



**REQUEST FOR QUALIFICATIONS (RFQ)
FOR
CONSTRUCTION INSPECTION SERVICES FOR THE
GRAND AVENUE PATHWAY CONNECTOR PROJECT**

May 25, 2018

Introduction

The City of San Rafael (City) hereby requests Statements of Qualifications (Statements) from qualified consultants for construction inspection services associated with the Grand Avenue Pathway Connector Project. Statements shall be submitted by firms that have a capable and demonstrable background in the type of work described in the section entitled “Scope of Work” of this notice. In addition, all interested firms shall have sufficient, readily available resources, in the form of trained personnel, support services, specialized consultants and financial resources, to carry out the work without delay or shortcomings.

The City’s construction inspection consultant shall be able to provide/meet the following minimum requirements and qualifications:

1. Knowledge of current Caltrans Standard Plans and Standard Specifications.
2. Knowledge of the County of Marin Uniform Construction Standards.
3. Ability to read and interpret plans and specifications.
4. Ability to work with a computer or tablet (knowledge of Microsoft Office).
5. Ability to conduct business as a representative of the City of San Rafael.

Background

The City has secured federal funds to install a new prefabricated pedestrian bridge to be located on Grand Avenue on the east side of the existing vehicular bridge crossing the San Rafael Canal between Second Street and Francisco Boulevard East (i.e., between Toyota Marin and the City owned property adjacent to Montecito Plaza). The City anticipates construction beginning in August/September 2018 with a 120-working day contract. The work will include installation of the new bridge, abutments, piles, approach sidewalk, electrical work, methacrylate deck treatment, and striping.

Anticipated Schedule

- Statements due to Public Works See the “Statement Requirements” section of this RFQ
- Consultant Interviews June 2018
- Award Contract by City Council July 2018
- Notice to Proceed August or September 2018

Scope of Services

The City’s construction inspection consultant shall be able to provide construction inspection services including, but not limited to, the following:

1. Review plans, specifications, and other contract and construction-related documents. Become familiar with traffic control plans, construction schedules, construction sequences, and permit requirements from other agencies.
2. Attend pre-construction meetings and present concerns, if any.

3. Interpret plans, specifications, and regulations and ensure that the contractor is following its contract. Provide daily inspections to ensure the project is constructed according to contract documents. The level of effort for daily inspections shall be coordinated with the Resident Engineer (RE) for each project.
4. Notify the RE about non-compliance and assist the RE in correcting compliance problems with the contractor as soon as they are discovered.
5. Prepare and maintain daily diaries showing site and weather conditions, traffic control measures, stormwater management, labor, equipment, and materials used, quantity of work performed, and major incidents/safety violations. Daily diaries shall be submitted to the RE on a weekly basis and shall include photos.
6. Review construction progress schedules on a regular basis, verify schedules are on track with project milestones, identify deviations, and ensure that corrective actions are taken to bring projects back on schedule.
7. Provide accurate measurements of work completed by contractors in accordance with contract documents for the preparation of progress payments.
8. Review and evaluate proposed change orders and/or estimates for reasonableness and cost effectiveness, and provide recommendations to the RE.
9. Monitor contractor's compliance with the established safety program and response to deficiencies and hazards, and investigate and report on accidents.
10. Review soil compaction and material testing certifications of compliance (COC). Coordinate with the City's on-call material sampling and testing consultant.
11. Ensure contractors do not install materials without approved material testing certifications. Any failed tests shall be reported to the RE.
12. Attend weekly progress meetings, when invited, to communicate, coordinate, and resolve any issues that may arise at the job site.
13. Conduct field construction employee interviews, as directed by the RE, to comply with Equal Employment Opportunity Law and David Bacon Act. Interviews shall be provided to the RE.
14. Prepare project punch list with RE.
15. Upon project completion, conduct final inspection with RE.
16. Review contractor's certified payroll for compliance with applicable minimum wage rates.
17. Review contractor submittals and RFIs as needed.

Statement Requirements

The Statement shall be concise, well organized, and demonstrate an understanding of the Scope of Services as outlined in this RFQ. Statements shall be limited to no more than eight (8) one-sided pages (8½"x11", or 11"x17" for fold-out drawings), inclusive of resumes, graphics, pictures, photographs, dividers, front and back covers, cover letter, etc. The required federal-aid forms do not count toward the page limit. Statement submittals shall consist of three (3) bound sets and one (1) PDF on flash drive; no emailed or faxed Statements will be accepted.

Statements shall be evaluated based on the Evaluation Criteria section of this RFQ.

At a minimum, Statements shall include:

1. Statements must be received no later than **2:00 PM, local time, on June 15, 2018**, at the Department of Public Works. Address to:

City of San Rafael
Public Works Department
111 Morphew Street
San Rafael, CA 94901
Attn: Hunter Young

2. Statements shall be submitted in sealed packages and clearly marked with the name of the consultant and "Grand Avenue Pathway Connector Project."
3. Cover letter signed by the person authorized to negotiate a contract for proposed services with the City on behalf of the Proposal team. The cover letter must state that the sample Professional Services Agreement is acceptable as-is.
4. Experience and Technical Competence – The consultant shall describe his or her experience in completing similar consulting efforts, especially installation of bridges and foundation work. List in reverse chronological order for the last four years projects completed for which your firm provided construction inspection services. Name of clients, project managers, telephone numbers, type of work performed, and the value of the consulting contracts shall be included. Projects currently being performed may be submitted for the City's review.
5. Project Organization and Key Personnel
 - a. The Statement must include a discussion of consultant's staffing plans and level of personnel to be involved, their qualification, experience, resumes, roles, and the name of the individual who will be in overall charge and responsibility for coordination with the City. Do not submit resumes for individuals who do not have a high probability of actually leading or working on the project.
 - b. Identify proposed sub-consultants (if any) that will be retained to perform specified items of work listed in the Scope of Services.

The consultant shall be aware of the following:

- Statements and/or modifications to Statements received after the hour and date specified in this RFQ will be rejected and returned unopened to the proposer.
- All Statements shall be submitted according to the specifications set forth in the RFQ. Failure to adhere to these specifications may be cause for rejection.
- Once submitted, Statements, including the composition of the consulting staff, shall not be changed without prior written consent. The City requires one inspector for the duration of the contract.

- All requests for clarification for this RFQ must be made in writing at least 96 hours prior to the due date as set forth in this RFQ. Consultants shall contact Hunter Young at hunter.young@cityofsanrafael.org.

The City will only respond to written questions from consultants. The City cannot respond to verbal questions submitted by telephone or in person. All addenda will be posted on the City's Web site. By submitting a Statement, the proposer affirms that they are aware of any addenda and have prepared their Statement accordingly. No allowances will be made for a proposer's failure to inform themselves of addenda content. A link to the addenda may be accessed at <https://www.cityofsanrafael.org/projects-out-to-bid/>.

The City reserves the right to revise the RFQ prior to the indicated due date. The City may consider extending the due date for RFQ due to significant revisions to Scope of Services.

Payment and Cost Estimate

The method of payment to the successful proposer shall be on a time and materials basis with a maximum "not to exceed" fee, as set by the proposer in his/her Proposal, as being the maximum cost to perform all work. This figure shall include direct costs, including labor, overhead, profit, and expenses, such as, but not limited to, transportation, communications, subsistence, materials, and any subcontracted items of work. Progress payments will be based on actual hours and contract hourly rates charged to the project on a monthly basis.

The prime Consultant shall submit his/her cost proposal using the attached Exhibit 10-H, Example 2 form. The Consultant shall:

- Show broken down by job classifications and types of costs and/or rates the direct labor cost;
- Provide the indirect cost rate (ICR) for the current fiscal year; and
- Itemize by items of work quantity, unit prices, and total price for each item listed under "other direct cost."

The Schedule of Fees shall be submitted with the Statement in a separate, sealed envelope. Inclusion of the Schedule of Fees in the Statement is grounds for rejection of the Statement.

Each invoice submitted to the City for payment shall contain a brief description of the work billed on that invoice, total billed to date, total paid to date, and amount remaining.

Evaluation Criteria

Ranking of the Statements will be weighted based on the following point system (100 points maximum):

1. Inclusion of all required items and completeness of the Proposal (10 points)
2. Understanding of the work to be done (25 points)
3. Previous experience of similar projects completed on time and within budget (35 points)
4. Qualified and experienced personnel in the project team (20 points)
5. Familiarity with state and federal procedures (10 points)

The City will notify each consultant regarding the outcome of the selection process.

The City may reject any or all of the Statements if it deems such action are in the public interest.

Consultant Nominating and Selection Process

- A Consultant Selection Committee will be established for this project. Each member of the committee will evaluate each submitted Statement.
- The Committee will select a shortlist of firms qualified for this project to participate in an oral interview.
- Based on qualifications provided in Statements and oral interviews, the committee will rank the consultants. The top-ranked firm will be the selected firm.
- The Committee, or representative, will enter into negotiations with the selected firm. The negotiations will cover: Scope of Work, contract terms and conditions, and profit. If the Committee is unable to reach an acceptable agreement with the selected firm, the negotiations will be terminated and negotiations with the second-ranked firm will be initiated.
- After negotiating a proposed agreement that is fair and reasonable, the Public Works Director will recommend to the City Council the approval of the agreement. Final authority to approve the agreement rests with the City Council.

Disadvantaged Business Enterprise (DBE) Policy

As this project is federally funded, the contract is subject to regulations in accordance with Title 49, Code of Federal Regulations, Part 26 (49 CFR 26).

The consultant shall ensure that certified DBE firms have the opportunity to participate in the performance of the contract and shall take all necessary and reasonable steps to facilitate participation by DBE firms for such assurance. For this contract, the City has established a DBE goal of 0.0%. While the goal is 0.0%, proposers are nevertheless required to submit the required DBE documents noted in the "Attachments" section of this RFQ.

For additional information, please see Caltrans Exhibit 10-I, "Notice to Proposers DBE Information," provided as an attachment. DBE Regulations: Bidders shall be fully informed with respect to the requirements of the DBE regulations. The DBE regulations in their entirety are incorporated herein by reference. Please note:

1. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
2. A certified DBE may participate as a prime consultant, sub consultant, joint venture partner, as a vendor of materials or supplies, or as a trucking company.
3. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
4. The proposer shall list only one subcontractor for each portion of work as defined in their proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.

5. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

More information on the DBE application process and recent policy changes is available on the California Department of Transportation (Caltrans) Web site <http://www.dot.ca.gov/hq/bep/>

Special Conditions

- **Professional Services Agreement**
The consultant selected to provide the scope of services shall use the City of San Rafael's standard Professional Services Agreement as amended for use on federal-aid contracts. A copy of the template of this agreement is attached to this RFQ. Submittal of a Statement is acceptance of the Professional Services Agreement as-is. Contractually required insurance coverage and endorsement information is shown in the body of the document.
- **Reservations**
This RFQ does not commit the City to award a contract, to defray any costs incurred in the preparation of a Statement pursuant to this RFQ, or to procure or contract for work.
- **RFQ as a Public Record**
All Statements submitted in response to this RFQ become the property of the City and thus become public records and, as such, may be subject to public review.
- **Right to Cancel**
The City reserves the right to cancel or change, for any or no reason, in part or in its entirety, this RFQ, including but not limited to: selection schedule, submittal date, and submittal requirements.
- **Additional Information**
The City reserves the right to request additional information and/or clarification from any or all respondents to this RFQ.
- **Public Information**
Consultants who wish to release information regarding the consultant selection process, contract award, or data provided by the City at any Public Hearing, must receive prior written approval from the City before disclosing such information to the public.
- **Financial Management and Accounting System Requirements**
No consultant contract will be awarded to a consulting firm who does not possess an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The contract associated with this agreement and supporting documents are subject to audit or review by Caltrans' Audits and Investigations or the federal government.
- **Protest Procedures**
This RFQ and contract is subject to the protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

- Required Documents

Caltrans forms and Exhibits from the Local Assistance Procedures Manual (LAPM) as noted in the Attachments section of this RFP may be required. Failure to submit the required forms at the required intervals will render a bid non-responsive.

Attachments

Required by Consultant with Proposal Submittal:

1. Exhibit 10-O1, "Consultant Proposal DBE Commitment"
2. Exhibit 10-H, "Sample Cost Proposal" (10-H, must be submitted in separate, sealed envelope) – for prime and all sub consultants, if any
3. Exhibit 10-Q, "Disclosure of Lobbying Activities"

Required by Consultant and City after Contract Execution:

1. Exhibit 10-O2, "Consultant Contract DBE Commitment" (Exhibit 10-O2 will be turned into the City following the conclusion of cost negotiations and included as an attachment in the fully executed contract)
2. Exhibit 17-F, "Final Report – Utilization of DBEs"
3. Exhibit 17-O, "DBE Certification Status Change"

For informational purposes only, the following is provided:

1. City of San Rafael *Professional Services Agreement for Federal-Aid Projects* Template (subject to change by the City Attorney's office, if necessary)
2. Exhibit 10-I, "Notice to Proposers DBE Information" (for informational purposes only)
3. Plans and Specifications for this project are accessible at www.blueprintexpress.com/sanrafael. Plans/specs need not be purchased to review them.

Thank you for your interest in contracting opportunities with the City of San Rafael.

Sincerely,



Hunter Young
Senior Civil Engineer

EXHIBIT 10-01 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		11. TOTAL CLAIMED DBE PARTICIPATION	%
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____	IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.		_____ _____ _____
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
20. Local Agency Representative's Signature _____ 21. Date _____		12. Preparer's Signature _____ 13. Date _____	
22. Local Agency Representative's Name _____ 23. Phone _____		14. Preparer's Name _____ 15. Phone _____	
24. Local Agency Representative's Title _____	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 COMMITMENTCONSULTANT 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 Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
- 4. Project Location** - Enter the project location as it appears on the project advertisement.
- 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. 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.
- 21. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 22. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 23. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 24. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

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 _____ Prime Consultant Subconsultant 2nd Tier Subconsultant

Project No. _____ Contract No. _____ Participation Amount \$ _____ Date _____

For Combined Rate	Fringe Benefit % + General & Administrative %	=	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 _____ = _____ %

BILLING INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ²		
	Straight ³	OT(1.5x)	OT(2x)
John Doe – Project Manager * Civil Engineer II	\$0.00	\$0.00	\$0.00
Sue Jones – Construction Engineer/Inspector Engineer I	\$0.00	\$0.00	\$0.00
Buddy Black – Claims Engineer Engineer III	\$0.00	\$0.00	\$0.00
Land Surveyor **	\$0.00	\$0.00	\$0.00
Technician	\$0.00	\$0.00	\$0.00

CALCULATION INFORMATION

Effective Date of Hourly Rate	From	To	Actual or Avg. Hourly Rate ⁴	% or \$ Increase	Hourly Range - for Classifications Only	
						01/01/2016
01/01/2017	12/31/2017	12/31/2017	\$0.00	0.0%		
01/01/2018	12/31/2018	12/31/2018	\$0.00	0.0%		
01/01/2016	12/31/2016	12/31/2016	\$0.00			Not Applicable
01/01/2017	12/31/2017	12/31/2017	\$0.00	0.0%		
01/01/2018	12/31/2018	12/31/2018	\$0.00	0.0%		
01/01/2016	12/31/2016	12/31/2016	\$0.00			Not Applicable
01/01/2017	12/31/2017	12/31/2017	\$0.00	0.0%		
01/01/2018	12/31/2018	12/31/2018	\$0.00	0.0%		
01/01/2016	12/31/2016	12/31/2016	\$0.00			\$00 - \$00
01/01/2017	12/31/2017	12/31/2017	\$0.00	0.0%		\$00 - \$00
01/01/2018	12/31/2018	12/31/2018	\$0.00	0.0%		\$00 - \$00
01/01/2016	12/31/2016	12/31/2016	\$0.00			\$00 - \$00
01/01/2017	12/31/2017	12/31/2017	\$0.00	0.0%		\$00 - \$00
01/01/2018	12/31/2018	12/31/2018	\$0.00	0.0%		\$00 - \$00

(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 _____ 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			\$	\$
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: _____ Title *: _____

Signature : _____ Date of Certification (mm/dd/yyyy): _____

Email: _____ Phone Number: _____

Address: _____

* 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:

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial <input type="checkbox"/> b. material change</p> <p>For Material Change Only: year ____ quarter ____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known</p> <p>Congressional District, if known _____</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known _____</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p>	
<p>10. Name and Address of Lobby Entity (If individual, last name, first name, MI)</p> <p>(attach Continuation Sheet(s) if necessary)</p>	<p>11. Individuals Performing Services (including address if different from No. 10) (last name, first name, MI)</p>	
<p>12. Amount of Payment (check all that apply)</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>14. Type of Payment (check all that apply)</p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____</p>	
<p>13. Form of Payment (check all that apply):</p> <p><input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____</p>		
<p>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:</p> <p>(attach Continuation Sheet(s) if necessary)</p>		
<p>16. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/></p>		
<p>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.</p>		
		<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>
<p>Authorized for Local Reproduction Standard Form - LLL</p>		
<p>Federal Use Only:</p>		

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

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 (MI).
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

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

The Agency has established a DBE goal for this Contract of _____ 0.00 %

OR

The Agency has not established a goal for this Contract. However, proposers are encouraged to obtain DBE participation for this contract.

1. TERMS AS USED IN THIS DOCUMENT

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Contracts financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Consultant must ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, Exhibit 10-O1 *Consultant Proposal DBE Commitment* must be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-O2 *Consultant Contract DBE Information* must be included with the Request for Proposal. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
 - 2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
 - 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity Web site at: <http://www.dot.ca.gov/hq/bep/>.
 - 1. Click on the link in the left menu titled *Disadvantaged Business Enterprise*;
 - 2. Click on Search for a DBE Firm link;
 - 3. Click on *Access to the DBE Query Form* located on the first line in the center of the page.

Searches can be performed by one or more criteria. Follow instructions on the screen.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the

purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

**AGREEMENT FOR PROFESSIONAL SERVICES WITH
[NAME OF CONSULTANT]
FOR CONSTRUCTION INSPECTION SERVICES ASSOCIATED WITH THE
GRAND AVENUE CONNECTOR PATHWAY PROJECT**

ARTICLE I INTRODUCTION

A. This contract is entered into as of the _____ day of _____, 2018 by and between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the “CONSULTANT” is as follows: _____,
incorporated in or authorized to do business in the State of California.

The Project Manager for the “CONSULTANT” will be (NAME)

The name of the “LOCAL AGENCY” is as follows: City of San Rafael

The Contract Administrator for LOCAL AGENCY will be Bill Guerin, Public Works Director

- B. The work to be performed under this contract is described in Article II entitled Statement of Work and the approved CONSULTANT’s Cost Proposal dated (DATE). The approved CONSULTANT’s Cost Proposal is attached hereto (Attachment I) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.
- C. CONSULTANT agrees to indemnify and hold harmless and defend LOCAL AGENCY, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to willful misconduct, recklessness, negligent acts, errors, or omissions of CONSULTANT. CONSULTANT will reimburse LOCAL AGENCY for any expenditure, including reasonable attorney fees, incurred by LOCAL AGENCY in defending against claims ultimately determined to be due to willful misconduct, negligent acts, errors, or omissions of CONSULTANT. In no event shall the cost to defend charged to CONSULTANT exceed the design professional’s proportionate percentage of fault.
- D. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of LOCAL AGENCY.
- E. Without the written consent of LOCAL AGENCY, this contract is not assignable by CONSULTANT either in whole or in part.
- F. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- G. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT’s expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II STATEMENT OF WORK

The CONSULTANT shall perform the services specified in the Scope of Work, dated [INSERT DATE], attached hereto as Exhibit A and incorporated herein by reference. If there is any conflict between the terms of the Cost Proposal, attached hereto as Exhibit B, and the terms of this contract, the terms of this contract shall take precedence.

ARTICLE III CONSULTANT'S REPORTS OR MEETINGS

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

ARTICLE IV PERFORMANCE PERIOD (Verbatim)

- A. This contract shall go into effect as of the date first hereinabove written, and the CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. This Agreement shall end upon completion of the work to the satisfaction of the LOCAL AGENCY'S Contract Administrator.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on LOCAL AGENCY until the contract is fully executed and approved by LOCAL AGENCY.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS (Verbatim)

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal (Attachment Number). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.
- D. After a project to be performed under this contract is identified by LOCAL AGENCY, LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's Cost Proposal.
- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

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- I. CONSULTANT shall not commence performance of work or services until this contract has been approved by LOCAL AGENCY, and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this contract.
 - J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.
 - K. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task 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 contract number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract, must be reimbursed by CONSULTANT prior to the expiration or termination of this contract. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

City of San Rafael
Public Works Department
Bill Guerin
111 Morphew Street
San Rafael, CA 94901

- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Contract.
- M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.
- N. If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.
- P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this contract shall not exceed \$ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.

ARTICLE VI TERMINATION (Verbatim)

- A. LOCAL AGENCY reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.
- B. LOCAL AGENCY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, LOCAL AGENCY may proceed with the work in any manner deemed proper by LOCAL AGENCY. If LOCAL AGENCY terminates this contract with CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

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- C. The maximum amount for which the LOCAL AGENCY shall be liable if this contract is terminated is \$0.00 dollars.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS (Verbatim)

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

ARTICLE VIII RETENTION OF RECORDS/AUDIT (Verbatim)

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

ARTICLE IX AUDIT REVIEW PROCEDURES (Verbatim)

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

governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

ARTICLE X SUBCONTRACTING (Verbatim)

- A. Nothing contained in this contract or otherwise, shall create any contractual relation between LOCAL AGENCY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from LOCAL AGENCY'S obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by LOCAL AGENCY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by LOCAL AGENCY.
- D. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by LOCAL AGENCY's Contract Administrator prior to the start of work by the subconsultant(s).

ARTICLE XI EQUIPMENT PURCHASE (Verbatim)

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

ARTICLE XII STATE PREVAILING WAGE RATES (Verbatim)

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

ARTICLE XIII CONFLICT OF INTEREST (Verbatim)

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

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION (Verbatim)

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

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING (Verbatim)

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
 - 1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or

federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XVI STATEMENT OF COMPLIANCE

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. 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.
- C. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California 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.
- D. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the

discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and 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. Any exceptions to this certification must be disclosed to LOCAL AGENCY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

ARTICLE XVIII FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- B. This contract is valid and enforceable only if sufficient funds are made available to LOCAL AGENCY for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this contract in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to void the contract under the 30-day termination clause pursuant to Article VI, or by mutual agreement to amend the contract to reflect any reduction of funds.

ARTICLE XIX CHANGE IN TERMS

- A. The terms and conditions of this contract, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.
- B. This written contract shall supersede any and all prior agreements, oral or written, regarding the subject matter between the CONSULTANT and the LOCAL AGENCY.
- C. No other agreement, promise or statement, written or oral, relating to the subject matter of this contract, shall be valid or binding, except by way of a written amendment to this contract.
- D. The terms and conditions of this contract shall not be altered or modified except by a written amendment to this contract signed by the CONSULTANT and the LOCAL AGENCY.

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- E. If any conflicts arise between the terms and conditions of this contract, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this contract shall control.
 - F. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.
 - G. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this contract without prior written approval by LOCAL AGENCY's Contract Administrator.

ARTICLE XX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this contract shall be that stated in the Contract Documents at the time of advertisement. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT 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, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT 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 LOCAL AGENCY deems appropriate.
- D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).
- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than

would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

- I. 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 consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], 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.
- K. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within 30 days.

ARTICLE XXI CONTINGENT FEE

CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon 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, LOCAL AGENCY has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXII DISPUTES

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

ARTICLE XXIII INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

ARTICLE XXIV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

ARTICLE XXV INSURANCE

CONSULTANT is not required to show evidence of general comprehensive liability insurance.

- A. During the term of this contract, CONSULTANT shall maintain, at no expense to LOCAL AGENCY, the following insurance policies:
- B. The insurance coverage required of the CONSULTANT in Subparagraph A above, shall also meet the following requirements:
 - 1. Except for professional liability insurance, the insurance policies shall be specifically endorsed to include the LOCAL AGENCY, its officers, agents, employees, and volunteers, as additionally named insureds under the policies.
 - 2. The additional insured coverage under CONSULTANT'S insurance policies shall be primary with respect to any insurance or coverage maintained by LOCAL AGENCY and shall not call upon LOCAL AGENCY's insurance or self-insurance coverage for any contribution. The "primary and noncontributory" coverage in CONSULTANT'S policies shall be at least as broad as ISO form CG20 01 04 13.
 - 3. Except for professional liability insurance, the insurance policies shall include, in their text or by endorsement, coverage for contractual liability and personal injury.
 - 4. By execution of this contract, CONSULTANT hereby grants to LOCAL AGENCY a waiver of any right to subrogation which any insurer of CONSULTANT may acquire against LOCAL AGENCY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not LOCAL AGENCY has received a waiver of subrogation endorsement from the insurer.
 - 5. If the insurance is written on a Claims Made Form, then, following termination of this contract, said insurance coverage shall survive for a period of not less than five years.

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6. The insurance policies shall provide for a retroactive date of placement coinciding with the effective date of this contract.
 7. The limits of insurance required in this contract may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of LOCAL AGENCY (if agreed to in a written contract or agreement) before LOCAL AGENCY'S own insurance or self-insurance shall be called upon to protect it as a named insured.
 8. It shall be a requirement under this contract that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to LOCAL AGENCY or any other additional insured party. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this contract; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
 9. In the event said insurance coverage expires at any time or times during the term of this contract, CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.
- C. Deductibles and SIR's. Any deductibles or self-insured retentions in CONSULTANT's insurance policies must be declared to and approved by the LOCAL AGENCY's Contract Manager and LOCAL AGENCY's City Attorney, and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or LOCAL AGENCY or other additional insured party. At LOCAL AGENCY's option, the deductibles or self-insured retentions with respect to LOCAL AGENCY shall be reduced or eliminated to LOCAL AGENCY's satisfaction, or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.
- D. Subcontractors. CONSULTANT agrees to include with all subcontractors in their subcontract the same requirements and provisions of this contract regarding indemnity and insurance to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by CONSULTANT agree to be bound to CONSULTANT and LOCAL AGENCY in the same manner and to the same extent as CONSULTANT is bound to LOCAL AGENCY under this contract. All subcontractors shall provide insurance with a blanket additional insured endorsement or coverage at least as broad as ISO form CB 20 38 04 13, and CONSULTANT shall provide a copy of such endorsement of policy provision to LOCAL AGENCY.
- E. Proof of Insurance. CONSULTANT shall provide to the LOCAL AGENCY's Contract Manager or LOCAL AGENCY'S City Attorney all of the following: (1) Certificates of Insurance evidencing the insurance coverage required in this contract; (2) a copy of the policy declaration page and/or endorsement page listing all policy endorsements for the commercial general liability policy, and (3) excerpts of policy language or specific endorsements evidencing the other insurance requirements set forth in this contract. LOCAL AGENCY reserves the right to obtain a full certified copy of any insurance policy and endorsements from CONSULTANT. Failure to exercise this right shall not constitute a waiver of the right to exercise it later. The insurance shall be approved as to form and sufficiency by LOCAL AGENCY Contract Manager and the LOCAL AGENCY City Attorney.

ARTICLE XXVI OWNERSHIP OF DATA

- A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in LOCAL AGENCY; and no further agreement will be necessary to transfer ownership to LOCAL AGENCY. CONSULTANT shall furnish LOCAL AGENCY all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.
- C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by LOCAL AGENCY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by LOCAL AGENCY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by 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. LOCAL AGENCY 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.

ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by LOCAL AGENCY'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 LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this contract.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

ARTICLE XXVIII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

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- C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.
 - D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
 - E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.
 - F. For PS&E contracts, all information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than LOCAL AGENCY.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 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 may be evaluated by LOCAL AGENCY at LOCAL AGENCY'S discretion. If performed, a copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

ARTICLE XXXI RETENTION OF FUNDS

- A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- B. No retainage will be held by the LOCAL AGENCY from progress payments due the prime CONSULTANT. Any retainage held by the prime CONSULTANT or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of this provision shall subject the violating prime CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the prime CONSULTANT, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime CONSULTANT and subconsultants.

ARTICLE XXXII NOTIFICATION

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

CONSULTANT: [CONSULTANT NAME]
[NAME], Project Manager
[ADDRESS]

LOCAL AGENCY: City of San Rafael
Bill Guerin, Contract Administrator
111 Morphew Street
San Rafael, CA 94901

ARTICLE XXXIII CONTRACT

The two parties to this contract, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this contract 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 contract as evidenced by the signatures below.

ARTICLE XXXIV NO THIRD PARTY BENEFICIARIES

LOCAL AGENCY and CONSULTANT do not intend, by any provision of this contract, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

ARTICLE XXXV COSTS AND ATTORNEY'S FEES

The prevailing party in any action brought to enforce the terms and conditions of this contract, or arising out of the performance of this contract, may recover its reasonable costs (including claims administration) and attorney's fees expended in connection with such action.

ARTICLE XXXVI LOCAL AGENCY BUSINESS LICENSE / OTHER TAXES

CONSULTANT shall obtain and maintain during the duration of this contract, a LOCAL AGENCY business license as required by the San Rafael Municipal Code. CONSULTANT shall pay any and all state and federal taxes and any other applicable taxes. LOCAL AGENCY shall not be required to pay for any work performed under this contract, until CONSULTANT has provided LOCAL AGENCY with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

ARTICLE XXXVII WAIVERS

The waiver by either party of any breach or violation of any term, covenant or condition of this contract, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this contract, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this contract or any applicable law, ordinance or regulation.

ARTICLE XXXVIII APPLICABLE LAW

The laws of the State of California shall govern this contract.

CONSULTANT shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this contract. CONSULTANT shall perform all services under this contract in accordance with these laws, ordinances, codes and regulations. CONSULTANT shall release, defend, indemnify and hold harmless LOCAL AGENCY, its officers, agents and employees from any and all damages, liabilities, penalties, fines and all other consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

ARTICLE XXXIX SIGNATURES

CITY OF SAN RAFAEL

CONSULTANT

Jim Schutz
City Manager

By: _____

Title: _____

and

ATTEST:

CONSULTANT

LINDSAY LARA
Interim City Clerk

By: _____

Title: _____

APPROVED AS TO FORM:

ROBERT F. EPSTEIN
City Attorney