/2023	3.00%	$35.01	N/A
	$114.68	N/C	1/1/2024	12/31/2024	3.00%	$36.06	N/A
	$118.12	N/C	1/1/2025	12/31/2025	3.00%	$37.14	N/A
Assistant Planner	$79.51	$92.01	1/1/2021	12/31/2021	0%	$25.00	24-26
	$81.89	$94.77	1/1/2022	12/31/2022	3.00%	$25.75	N/A
	$84.35	$97.61	1/1/2023	12/31/2023	3.00%	$26.52	N/A
	$86.88	$100.54	1/1/2024	12/31/2024	3.00%	$27.32	N/A
	$89.49	$103.56	1/1/2025	12/31/2025	3.00%	$28.14	N/A
Senior Environmental Scientist	$143.11	N/C	1/1/2021	12/31/2021	0%	$45.00	40-50
	$147.41	N/C	1/1/2022	12/31/2022	3.00%	$46.35	N/A
	$151.83	N/C	1/1/2023	12/31/2023	3.00%	$47.74	N/A
	$156.38	N/C	1/1/2024	12/31/2024	3.00%	$49.17	N/A
	$161.08	N/C	1/1/2025	12/31/2025	3.00%	$50.65	N/A
Senior Associate Environmental Scientis	$114.49	N/C	1/1/2021	12/31/2021	0%	$36.00	33-40
	$117.93	N/C	1/1/2022	12/31/2022	3.00%	$37.08	N/A
	$121.46	N/C	1/1/2023	12/31/2023	3.00%	$38.19	N/A
	$125.11	N/C	1/1/2024	12/31/2024	3.00%	$39.34	N/A
	$128.86	N/C	1/1/2025	12/31/2025	3.00%	$40.52	N/A
Associate Environmental Scientist	$101.77	$117.77	1/1/2021	12/31/2021	0%	$32.00	31-33
	$104.82	$121.30	1/1/2022	12/31/2022	3.00%	$32.96	N/A
	$107.97	$124.94	1/1/2023	12/31/2023	3.00%	$33.95	N/A
	$111.21	$128.69	1/1/2024	12/31/2024	3.00%	$34.97	N/A
	$114.54	$132.55	1/1/2025	12/31/2025	3.00%	$36.02	N/A
Assistant Environmental Scientist	$73.15	$84.65	1/1/2021	12/31/2021	0%	$23.00	20-26
	$75.34	$87.19	1/1/2022	12/31/2022	3.00%	$23.69	N/A
	$77.60	$89.80	1/1/2023	12/31/2023	3.00%	$24.40	N/A
	$79.93	$92.50	1/1/2024	12/31/2024	3.00%	$25.13	N/A
	$82.33	$95.27	1/1/2025	12/31/2025	3.00%	$25.89	N/A

BILLING INFORMATION			CALCULATION INFORMATION				
Name/Job Title/Classification	Loaded Hourly Billing Rates Straight	Overtime	Effective Date of Hourly Rate From	To	% Escalation Increase	Actual Hourly Rate and/or Average Hourly Rate[2]	Hourly Range for Class
Landscape Architect Technician	$89.05	$103.05	1/1/2021	12/31/2021	0%	$28.00	
	$91.72	$106.14	1/1/2022	12/31/2022	3.00%	$28.84	N/A
	$94.47	$109.32	1/1/2023	12/31/2023	3.00%	$29.71	N/A
	$97.31	$112.61	1/1/2024	12/31/2024	3.00%	$30.60	N/A
	$100.23	$115.99	1/1/2025	12/31/2025	3.00%	$31.51	N/A
Assistant CADD Technician/GIS Tech	$69.97	$80.97	1/1/2021	12/31/2021	0%	$22.00	20-24
	$72.07	$83.40	1/1/2022	12/31/2022	3.00%	$22.66	N/A
	$74.23	$85.90	1/1/2023	12/31/2023	3.00%	$23.34	N/A
	$76.45	$88.47	1/1/2024	12/31/2024	3.00%	$24.04	N/A
	$78.75	$91.13	1/1/2025	12/31/2025	3.00%	$24.76	N/A
Associate CADD Tech/GIS Analyst	$89.05	$103.05	1/1/2021	12/31/2021	0%	$28.00	26-32
	$91.72	$106.14	1/1/2022	12/31/2022	3.00%	$28.84	N/A
	$94.47	$109.32	1/1/2023	12/31/2023	3.00%	$29.71	N/A
	$97.31	$112.61	1/1/2024	12/31/2024	3.00%	$30.60	N/A
	$100.23	$115.99	1/1/2025	12/31/2025	3.00%	$31.51	N/A
Senior Associate CADD Tech/ GIS Analyst	$111.31	$128.81	1/1/2021	12/31/2021	0%	$35.00	30-40
	$114.65	$132.68	1/1/2022	12/31/2022	3.00%	$36.05	N/A
	$118.09	$136.66	1/1/2023	12/31/2023	3.00%	$37.13	N/A
	$121.63	$140.75	1/1/2024	12/31/2024	3.00%	$38.25	N/A
	$125.28	$144.98	1/1/2025	12/31/2025	3.00%	$39.39	N/A
Senior CADD Technician	$124.03	$143.53	1/1/2021	12/31/2021	0%	$39.00	38-40
	$127.75	$147.84	1/1/2022	12/31/2022	3.00%	$40.17	N/A
	$131.59	$152.28	1/1/2023	12/31/2023	3.00%	$41.38	N/A
	$135.53	$156.84	1/1/2024	12/31/2024	3.00%	$42.62	N/A
	$139.60	$161.55	1/1/2025	12/31/2025	3.00%	$43.89	N/A
Senior Construction/Project Manager	$190.82	N/C	1/1/2021	12/31/2021	0%	$60.00	50-70
	$196.54	N/C	1/1/2022	12/31/2022	3.00%	$61.80	N/A
	$202.44	N/C	1/1/2023	12/31/2023	3.00%	$63.65	N/A
	$208.51	N/C	1/1/2024	12/31/2024	3.00%	$65.56	N/A
	$214.77	N/C	1/1/2025	12/31/2025	3.00%	$67.53	N/A
Associate Construction Manager	$111.31	$128.81	1/1/2021	12/31/2021	0%	$35.00	
	$114.65	$132.68	1/1/2022	12/31/2022	3.00%	$36.05	N/A
	$118.09	$136.66	1/1/2023	12/31/2023	3.00%	$37.13	N/A
	$121.63	$140.75	1/1/2024	12/31/2024	3.00%	$38.25	N/A
	$125.28	$144.98	1/1/2025	12/31/2025	3.00%	$39.39	N/A
Project Manager	$127.21	N/C	1/1/2021	12/31/2021	0%	$40.00	38-42
	$131.03	N/C	1/1/2022	12/31/2022	3.00%	$41.20	N/A
	$134.96	N/C	1/1/2023	12/31/2023	3.00%	$42.44	N/A
	$139.01	N/C	1/1/2024	12/31/2024	3.00%	$43.71	N/A
	$143.18	N/C	1/1/2025	12/31/2025	3.00%	$45.02	N/A
Assistant Project Manager	$92.23	$106.73	1/1/2021	12/31/2021	0%	$29.00	28-30
	$95.00	$109.94	1/1/2022	12/31/2022	3.00%	$29.87	N/A
	$97.85	$113.23	1/1/2023	12/31/2023	3.00%	$30.77	N/A
	$100.78	$116.62	1/1/2024	12/31/2024	3.00%	$31.69	N/A
	$103.80	$120.12	1/1/2025	12/31/2025	3.00%	$32.64	N/A

BILLING INFORMATION			CALCULATION INFORMATION				
Name/Job Title/Classification	Loaded Hourly Billing Rates Straight	Overtime	Effective Date of Hourly Rate From	To	% Escalation Increase	Actual Hourly Rate and/or Average Hourly Rate[2]	Hourly Range for Class
Field Construction Observer	$101.77	$117.77	1/1/2021	12/31/2021	0%	$32.00	28-34
	$104.82	$121.30	1/1/2022	12/31/2022	3.00%	$32.96	N/A
	$107.97	$124.94	1/1/2023	12/31/2023	3.00%	$33.95	N/A
	$111.21	$128.69	1/1/2024	12/31/2024	3.00%	$34.97	N/A
	$114.54	$132.55	1/1/2025	12/31/2025	3.00%	$36.02	N/A
Project Adminstrator	$87.46	$101.21	1/1/2021	12/31/2021	0%	$27.50	25-30
	$90.08	$104.24	1/1/2022	12/31/2022	3.00%	$28.33	N/A
	$92.79	$107.38	1/1/2023	12/31/2023	3.00%	$29.17	N/A
	$95.57	$110.59	1/1/2024	12/31/2024	3.00%	$30.05	N/A
	$98.44	$113.92	1/1/2025	12/31/2025	3.00%	$30.95	N/A

Notes:

1. All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Indirect cost rates should be based on the consultant's annual accounting period, established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

EXHIBIT 10-H2 COST PROPOSAL

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant Quad Knopf, Inc., dba QK ☒ Prime Consultant ☐ Subconsultant

Project No. TBD Contract No. TBD Date November 13, 2020

SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)				
Description of Item	**Quantity**	**Unit**	**Unit Cost**	**Total**
Mileage	TBD	Mile	IRS Rate	TBD
Printing and Reproduction Costs	TBD	TBD	At Cost	TBD
Project Specific Delivery Costs	TBD	Each	At Cost	TBD
Subconsultant 1:				
Subconsultant 2:				
Subconsultant 3:				
Subconsultant 4:				
Subconsultant 5:				

Note: Add additional pages if necessary.

NOTES:

1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.

7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

EXHIBIT 10-H2 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

7. Generally Accepted Accounting Principles (GAAP)
8. Terms and conditions of the contract
9. Title 23 United States Code Section 112 - Letting of Contracts
10. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
11. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
12. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: Janel Freeman Title*: CFO

Signature: Date of Certification (mm/dd/yyyy): 11/13/2020

Email: janel.freeman@qkinc.com Phone Number: 559.733.0440

Address: PO Box 3699, Visalia, CA 93278

* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

On- call civil engineering, land surveying, landscape architecture, planning and environmental services.

EXHIBIT "C"

Consultant's Proposal DBE Commitment

(LAPM form 10-O1: Consultant shall utilize form for specific Federal or State projects work orders requiring a DBE goal.)

Reset Form

EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____

3. Project Description: _____

4. Project Location: _____

5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %

Local Agency to Complete this Section

17. Local Agency Contract Number: _____

18. Federal-Aid Project Number: _____

19. Proposed Contract Execution Date: _____

20. Consultant's Ranking after Evaluation: _____

Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.

_____ _____

_____ _____

_____

11. TOTAL CLAIMED DBE PARTICIPATION	**%**

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.

_____ _____
12. Preparer's Signature 13. Date

_____ _____
14. Preparer's Name 15. Phone

_____
16. Preparer's Title

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Attachment: QK-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

1. Local Agency - Enter the name of the local or regional agency that is funding the contract.
2. Contract DBE Goal - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. Project Location - Enter the project location as it appears on the project advertisement.
4. Project Description - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
5. Consultant's Name - Enter the consultant's firm name.
6. Prime Certified DBE - Check box if prime contractor is a certified DBE.
7. Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
8. DBE Certification Number - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
9. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
10. DBE % - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
11. Total Claimed DBE Participation % - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
12. Preparer's Signature - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
13. Date - Enter the date the DBE commitment form is signed by the consultant's preparer.
14. Preparer's Name - Enter the name of the person preparing and signing the consultant's DBE commitment form.
15. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
16. Preparer's Title - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

17. Local Agency Contract Number - Enter the Local Agency contract number or identifier.
18. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
19. Proposed Contract Execution Date - Enter the proposed contract execution date.
20. Consultant's Ranking after Evaluation – Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
21. Local Agency Representative's Signature - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
22. Date - Enter the date the DBE commitment form is signed by the Local Agency Representative.
23. Local Agency Representative's Name - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
24. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
25. Local Agency Representative Title - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

Attachment: QK-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT "D"

Consultant Performance Evaluation Sheet

(for project closeout)

(LAPM form 10-S)

Exhibit 10-S Consultant Performance Evaluation

1. PROJECT DATA	2. CONSULTANT DATA
1a. Project (include title, location, and Activity/CIP No.)	2a. Consultant Name and Address
1b. Brief Description of Project (design, study, etc.)	2b. Consultant's Manager
1c. Budget Cost for Project: $_____	2c. Phone: _____

3. AGENCY DEPARTMENT/SECTION RESPONSIBLE

3a. Department (include section and division)	3b. Agency Project Manager (name & phone)

4. CONTRACT DATA (Engineering Services)

4a. Contract No.: _____ Termination date: _____ Base Fee: $ _____

Agreement date: _____ Date terminated: _____ Contingency: $ _____

4b. Amendment $ _____ / # _____ $ _____ / # _____
(Total Value) (Initiated by Agency) (Total Value) (Initiated by Agency)

4c. Change Order $ _____ / # _____ $ _____ / # _____
(Total Value) (Initiated by Agency) (Total Value) (Initiated by Agency)

4d. Total Fee per Agreement (4a. + 4b. + 4c.) $ _____ Total Fee Paid $ _____
(Do not include Contingency Listed in 4a.)

4e. Type of Services (Design, study, etc.)

4f. Historical Record of Key Submittal Dates (enter date or n/a if not applicable)

	Preliminary	30%	70%	90%	100%	Final
Per Agreement						
Delivery Date						
Acceptance Date						

4g. Notice To Proceed _____ (date)

4h. Number of Days _____ (number)

4i. Actual Number of Days (number)

4j. Reasons for Change Orders: (Indicate total for each reason)

Errors/Omissions $		% of Base Fee	0.00%
Unforeseen Conditions $		% of Base Fee	0.00%
Changed Scope $		% of Base Fee	0.00%
Changed Quantities $		% of Base Fee	0.00%
Program Task Options $		% of Base Fee	0.00%

5.OVERALL RATING (Complete Section II on reverse, include comments as appropriate.)

		Outstanding	Above Average	Average	Below Average	Poor	N/A
5a.	Plans/Specifications accuracy						
5b.	Consistency with budget						
5c.	Responsiveness to Agency Staff						
5d.	Overall Rating						

6. AUTHORIZING SIGNATURES

6a. Agency Design Team Leader _____ Date: _____

6b. Agency Project Manager _____ Date: _____

6c. Agency Public Works Manager Date:

6d. Consultant Representative Date:

See Reverse Side

Attachment: QK-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

PLANS/SPECIFICATIONS ACCURACY	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A	Responsiveness To Staff	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A
Plans Specifications clear and concise							Timely Responses						
Plans/Specs Coordination							Attitude toward Client and review bodies						
Plans/Specs properly formatted							Follows directions and Chain of responsibility						
Code Requirements covered							Work product delivered on time						
Adhered to Agency Standard Drawings/Specs							Timeliness in notifying Agency of major problems						
Drawings reflect existing conditions							Resolution of field Problems						
As-Built Drawings							Consistency with budget						
Quality Design							Reasonable Agreement negotiation						
Change Orders due to design deficiencies are minimized							Adherence to fee schedule						
							Adherence to project Budget						

Section III **EXPLANATIONS AND SUPPLEMENTAL INFORMATION**

(Attach additional documentation as needed)

Item _____: _____

_____

Item _____: _____

_____

Item _____: _____

Item _____: _____

_____

Item _____: _____

_____

Item _____: _____

_____

***Indicates supporting documentation attached.**

Attachment: QK-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT "E"

Consultant Annual Certification of Indirect Costs and Financial Management System

(LAPM form 10-K)

Attachment: QK-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

EXHIBIT 10-K CONSULTANT ANNUAL CERTIFICATION OF INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required.)

Consultant's Full Legal Name: _____

Important: Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

Indirect Cost Rate:

Combined Rate 189.12 % **OR**

Home Office Rate_____% and Field Office Rate (if applicable)_____%

Facilities Capital Cost of Money_____% (if applicable)

Fiscal period * 01/01/2019 - 12/31/2019

* Fiscal period is annual one year applicable accounting period that the Indirect Cost Rate was developed (not the contract period). The Indirect Cost Rate is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an Indirect Cost Rate(s) for the **fiscal period** as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the indirect cost rate(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31);
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31;
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on Exhibit 10-A.

Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in Title 23 United States Code (U.S.C.) Section 112(b)(2); 48 CFR Part 31.201-2(d); 23 CFR, Chapter 1, Part 172.11(a)(2); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost

accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirement

Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - 23 CFR Part 172.11(c)(4)
- False Claims Act - Title 31 U.S.C. Sections 3729-3733
- Statements or entries generally - Title 18 U.S.C. Section 1001
- Major Fraud Act - Title 18 U.S.C. Section 1031

All A&E Contract Information:

- Total participation amount $ 5,000,000 est. on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is one.
- Years of consultant's experience with 48 CFR Part 31 is 13.
- Audit history of the consultant's current and prior years (if applicable)

☐ Cognizant ICR Audit ☐ Local Gov't ICR Audit ☐ Caltrans ICR Audit
☐ CPA ICR Audit ☐ Federal Gov't ICR Audit

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the Indirect Cost Rate Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with Title 23 U.S.C. Section 112(b)(2), 48 CFR Part 31, 23 CFR Part 172, and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name**: Janel Freeman Title**: CFO

Signature: Janel Freeman Date of Certification (mm/dd/yyyy): 11/19/2020

Email**: JanelFreeman@qkinc.com Phone Number**: (559) 733-0440

**An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: ***Both prime and subconsultants as parties of a contract must complete their own Exhibit 10-K*** *forms. Caltrans will not process local agency's invoices until a complete Exhibit 10-K form is accepted and approved by Caltrans Audits and Investigations.*

Distribution: 1) Original - Local Agency Project File
2) Copy - Consultant
3) Copy - Caltrans Audits and Investigations

EXHIBIT "F"

Disclosure of Lobbying Activities

(LAPM form 10-Q)

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action:

- a. contract
- b. grant
- c. cooperative agreement
- d. loan
- e. loan guarantee
- f. loan insurance

2. Status of Federal Action:

- a. bid/offer/application
- b. initial award
- c. post-award

3. Report Type:

- a. initial
- b. material change

For Material Change Only:
year ____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity

Prime Subawardee
Tier _____, if known

Congressional District, if known

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, if known

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable _____

8. Federal Action Number, if known:

9. Award Amount, if known:

10. Name and Address of Lobby Entity
(If individual, last name, first name, MI)

11. Individuals Performing Services
(including address if different from No. 10)
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

12. Amount of Payment (check all that apply)

$ _____ actual planned

13. Form of Payment (check all that apply):

- a. cash
- b. in-kind; specify: nature _____
  Value _____

14. Type of Payment (check all that apply)

- a. retainer
- b. one-time fee
- c. commission
- d. contingent fee
- e deferred
- f. other, specify _____

15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:

(attach Continuation Sheet(s) if necessary)

16. Continuation Sheet(s) attached: **Yes** **No**

17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Authorized for Local Reproduction

Standard Form - LLL

Federal Use Only:

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

Attachment: QK-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant Services

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity 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 a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (Ml).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

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CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

ZUMWALT HANSEN, INC.

City of Hanford
900 S. 10th Avenue
Hanford, CA 93230

CITY OF HANFORD

ARCHITECTURAL AND ENGINEERING CONSULTANT AGREEMENT

(For Local Assistance Federal-aid Projects, based on Caltrans LAPM Form 10-R)

This exhibit contains fiscal requirements from 2 CFR 200 and may be used for state-only funded contracts as well.

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AGREEMENT FOR PROFESSIONAL SERVICES FOR
ON-CALL ENGINEERING SERVICES

ARTICLE I: INTRODUCTION

This Agreement for Professional Services ("Agreement") is made and entered into this 6th day of April, 2021, by and between the City of Hanford, a Municipal Corporation ("CITY"), and **Zumwalt Hansen, Inc.** ("CONSULTANT"), incorporated in the State of California.

The Project Manager for the "CONSULTANT" will be **Alex Dwiggins, PE**.

The name of the "CITY" is as follows: City of Hanford.

The Contract Administrator for CITY will be the City Engineer and/or its assignees.

RECITALS

1. CONSULTANT represents to CITY that they are trained, experienced, licensed and competent to perform the services which will be required by this Agreement; and

2. CONSULTANT represents to CITY that they possess the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

3. CITY desires to retain CONSULTANT to render Professional Architectural and Engineering Consulting Services as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth herein for such other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

A. **RETENTION OF CONSULTANT.** Subject to the terms and conditions set forth herein, the CITY retains the CONSULTANT to perform the services identified in this Agreement, as an Independent Contractor and CONSULTANT hereby accepts this independent contractor appointment.

B. **SCOPE OF SERVICES.** The work to be performed under this AGREEMENT is described in Article III, Statement of Work, and the approved CONSULTANT's Cost Proposals. The approved CONSULTANT's Cost Proposals shall be attached hereto as Exhibit "A" and incorporated by reference. If there is any conflict between the approved Cost Proposals and this AGREEMENT, this AGREEMENT shall take precedence.

C. **INDEMNIFICATION.** 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 actions, injuries, claims, damages, demands, liabilities, costs, losses, and expenses, direct or indirect, including without limitation, any and all court costs, reasonable attorneys' fees, expert witness fees, and other expenses which the CITY may sustain or incur as a consequence of, or are in any way related to or arising out of any failure to the CONSULTANT 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 and services on the part of CONSULTANT, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statue of repose or statute of limitations; provided however, the duty to defend shall apply regardless of whether an application statute of limitations has lapsed.

D. **INDEPENDENT CONTRACTOR STATUS.** CONSULTANT, in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employee's), in the performance of the Services to be performed pursuant to this Agreement, is an Independent Contractor, and shall not act as an agent or employee of the CITY, and that no relationship of employer-employee exists between the Parties hereto. The CONSULTANT's assigned personnel shall not be entitled to, or obtain retirement benefits or other benefits which accrue to CITY employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights. Nothing in the Agreement shall create or be construed as creating a partnership, joint venture, or any other relationship between the CITY and CONSULTANT.

E. **TAX WITHHOLDINGS**. 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.

F. **THIRD PARTY PERSONS EMPLOYED.** 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.

G. **AGREEMENT NOT TRANSFERABLE.** Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT 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 CITY under this AGREEMENT, 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.

H. **NEGLIGENT ACTS AND OMMISSIONS.** CONSULTANT shall be fully responsible to the CITY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons employed by them for whom CONSULTANT is legally liable, in the same manner as persons directly employed by CONSULTANT.

I. **ALTERATIONS APPROVED IN WRITING.** 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.

J. **PAYMENTS.** 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.

K. **INTEREST OF CONSULTANT**. CONSULTANT and its shareholders and covenants represent that they do not now have any investment or interest in real property, and shall not acquire any interest, direct or

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indirect in the area covered by this Agreement, or any other source of income, interest in real property, or investment which would be affected in any manner or degree by the performance of CONSULTANT's Services hereunder. CONSULTANT further covenants and represents that, in the performance of the Services hereunder, to the best of its knowledge no person having any such interest shall perform any Services under this Agreement.

CONSULTANT is not a designated employee within the meaning of the Political Reform Act because CONSULTANT:

1. Will conduct, research, and arrive at conclusions with respect to rendition of information, advice, recommendation, or counsel, independent of the control and direction of the CITY or of any CITY official, other than normal agreement monitoring; and
2. Shall possesses no authority with respect to any CITY decision beyond rendition of information, advice, recommendation, or counsel. FPPC Reg.18700, et seq.

L. **PROFESSIONAL ABILITY OF CONSULTANT**. CITY has relied upon CONSULTANT's representations regarding its training and professional ability to perform the Services hereunder as a material inducement to enter into this Agreement. CONSULTANT shall therefore provide properly skilled personnel to perform all Services under this Agreement. The primary provider of the Services

called for by this Agreement shall be _____**John Zumwalt, PE**_____**.**
(Consult fill in employee name and title who will represent the agreement to the CITY)

who shall not be replaced without the written consent of the CITY. All work performed by the CONSULTANT under this Agreement shall be in accordance with the applicable professional standard of care, and shall meet the local professional standard of quality ordinarily to be expected of competent persons in CONSULTANT's field of expertise working in Kings County.

M. **COMPLIANCE WITH LAWS**. CONSULTANT shall use the proper standard of care in performing the Services, and shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations in effect at the time the Agreement is executed. In addition, if the request for proposal to provide professional services which are the subject of this Agreement cited any Federal or State Financial Assistance involved in the project for which the Services are provided, the CONSULTANT shall perform all services in accordance with all applicable federal and state laws, rates and regulations in effect at the time the agreement is executed.

N. **LICENSES**. CONSULTANT represents and warrants to CITY that it has all licenses, permits, qualifications, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and insurance which are legally required of CONSULTANT to lawfully and competently perform the Services. CONSULTANT shall maintain a CITY of Hanford Business License.

ARTICLE II: CONSULTANT'S REPORTS OR MEETINGS

A. **PROGRESS REPORTS AND BILLINGS.** CONSULTANT shall submit progress reports and billings on EACH specific project in accordance with the Work Order at least once a month. CONSULTANT's bill shall include a brief description of the Services performed, the date the Services were performed, the number of hours spent, and by whom, and shall include a description of any authorized reimbursable expenditures. The report should be sufficiently detailed for the CITY's Contract Administrator or Project Coordinator: to determine if CONSULTANT is performing to expectations and is on schedule; to provide communication of interim findings; to sufficiently address any difficulties or special problems encountered so remedies can be developed. The CITY shall pay the CONSULTANT no later than 60 days after the date of submittal of a complete invoice for completed tasks and approval of the invoice by CITY staff.

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B. **MEETINGS.** CONSULTANT's Project Manager shall meet with CITY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE III: STATEMENT OF WORK

Zumwalt Hansen shall NOT perform work on projects that receive Federal or State Funding for any phase of the project, and therefore shall not be required to comply with items in the contract that are required ONLY for federal or state funded projects.

A. **CONSULTANT SERVICES.** The CONSULTANT shall perform professional architectural, engineering, and land surveying services, in accordance with all the provisions of this Agreement. The Scope of Work for each project will be determined by the CITY Engineer. The CONSULTANT shall submit their proposal to the CITY within the required timeframe, and the CITY shall select the top proposal using Qualifications Based Selection. Upon selection, the CITY will negotiate the cost based on the agreement labor price agreement. A work order will be assigned for each project after CONSULTANT determines an estimated cost for producing all necessary plans and documents to satisfy the Scope of Work. For Local Funded projects, the CONSULTANT will submit a scope of work proposal with cost, and a Work Order will be prepared. The CONSULTANT shall correct any and all errors and/or omissions in the performance of the Services and any documents resulting therefrom even though CITY has accepted said Services or documents. CONSULTANT shall make such corrections upon CITY's request and at no cost or expense to CITY.

B. **ENVIRONMENTAL COMPLIANCE**. This AGREEMENT provides for CONSULTANT environmental services that result in CEQA or NEPA approval. Federal funded projects require NEPA clearance in addition to CEQA. NEPA Environmental documents are not considered complete until a Caltrans Official signs the Categorical Exclusion (CE), the Finding of No Significant Impact (FONSI), or the Record of Decision.

C. **RIGHT OF WAY.** Existing and proposed Right of Way requirements are to be determined and shown by the CONSULTANT. Land surveys and computations with metes and bounds descriptions shall be made by a California Licensed Land Surveyor. Projects shall be tied into recorded monumentation and bench marks. A bench mark map with record elevation data is available from the City. Services shall include preparation of Appraisal Map, Acquisition Maps, and Legal Descriptions used to acquire right of way or property.

D. **SURVEYS.** This AGREEMENT provides for CONSULTANT licensed surveying services for preliminary surveying, topographic surveys, monumentation mapping, construction staking, and monument setting and recording of corner records. Work under this service shall be performed or as directed by a California Licensed Land Surveyor.

E. **SUBSURFACE INVESTIGATIONS.** This AGREEMENT provides for CONSULTANT Sub-Surface Investigations as directed by the CITY for Environmental testing, topographic mapping, boring, construction staking, and other specialized sub surface investigation services, either by the CONSULTANT, or under the direction of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order.

F. **CONSTRUCTION MANAGEMENT.** This AGREEMENT does NOT provide for a CONSULTANT in a Management role.

G. **DESIGN PLANS, SPECIFICATIONS, AND ESTIMATES.** This AGREEMENT provides for CONSULTANT Design Plans, Specifications, and Estimates as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, as determined in the Scope of Work of the assigned Work Order. Design work shall meet City Standards.

H. **ARCHITECTURAL AND STRUCTURAL ENGINEERING.** This AGREEMENT provides for CONSULTANT Architectural and Structural Engineering as directed by the CITY and performed either by the CONSULTANT, or under the direction of the CONSULTANT, for structural design and analysis as determined in the Scope of Work of the assigned Work Order. All Architectural and Structural Engineering shall by performed by a Licensed Structural Engineer and shall meet all City and State Standards.

I. **TRAFFIC ENGINEERING AND TRAFFIC SIGNAL DESIGN.** This AGREEMENT provides for CONSULTANT Traffic Engineering and Traffic Signal Design as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for traffic engineering and traffic signal design as determined in the Scope of Work of the assigned Work Order. All Traffic Engineering shall by performed by a licensed Professional Engineer and shall meet all City and State Standards.

J. **MAPPING, INCLUDING GIS AND GPS.** This AGREEMENT provides for CONSULTANT Mapping, including GIS and GPS, as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for mapping as determined in the Scope of Work of the assigned Work Order.

K. **RAILROAD PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Railroad Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for railroad permitting and coordination as determined in the Scope of Work of the assigned Work Order.

L. **UTILITY PERMITTING AND COORDINATION.** This AGREEMENT provides for CONSULTANT Utility Permitting and Coordination as directed by the CITY and performed either by the CONSULTANT, or under the supervision of the CONSULTANT, for utility permitting and coordination as determined in the Scope of Work of the assigned Work Order.

M. **CONFERENCES, SITE VISITS, AND INSPECTION OF WORK.** This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the CITY, County, State, and/or FHWA. Costs incurred by CONSULTANT for meetings subsequent to the initial meeting shall be included in the fee.

N. **CHECKING SHOP DRAWINGS.**
This AGREEMENT provides for the CONSULTANT to provide plan checking of shop drawings and contract documents. Payment for checking of drawings by CONSULTANT shall be paid at the hourly rate per the attached Fee Schedule. The total compensation paid to the CONSULTANT for all services in this agreement shall not exceed the maximum contract amount stated in Article V, Section P.

O. **CONSULTANT SERVICES DURING CONSTRUCTION.**
This AGREEMENT provides for CONSULTANT services during the course of construction, including resident engineering, construction surveys and construction staking. Payment for services shall be paid at the rates stated in the attached Fee Schedule, and shall not exceed the Work Order fee stated without an approved Change Order.

P. **DOCUMENTATION AND SCHEDULES.**
This AGREEMENT provides for the CONSULTANT to document the results of the work to the satisfaction of CITY, and if applicable, to the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Work Order objectives. All final construction documents shall be stamped and wet signed when completed.

Q. **CITY OBLIGATIONS.** Data applicable to the Work Order Scope of Work shall be made available to the CONSULTANT at the time of Work Order Execution. Data may include maps, plans, documents, and

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records that are in the possession of the CITY. Additional items to be made available to the CONSULTANT shall be noted specifically on the Work Order.

R. **DELIVERABLES AND NUMBER OF COPIES.**
The number of copies or documents to be furnished with each submittal, such as reports, brochures, sets of plans, specifications, maps, etc., shall be two (2) copies minimum unless otherwise specified in the work order or as may be required for City Permitting. Final plans and maps shall be plotted on 20# vellum or on plastic film mylar, and shall have stamp and original wet signatures.

S. **DESIGN STANDARD.**
All work performed under this AGREEMENT shall conform to the most current City of Hanford Standards, Caltrans Standards, and all other Local, State, and FHWA requirements.

ARTICLE IV: PERFORMANCE PERIOD

A. This AGREEMENT shall go into effect on **April 6, 2021**, contingent upon approval by CITY, and CONSULTANT shall commence work after notification to proceed by CITY'S Contract Administrator. The AGREEMENT shall be in effect for 3 (three) years, and end on **April 6, 2024**, unless extended by AGREEMENT amendment. AGREEMENT amendments shall be limited to two separate ONE YEAR EXTENSIONS, and in no case shall the AGREEMENT exceed five years.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on CITY until the AGREEMENT is fully executed and approved by CITY.

C. The period of performance for each specific project shall be in accordance with the Work Order for that project. If work on a Work Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the Work Order in progress only. In no case shall the maximum term of this AGREEMENT exceed five (5) years.

ARTICLE V: ALLOWABLE COSTS AND PAYMENTS

A. **PAYMENT.** CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's attached approved 10H-2: Cost Proposal Fee Schedule (Exhibit B), subject to Prevailing Wage Requirements which are available at the office of the City Engineer. An estimate for cost of services for each project shall be submitted to the City Engineer before commencement of work. Payment by CITY under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment. An increase in the fee schedule for non-prevailing wage classifications will be allowed at the beginning of Year 2 (two) of this agreement and shall be made a part of an AGREEMENT extension, if said agreement is extended for a period. The CONSULTANT must notify the CITY thirty (30) days in advance of such increases. The CONSULTANT is limited to two (2) price increases during the three years contract period, and one increase per year for each year the contract is extended. An increase in fee schedule for prevailing wage classifications shall be allowed when the Prevailing Wage for said wage determination increases. The services included in this agreement shall increase by the same amount approved for increase by the Department of Industrial Relations. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this

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AGREEMENT. CONSULTANT will be reimbursed within sixty (60) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate.

B. **DIRECT COSTS.** In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal, and identified in the approved Cost Proposal and in the executed Work Order.

C. **WORK ORDERS.** Specific projects will be assigned to CONSULTANT after approval of the proposal for each specific project through the issuance of Work Orders. Work Orders shall be number consecutively for each specific project.

D. **DRAFT WORK ORDERS.** After a project to be performed under this AGREEMENT is identified by CITY, CITY will prepare a draft Work Order with Scope of Work; less the cost estimate. A draft Work Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a CITY Project Coordinator. The draft Work Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Work Order within ten (10) calendar days along with a Cost Estimate for requested services, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and the total dollar amount. After agreement has been reached on the negotiable items and total cost; a finalized Work Order shall be signed by both CITY and CONSULTANT.

E. **NOT TO EXCEED COMPENSATION**. Work Orders may be negotiated for specific rates of compensation Not to Exceed amount, of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT. Work Orders that are approved as "Flat Fee" must have any prevailing wage increase built into the cost proposal, and the CONSULTANT must pay the required prevailing wage rates to workers. Work Orders that are approved as "Time and Materials, Not to Exceed" will require prevailing wage rates be paid to workers, and the total amount "Not to Exceed" will be increased to accommodate said increases in the amount approved by the DIR.

F. **STATE RATE REIMBURSEMENTS.** Reimbursement for transportation and subsistence costs shall not exceed State rates. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

G. **CHANGE ORDERS.** When milestone cost estimates, or not to exceed estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment Change Order for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

H. **MONTHLY PAYMENTS.** Progress payments for each Work Order will be made monthly in arrears based on services provided and actual costs incurred.

I. **NOTICE TO PROCEED.** 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 or for any work performed prior to approval of this

AGREEMENT, or for work done on a project Work Order prior to the City's issuance of a Notice to Proceed (NTP).

J. **EXECUTED WORK ORDERS.** A Work Order is of no force or effect until returned to CITY and signed by an authorized representative of CITY. No expenditures are authorized on a project and work shall not commence until a Work Order for that project has been executed by CITY.

K. **INVOICES.** CONSULTANT will be reimbursed within thirty (30) days upon receipt by CITY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Work Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Work Order. 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, the project title and the Work Order number. Credits due CITY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to CITY's Contract Administrator at the following address:

City of Hanford
Attn.: Finance Dept., Accounts Payable
315 N. Douty Street
Hanford CA 93230

L. **PERIOD OF PERFORMANCE FOR WORK ORDERS.** The period of performance for Work Orders shall be in accordance with dates specified in each individual Work Order. No Work Order will be written which extends beyond the expiration date of this AGREEMENT.

M. **AMOUNT PAYABLE FOR WORK ORDER.** The total amount payable by CITY for an individual Work Order shall not exceed the amount agreed to in the Work Order, unless authorized by amendment Change Order.

N. **PAYMENT FOR DELIVERABLES.** If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Work Order, no payment will be made until the deliverable has been satisfactorily completed.

O. **AMENDMENT TO AGREEMENT.** Work Orders may not be used to amend the language (or the terms) of this AGREEMENT, nor to exceed the scope of work under this AGREEMENT.

P. **AGREEMENT MAXIMIM PAYMENT.** The total amount payable by CITY for all Work Orders resulting from this AGREEMENT shall not exceed **$150,000 per year, or $ 450,000.00 for the total three-year agreement.** It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Work Orders.

Q. **EXTRA WORK.** At any time during the term of this Agreement, CITY may request that CONSULTANT perform Extra Work. As used herein, "Extra Work" means any work which is determined by CITY to be necessary for the proper completion of the Services, but which the parties did not include in the Scope of Work. Extra work will be performed on an hourly basis under the CONSULTANT's most current hourly fee schedule. CONSULTANT shall not perform, nor be compensated for Extra Work without written authorization from CITY.

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ARTICLE VI: TERMINATION

A. This AGREEMENT may be terminated by CITY, provided that CITY gives not less than thirty (30) calendar days' written notice to CONSULTANT (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, and in accordance with Section 15, Property of CITY. Upon termination, CONSULTANT shall be entitled to compensation for Services performed up to the effective date of termination, unless this Agreement is terminated for cause, in which case, CITY may withhold compensation due CONSULTANT in order to reimburse CITY for any losses, damages or expenses caused by CONSULTANT's default under this Agreement

B. CITY may temporarily suspend this AGREEMENT, at no additional cost to 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 provided for in subsection A of this section.

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.

D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Section 11C. 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, and in accordance with Section 15, Property of CITY.

E. If the CITY is in breach of the payment terms or otherwise is in material breach of this AGREEMENT, the CONSULTANT may suspend performance of services upon ten (10) calendar days' notice to the CITY. The CONSULTANT shall have no liability to the CITY, and the CITY agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this AGREEMENT by the CITY. Upon receipt of payment in full of all outstanding sums due from the CITY, or curing of such other breach that caused the CONSULTANT to suspend services, the CONSULTANT shall resume services, and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension. If the CITY does not cure said material breach of AGREEMENT within thirty (30) calendar days of notice, the CONSULTANT may terminate the AGREEMENT upon written notice to the CITY.

ARTICLE VII: COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

~~Consulting Architectural & Engineering (A&E) firms providing engineering and design related services under a contract funded by a federal grant, are required by regulation (as specified in 2 CFR Part 200) to account for and bill costs in accordance with the Federal Cost Principles of 48 CFR 31. In efforts to comply with the Federal Cost Principles, A&E consulting firms that provide services on federal-aid highway projects are required to develop indirect cost rates in accordance with the Federal Cost Principles on an annual basis.~~

~~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.~~

~~F. 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.~~

~~Consultant shall provide all documents and files per Work Order to the City as required per Ownership of Data requirements in the Agreement.~~

ARTICLE VIII: RETENTION OF RECORD/AUDITS

A. For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and CITY shall maintain any and all books of account, ledgers, invoices, vouchers, canceled checks, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate work papers, and other evidence pertaining to the performance, services, expenditures, and disbursements 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 work papers 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. 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 CONSUTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, work paper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

B. CONSULTANT shall maintain all documents and records that demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the CITY. Copies of such documents shall be provided to the CITY for inspection at the CITY offices.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request, require that custody of the records be given to the CITY and that the records and documents be maintained in the CITY offices. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

ARTICLE IX: 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 thirty (30) calendar 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.

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D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals ~~and Indirect Cost Rates (ICR)~~, may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, ~~an ICR Audit, or a CPA ICR audit work paper review~~. If selected for audit or review, the AGREEMENT, 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,~~ CITY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, ~~and ICR~~ shall be adjusted by CONSULTANT and approved by CITY 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 AGREEMENT 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,~~ CITY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT 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 Caltrans Audits and Investigation (A&I). Caltrans A&I, 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 AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.~~

~~1. During Caltrans A&I's review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans A&I 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 Caltrans A&I 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 A&I.~~

~~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 Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I 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. Caltrans A&I will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.~~

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~~3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if Caltrans A&I 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) Caltrans A&I 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) Caltrans A&I 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 X: SUBCONTRACTING

A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the CITY and any Subconsultants, and no sub-agreement 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 Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.

C. Any sub-agreement 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 the CONSULTANT by the CITY.

E. Any substitution of Subconsultants must be approved in writing by the CITY Contract Administrator in advance of assigning work to a substitute Subconsultant.

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.

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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.

Method 3: The CITY shall 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. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the CITY. 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 subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other 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 noncompliance 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 XI: EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

A. Prior authorization in writing by 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 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 AGREEMENT 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, CITY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit CITY in an amount equal to its

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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 five thousand dollars ($5,000) is credited to the project.~~

ARTICLE XII: STATE PREVAILING WAGE RATES

A. **D.I.R. REGISTRATION.** 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. **WAGE DETERMINATIONS (CALTRANS).** 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 (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). 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 RATES.** 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 representatives at all reasonable hours at the principal

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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 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.

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 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. **CERTIFIED PAYROLL.** 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.

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.

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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:

a. 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.

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 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 XIII: CONFLICT OF INTEREST

A. During the term of this AGREEMENT, the 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. The 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 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 AGREEMENT.

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 Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, 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.

E. CONSULTANT maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement.

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F. Further CONSULTANT warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or result from the award or making of this Agreement.

G. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability.

H. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

ARTICLE XIV: REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT 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 AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

~~**ARTICLE XV: PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING** (for use when Federal funding will exceed $150,000)~~

~~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 AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the 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 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 subagreements, which exceed one hundred thousand dollars ($100,000), and that all such subrecipients shall certify and disclose accordingly.~~

ARTICLE XVI: 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 AGREEMENT, CONSULTANT and its subconsultants represents that they are an Equal Opportunity Employer, and shall not deny the AGREEMENT's benefits or discriminate against 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. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of CITY's programs or guidelines currently in effect as identified and provided to Consultant by CITY.

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 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 AGREEMENT 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 subconsultant*s* 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 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

ARTICLE XVII: 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 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 XVIII: DISADVANTAGED BUSINESS ENTERPRISES (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 at https://dot.ca.gov/programs/civil-rights/dbe-search .~~

~~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.~~

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- ~~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. 49 CFR 26.55 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 enter into a federally-funded agreement, and proposes on a federal funded project RFP, 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 AGREEMENT is 0%.** Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Appendix "C": *Exhibit 10-01: Consultant Proposal DBE Commitment* , 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 Appendix "D": 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 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 recipient 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 CONSULTANT from future proposing as non-responsible~~

~~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.~~

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

~~1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.~~

~~2. 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.~~

~~3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.~~

~~4. 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).~~

~~5. Listed DBE's work is unsatisfactory and not in compliance with the contract.~~

~~6. Listed DBE is ineligible to work on the project because of suspension or debarment.~~

~~7. Listed DBE becomes bankrupt or insolvent.~~

~~8. Listed DBE voluntarily withdraws with written notice from the Contract~~

~~9. Listed DBE is ineligible to receive credit for the type of work required.~~

~~10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.~~

~~11. 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:~~

~~1. One or more of the reasons listed in the preceding paragraph.~~

~~2. Notices from CONSULTANT to the DBE regarding the request.~~

~~3. 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 Page 24 of 32 September 2020 Local Assistance Procedures Manual EXHBIT 10-R A&E Boilerplate Agreement Language~~

~~3. Maintain records including:~~

~~• Name and business address of each 1st-tier subconsultant~~

~~• Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier~~

~~• 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.~~

~~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 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 AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, Appendix "E": *Exhibit 17-F1: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) for On-call Contracts*, 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 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.~~

~~M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.~~

ARTICLE XIX: INSURANCE

A. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies.

1. Workers Compensation Coverage. As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury or disease.

2. General Liability Coverage. Insurance Services Office (ISO) Form CG 0001, including products and completed operations, with limits of no less than TWO MILLION AND NO/100 DOLLARS ($2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be FOUR MILLION AND NO/100 DOLLARS ($4,000,000), twice the required occurrence limit.

3. Automobile Liability Coverage. ISO Form Number CA 0001 covering any auto (Code 1), with a limit no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per accident for bodily injury and property damage.

4. Professional Liability Coverage. Contractor will maintain Professional Liability coverage with limits no less than ONE MILLION AND NO/100 DOLLARS ($1,000,000) per occurrence or claim, and TWO MILLION AND NO/100 DOLLARS ($2,000,000) policy aggregate.

B. If Consultant maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by Consultant.

C. Consultant's insurance policies shall be "occurrence" policies and not "claims-made" coverage except for Professional Liability Coverage.

D. Consultant may maintain an Umbrella policy in conjunction with the insurance policies referenced above. In such case, Consultant shall be deemed to have satisfied the insurance requirements of this contract as long as: (i) the coverage limits of the Umbrella policy and of the underlying liability policy(ies), when combined, satisfy each of the per occurrence and aggregate requirements identified in this subsection a.; and (ii) coverage under the Umbrella policy is as broad as and includes all incidents and events covered by the underlying insurance that it supplements.

E. Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Alternatively, the CITY may require Consultant to provide a financial guarantee satisfactory to the CITY

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guaranteeing payment of losses and related investigations, claim administration, and defense expenses within the retention.

F. The policies are to contain, or be endorsed to contain, the following provisions:

1. "The City and its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations; products used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. General liability coverage can be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.
2. For any claims related to this contract, Consultant's insurance coverage, with the exception of Professional Liability Insurance, shall be primary insurance as respects the City and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City and/or its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall be non-contributory.
3. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
4. These policies of insurance shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers, with the exception of Professional Liability Insurance. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with the policies of insurance obtained by Consultant.
5. With the exception of Professional Liability Insurance, these policies of insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
6. The insurer shall agree to waive all rights of subrogation against City, its officials, officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.
7. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.
8. The insurance provided by these policies shall not be canceled except after thirty (30) days written notice has been received by the City. The Consultant or its insurance agent shall, to the extent feasible, notify the City in writing thirty (30) days prior to the date on which any insurance policy required hereunder will be suspended voided, modified, or reduced. If such thirty (30) day prior notice is not feasible, notice will be promptly provided to the City upon Consultant's knowledge that a noticeable event will or has occurred.

G. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII and which are authorized to write business in California.

H. Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, true and correct copies of all required insurance policies, including endorsements required by these specifications, at any time. All forms and endorsements are to list the City of Hanford as additional insureds. The City reserves the right to require complete, true and

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correct copies of all required insurance policies, including endorsements required by these specifications, at any time. The policies can be redacted of personal information.

I. Consultant hereby grants to CITY and its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of Consultant may acquire against the CITY and/or its officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance. Consultant agrees to obtain endorsements necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

J. The CITY reserves the right to modify the insurance requirements contained in this contract, including, without limitation, coverage limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

K. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

ARTICLE XX: FUNDING REQUIREMENTS

A. It is mutually understood between the parties that this AGREEMENT 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 AGREEMENT were executed after that determination was made.

B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to 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 CITY 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 VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI: CHANGE IN TERMS

A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

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 CONSULTANT's Project Manager or members of the project team which shall not be unreasonable withheld, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by CITY's Contract Administrator.

ARTICLE XXII: CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a

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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 AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII: DISPUTES

A. Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to resolve any dispute amicably between them through mediation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, and 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.

B. 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 AGREEMENT.

ARTICLE XXIV: INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit 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 XXV: 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 Vehicle Code §591, 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 XXVI: OWNERSHIP OF DATA

A. It is mutually agreed that all materials prepared by CONSULTANT, its officers, employees, agents, and subcontractors under this AGREEMENT, except working notes and internal documents, shall become the sole property of the CITY in its discretion without further compensation to the CONSULTANT or to any other party, and the 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

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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. The CITY's use of completed documents for other projects and/or the use of uncompleted documents without the written authorization of Consultant will be at the CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of, or changes to the Project Documents not performed by the Consultant.

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. Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for CITY to use, modify, reuse or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data electronic or otherwise recorded on computer diskettes which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that CITY is granted non-exclusive and perpetual license for any Documents & Data the subcontractor prepared under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. CITY shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purpose intended by this Agreement shall be at CITY's sole risk. The CITY shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from any unauthorized reuse of or changes to the Project Documents not performed by the Consultant.

ARTICLE XXVII: CLAIMS FILED BY CITY's CONSTRUCTION CONTRACTOR

A. **CONSULTANT'S PERSONNEL AVAILABILITY.** 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 REIMBURSEMENT.** 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.

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C. **CONSULTANT'S PERSONNEL SERVICES.** 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.

D. **ATTORNEYS' FEES**. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court for the County of Kings, State of California for any proceeding arising hereunder.

E. **SOLE AND ONLY AGREEMENT.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this Agreement and no other agreement, statement or promise shall be valid or binding.

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

G. **AMENDMENT.** No change, amendment or modification of this Agreement shall be valid unless the same be in writing and signed by the parties hereto.

H. **GOVERNING LAW.** This Agreement shall be construed and governed pursuant to the laws of the State of California.

I. **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

ARTICLE XXVIII: CONFIDENTIALITY OF DATA

A. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information including financial, statistical, personal, technical, or other data, and other documents and data either created by or provided to CONSULTANT in connection with and relative to CITY's operations and CONSULTANTS performance of this agreement, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected and held confidential by CONSULTANT from unauthorized use and disclosure.

B. Such materials shall not, without the prior written consent of CITY, be used by Consultant for any purposes other than the performance of the Services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the Services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use CITY's name, insignia, photographs, or the project for which Consultant's Services are rendered, or any publicity pertaining to the Consultant's Services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent by CITY. Notwithstanding the foregoing, the CITY acknowledges that the Consultant may want/need to include projects performed under this agreement on proposals for similar work in the future. The CITY hereby grants permission to list any projects performed under

this agreement for marketing purposes; provided however, Consultant will not make any representations regarding CITY's satisfaction with Consultant's work product unless Consultant receives a written statement or evaluation from CITY

C. Permission to disclose information on one occasion, or public hearing held by CITY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

D. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or CITY's actions on the same, except to CITY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.

E. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by CITY, and receipt of CITY'S written permission.

F. 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.

ARTICLE XXIX: 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 XXX: 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 records. The Consultant Performance Evaluation form and criteria is attached in Appendix "F".

ARTICLE XXXI 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

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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 XXXII NOTIFICATION

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

CONSULTANT:

ZUMWALT HANSEN, INC

JOHN ZUMWALT, PE, Principle in Charge

609 N. IRWIN STREET

HANFORD, CA 93230

CITY:

CITY OF HANFORD

ATTN: CITY ENGINEER, Contract Administrator

900 S. 10TH AVENUE

HANFORD, CA 93230

ARTICLE XXXIII: CONTRACT

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.

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ARTICLE XXXIV: SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and in the year first set forth above.

CITY OF HANFORD,
a Municipal Corporation

By: _____
MARIO CIFUENTEZ, City Manager

Consultant

By: _____
JOHN ZUMWALT, Principal-In-Charge

APPROVED AS TO CONTENT:

By: _____
JOHNATHAN L. DOYEL
Public Works Director

ATTEST:

By: _____
NATALIE CORRAL
City Clerk

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EXHIBIT "A"

Consultants Cost Proposal for On-Call Contract

(Approved Work Orders)

Zumwalt Hansen shall NOT perform work on projects that receive Federal or State Funding for any phase of the project, and therefore shall not be required to comply with items in the contract that are required ONLY for federal or state funded projects.

EXHIBIT "B"

Consultants Fee Schedule

Zumwalt Hansen shall NOT perform work on projects that receive Federal or State Funding for any phase of the project, and therefore shall not be required to comply with items in the contract that are required ONLY for federal or state funded projects.

CIVIL ENGINEERS
ZUMWALT HANSEN INC.
LAND SURVEYORS
www.zumwalt-hansen.com

CITY OF HANFORD
ON-CALL RATE STRUCTURE
11/01/2020

OFFICE PERSONNEL

	Per Hour
Court Appearance, Depositions, Expert Testimony	
Engineer or Land Surveyor	$ 350
Civil Engineering	
Principal Engineer	$ 190
Senior Civil Engineer	$ 165
Civil Engineer	$ 148
Jr. Civil Engineer (EIT)	$ 95
Land Surveying	
Senior Professional Land Surveyor	$ 150
Support Services	
Assistant Engineer/Surveyor	$ 100
Senior Engineering/Surveying Technician	$ 88
Jr. Engineering/Surveying Technician	$ 70
Engineering Aide	$ 60
Secretarial	$ 75
Clerk	$ 50
Field Surveying	
1-Man Survey Crew-Prevailing Rate, Kings County-Non Federal	$ 200
1-Man Survey Crew-Prevailing Rate, Kings County-Non Federal (GPS & appurtenant electronics)	$ 228
2-Man Survey Crew-Prevailing Rate, Kings County-Non Federal	$ 363
2-Man Survey Crew-Prevailing Rate, Kings County-Non Federal (GPS & appurtenant electronics)	$ 404

(Prevailing Wage as of 10/01/2020)

OVERTIME

Overtime rates will be quoted upon request

REIMBURSABLE EXPENSES

24# B&W bond prints (18"x26")	$ 1.30/sheet	Copies (8½" x 11") B&W	$0.20/sheet
24# B&W bond prints (24"x36")	$ 2.50/sheet	Copies (8½" x 11") color	$0.40/sheet
24 # B&W bond prints (30"x42")	$ 4.00/sheet	Copies (11"x17") B&W	$0.35/sheet
24# Color bond prints (18"x26")	$ 2.50/sheet	Copies (11"x17") color	$0.70/sheet
24# Color bond prints (24"x36")	$ 4.50/sheet	Sub Consultants	Cost plus 15%
24 # Color bond prints (30"x42")	$ 6.50/sheet	Express Mail/Courier Charges	Commercial Rates
Vellum prints B&W (24"x36")	$ 3.50/sheet	Equipment rentals	Direct Cost
Mylar plots (18"x26")	$ 7.00/sheet	Other direct costs	Invoice Plus 15%
Mylar plots (24"x36")	$ 12.00/sheet	Materials	Invoice Plus 15%

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EXHIBIT "C"

Consultant's Proposal DBE Commitment

(LAPM form 10-O1: Consultant shall utilize form for specific Federal or State projects work orders requiring a DBE goal.)

Not Applicable to this contract.

Zumwalt Hansen shall NOT perform work on projects that receive Federal or State Funding for any phase of the project, and therefore shall not be required to comply with items in the contract that are required ONLY for federal or state funded projects.

EXHIBIT "D"

Consultant Performance Evaluation Sheet

(for project closeout)

(LAPM form 10-S)

Exhibit 10-S Consultant Performance Evaluation

1. PROJECT DATA	2. CONSULTANT DATA
1a. Project (include title, location, and Activity/CIP No.)	2a. Consultant Name and Address
1b. Brief Description of Project (design, study, etc.)	2b. Consultant's Manager
1c. Budget Cost for Project: $_____	2c. Phone: _____

3. AGENCY DEPARTMENT/SECTION RESPONSIBLE

3a. Department (include section and division)	3b. Agency Project Manager (name & phone)

4. CONTRACT DATA (Engineering Services)

4a. Contract No.: _____ Termination date: _____ Base Fee: $ _____

Agreement date: _____ Date terminated: _____ Contingency: $ _____

4b. Amendment $ _____ / # _____ $ _____ / # _____
(Total Value) (Initiated by Agency) (Total Value) (Initiated by Agency)

4c. Change Order $ _____ / # _____ $ _____ / # _____
(Total Value) (Initiated by Agency) (Total Value) (Initiated by Agency)

4d. Total Fee per Agreement (4a. + 4b. + 4c.) $ _____ Total Fee Paid $ _____
(Do not include Contingency Listed in 4a.)

4e. Type of Services (Design, study, etc.)

4f. Historical Record of Key Submittal Dates (enter date or n/a if not applicable)

	Preliminary	30%	70%	90%	100%	Final
Per Agreement						
Delivery Date						
Acceptance Date						

4g. Notice To Proceed _____ (date)

4h. Number of Days _____ (number)

4i. Actual Number of Days (number)

4j. Reasons for Change Orders: (Indicate total for each reason)

Errors/Omissions $		% of Base Fee	0.00%
Unforeseen Conditions $		% of Base Fee	0.00%
Changed Scope $		% of Base Fee	0.00%
Changed Quantities $		% of Base Fee	0.00%
Program Task Options $		% of Base Fee	0.00%

5.OVERALL RATING (Complete Section II on reverse, include comments as appropriate.)

		Outstanding	Above Average	Average	Below Average	Poor	N/A
5a.	Plans/Specifications accuracy						
5b.	Consistency with budget						
5c.	Responsiveness to Agency Staff						
5d.	Overall Rating						

6. AUTHORIZING SIGNATURES

6a. Agency Design Team Leader _____ Date: _____

6b. Agency Project Manager _____ Date: _____

6c. Agency Public Works Manager Date:

6d. Consultant Representative Date:

See Reverse Side

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PLANS/SPECIFICATIONS ACCURACY	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A	Responsiveness To Staff	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A
Plans Specifications clear and concise							Timely Responses						
Plans/Specs Coordination							Attitude toward Client and review bodies						
Plans/Specs properly formatted							Follows directions and Chain of responsibility						
Code Requirements covered							Work product delivered on time						
Adhered to Agency Standard Drawings/Specs							Timeliness in notifying Agency of major problems						
Drawings reflect existing conditions							Resolution of field Problems						
As-Built Drawings							Consistency with budget						
Quality Design							Reasonable Agreement negotiation						
Change Orders due to design deficiencies are minimized							Adherence to fee schedule						
							Adherence to project Budget						

Section III **EXPLANATIONS AND SUPPLEMENTAL INFORMATION**

(Attach additional documentation as needed)

Item _____: _____

_____

Item _____: _____

_____

Item _____: _____

Item _____: _____

_____

Item _____: _____

_____

Item _____: _____

_____

***Indicates supporting documentation attached.**

Attachment: Zumwalt-Hanford A&E Consultant Agreement (PW: Approval of seven (7) On-Call Architectural and Engineering Consultant

EXHIBIT "E"

Consultant Annual Certification of Indirect Costs and Financial Management System

(LAPM form 10-K)

Not Applicable to this contract.

Zumwalt Hansen shall NOT perform work on projects that receive Federal or State Funding for any phase of the project, and therefore shall not be required to comply with items in the contract that are required ONLY for federal or state funded projects.

EXHIBIT "F"

Disclosure of Lobbying Activities

(LAPM form 10-Q)

Not Applicable to this contract.

Zumwalt Hansen shall NOT perform work on projects that receive Federal or State Funding for any phase of the project, and therefore shall not be required to comply with items in the contract that are required ONLY for federal or state funded projects.

AGENDA
STAFF REPORT

MEETING DATE: 4/6/2021	**AGENDA SECTION:** A

SUBJECT:
Council Future Agenda Items

FISCAL IMPACT:

ATTACHMENTS:
Council Future Agenda Items

Council Future Agenda Items				
Originated Date	**Item**	**Originator**	**Staff Lead**	**Date Estimate**
4/7/20	Discussion of Pay for Parking Options in the Downtown Area	Council Consensus	John Doyel	5/4/2021
9/3/20	Proposed Rates & Fees adjustments	City Manager	Various Staff	5/4/2021
9/3/20	Revised Business License Ordinance	Finance	Various Staff	TBD
9/9/20	Revised Refuse Ordinance	Public Works	Jim Ross	4/20/2021
10/02/20	Introduction Hemp Ordinance	Council Consensus	Various Staff	4/6/2021
11/12/20	Discussion of Coe Park and changes to traffic and pedestrian to flow to enhance park usages	City Manager	Various Staff	5/4/2021
6/18/20	Discussion of Courthouse improvements and financing options	Council Consensus	Brad Albert	5/4/2021
3/3/2021	Development of Commission Handbook and Ordinance Updates	City Manager	Mario Cifuentez	4/20/2021
3/12/2021	Review of elements within the 2020 Parks & Rec Master Plan	Park & Comm Svcs. Dir.	Brad Albert	4/20/2021, 5/4/2021, 5/18/2021