

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into this ___ day of _____ 2021, between the CITY OF STOCKTON, a municipal corporation ("City"), and **ADVANCED MOBILITY GROUP** whose address is **3003 OAK ROAD, SUITE 100, WALNUT CREEK, CA 94597** ("Consultant") for the **TRANSPORTATION MANAGEMENT CENTER EQUIPMENT UPGRADE (PROJECT NO. WT21010/FEDERAL PROJECT NO. CML-5008(191)), formerly Project No. PW 2110**, hereinafter referred to as "Project".

RECITALS

- A. Consultant represents that it is licensed in the State of California and is qualified, willing and able to provide the services proposed in the SCOPE OF WORK section of this Contract.
- B. City finds it necessary and advisable to use the services of the Consultant for the purposes provided in this Contract.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions in this Contract, City and Consultant agree as follows:

1. SCOPE OF SERVICES. Subject to the terms and conditions set forth in this Contract, Consultant shall undertake and complete the services described in **Exhibit A**. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A and compatible with the standards of the profession. Consultant agrees that it shall produce a fully complete project that is acceptable to the City.

2. COMPENSATION. City shall pay Consultant for services outlined in **Exhibit A** according to the fee not to exceed the schedule detailed in **Exhibit B**, which is attached to this Contract and incorporated by this reference. Consultant agrees this fee is for full remuneration for performing all services and furnishing all staffing and materials called for in the scope of services. The payments shall be made on a monthly basis upon receipt and approval of Consultant's invoice. Total compensation for services and reimbursement for costs shall not exceed **\$217,778.44** or as otherwise mutually agreed to in a Contract Amendment.

3. INSURANCE. During the term of this Contract, Consultant shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached **Exhibit C** and shall otherwise comply with the other provisions of **Exhibit C**.

4. INDEMNITY AND HOLD HARMLESS. With the exception that this section shall in no event be construed to require indemnification by Consultant to a greater extent than permitted under the public policy of the State of California, Consultant shall indemnify, and hold harmless City, its Mayor, Council, officials, and employees from and against any and all claims and causes of action which result in liabilities, judgments, awards, losses, damages, expenses, and costs (including reasonable attorneys' fees, expert and consultant fees, and other expenses of litigation) including, but not limited to, death or injury to persons, or damage to property, which arise out of any violation of federal, state, or municipal law or ordinance, to the extent damages are caused by the Consultant's negligent services provided under this Agreement, or are in any way caused by the negligent performance of work by the Consultant or Consultant's officers, agents, employees, or subcontractor. Consultant shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Consultant to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Consultant under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification by Consultant to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, Consultant shall indemnify, defend, and hold harmless City, its Mayor, Council, officials, representatives, and employees from and against claims, losses, expenses, and costs including, but not limited to, reasonable attorneys' fees, arising out of any claim brought against the City by an employee of Consultant, regardless of whether such claim may be covered by any applicable workers compensation insurance. Consultant's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant under workers' compensation acts, disability acts, or other employee benefit acts.

5. SCHEDULE AND TERM. Consultant shall perform the scope of work as described in **Exhibit A** according to the schedule detailed in **Exhibit A**, which is attached to this Contract and incorporated by this reference. This contract shall commence on the date written above and shall expire on **April 31, 2028**, unless extended by mutual agreement through the issuance of a Contract Amendment.

- a. Invoices submitted by Consultant to City must contain a brief description of work performed, time used and City project number. Payment shall be made within thirty (30) days of approval of invoice by City.

- b. Upon completion of work and acceptance by City, Consultant shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. City shall have no obligation or liability to pay any invoice for work performed which Consultant fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after work is accepted by City.

6. CONFORMANCE TO APPLICABLE LAWS. Consultant shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Contract on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

a. TITLE VI

Title VI of the Civil Rights Act of 1964 requires that “no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” (42 USC Section 2000d).
<http://www.dol.gov/oasam/regs/statutes/titlevi.htm> .

The City of Stockton requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

b. DISCRIMINATION AND HARASSMENT POLICY

The City of Stockton has a Discrimination and Harassment Policy (**Exhibit D**). The purpose of this policy is to reaffirm the City’s commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating, and resolving complaints of discrimination and harassment in the workplace.

c. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

The bidder shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2.

d. PREVAILING WAGE RATES

Consultant and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. Consultant performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime Consultant and each subcontractor's responsibility to insure that the prevailing wage rates of concern is current and paid to the employee.

- i. The Consultant performing the work shall be responsible for obtaining a copy of the State wage rate determination. State wage rates may be obtained _____ at <http://www.dir.ca.gov/OPRL/pwd/Determinations/Northern/Northern.pdf>. The Consultant shall be responsible for posting said wage rates at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.
- ii. Should the Consultant choose to work on a Saturday, Sunday or on a holiday recognized by the Labor Unions, the Consultant shall reimburse the City the actual cost of engineering, inspection, superintendence, and or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the City, reimbursement will not be required. To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California. To forfeit as a penalty to City the sum of TWENTY FIVE AND NO/100 DOLLARS (\$25.00) for each laborer, worker, or mechanic employed by Consultant, or by any subcontractor under Consultant, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California. That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

- iii. **PAYROLL RECORDS** The Consultant to whom the contract is awarded shall insure that the prime and each subcontractor will, in accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention: Contract Compliance Officer. It shall be the Consultant's responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors. Additionally, certified payroll records must be uploaded to the DIR website as required by labor code.
- iv. **APPRENTICESHIP STANDARDS** The Consultant shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the 1) certified approval by local joint apprenticeship committees for the employment and training of apprentices, and 2) contribution of funds to administer and conduct apprenticeship programs, if applicable to the job.

e. **APPENDIX E OF THE TITLE VI ASSURANCES**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest agrees to comply with the Appendix E of the Title VI Assurances attached as Exhibit F.

7. RIGHTS AND DUTIES OF CITY. City shall make available to Consultant all data and information in the possession of City which both parties deem necessary to complete the work, and City shall actively aid and assist Consultant in obtaining such information as may be deemed necessary from other agencies and individuals.

8. OBLIGATIONS OF CONSULTANT. Throughout the term of this Contract, Consultant represents and warrants that it has or will have at the time this Contract is executed, all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required for the Consultant to practice its professions, and Consultant shall, at its own cost and expense, keep in effect during the life of this Contract all such licenses, permits, qualifications, insurance, and approvals. Consultant shall meet with the Public Works Director or other personnel of City or third parties as necessary on all matters connected with the carrying out of Consultant's services. Such meetings shall be held at the request of either party hereto. Consultant further warrants that it will follow the best current, generally accepted and professional practices to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding this project.

9. OWNERSHIP OF WORK. All reports, drawings, designs, plan review comments, work product, and all other documents completed or partially completed by Professional Services Contract – ADVANCED MOBILITY GROUP – PROJECT NO. WT21010/ CML-5008(191)

(Updated 10/19/18)

Consultant in the performance of this Contract shall become and remain the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Contract. If any materials are lost, damaged, or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Consultant shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Contract and shall not be disclosed to anyone not connected with these services unless the City expressly provides prior written consent.

10. CONTRACT AMENDMENTS. City reserves the right to make such alterations as may be deemed necessary or advisable and to require such extra work as may be required for the proper completion of the work contemplated by Consultant. Any such changes will be set forth in a Contract Amendment which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A Contract Amendment will not become effective until approved by the authorized City official.

11. TERMINATION. The City may terminate this Contract upon thirty (30) calendar days written notice to Consultant with the reason for termination stated in the notice. The Contract shall then be deemed terminated and no further work shall be performed by Consultant. If the Contract is so terminated, the Consultant shall be paid for that percentage of work actually completed at the time the notice of termination is received.

12. CONSULTANT STATUS. In performing the obligations set forth in this Contract, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant are its agents and employees, and are not agents of the City. Subcontractors shall not be recognized as having any direct or contractual relationship with the City. The persons engaged in the work, including employees of subcontractors and suppliers, will be considered employees of Consultant. The Consultant shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Contract. The Consultant is responsible to the City for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

- a. If in the performance of this Contract any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision, and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by Consultant.

- i. It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's personnel.
- ii. As an independent contractor, Consultant hereby indemnifies and holds City harmless from any and all claims that may be made against the City based upon any contention by any third party that employer-employee relationship exists by reason of this Contract.

13. ASSIGNMENT. Consultant shall not assign, sublet, or transfer this Contract or any interest or obligation in the Contract without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Consultant shall be solely responsible for reimbursing subcontractors.

14. HEADINGS NOT CONTROLLING. Headings used in the Contract are for reference purposes only and shall not be considered in construing this Contract.

15. NOTICES. Any and all notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

<p>To Consultant: Advanced Mobility Group 3003 Oak Road Suite 100 Walnut Creek, CA 94597</p>	<p>To City: Public Works Director City of Stockton 22 E. Weber Ave., Rm. 301 Stockton, CA 95202</p>
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16. LICENSES, CERTIFICATIONS, AND PERMITS. Prior to the City's execution of this Contract and prior to the Consultant's engaging in any operation or activity set forth in this Contract, Consultant shall obtain a City of Stockton business license, which must be kept in effect during the term of this Contract. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Contract.

17. RECORDS AND AUDITS. City reserves the right to periodically audit all charges made by Consultant to City for services under this Contract. Upon request, Consultant agrees to furnish City, or a designated representative, with necessary information and assistance.

Consultant agrees that City or its delegate shall have the right to review, obtain, and copy all records pertaining to performance of the Contract. Consultant agrees to provide City or its delegate with any relevant information requested, and shall permit City or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter

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under investigation for the purposes of determining compliance with this Contract. Consultant agrees to maintain such records for a period of three years from the date that final payment is made.

18. CONFIDENTIALITY. Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

19. CONFLICTS OF INTEREST. Consultant covenants that other than this Contract, Consultant has no financial interest with any official, employee, or other representative of the City. Consultant and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner or degree by the performance of Consultant's services under this Contract. If such an interest arises, Consultant will immediately notify City.

20. WAIVER. In the event either City or Consultant at any time waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or of any other covenant, condition, or obligation.

21. GOVERNING LAW. California law shall govern any legal action pursuant to this Contract with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.

22. NO PERSONAL LIABILITY. No official or employee of City shall be personally liable to Consultant in the event of any default or breach by City or for any amount due Consultant.

23. INTEGRATION AND MODIFICATION. The response by Consultant to the Request for Proposals and the Request for Proposals on file with the City Clerk are hereby incorporated herein by reference to the extent that such documents do not differ from the provisions and terms of this Contract that shall supersede such response to Request for Proposals. This Contract represents the entire integrated agreement between Consultant and City, supersedes all prior negotiations, representations, or agreements, either written or oral, between the parties, and may be amended only by written instrument signed by Consultant and City. All exhibits and this contract are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Contract and the attached exhibits, the terms of this Contract will prevail.

24. FEDERAL PROVISIONS. Consultant shall comply with the Federal Aid Consultant Contract Provisions which are attached hereto as **Exhibit "E"** and incorporated herein by this reference.

25. SEVERABILITY. The provisions of this Contract are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

26. THIRD PARTY RIGHTS. Nothing in this Contract shall be construed to give any rights or benefits to anyone other than City and Consultant.

27. AUTHORITY. The undersigned hereby represent and warrant that they are authorized by the parties to execute this Contract.

IN WITNESS WHEREOF: the parties have executed this Contract the day and year first hereinabove written.

CITY OF STOCKTON

ADVANCED MOBILITY GROUP

By: _____
HARRY BLACK
CITY MANAGER

By:  _____
Signature

ATTEST:

Beth Clement

Print Name

By: _____
ELIZA R. GARZA, CMC
CITY CLERK

Title: Operations Manager / Board Secretary

APPROVED AS TO FORM:

By: _____
DEPUTY CITY ATTORNEY

Detailed Work Plan



TASK 1: BACKGROUND RESEARCH

Task 1.1: Field Review and Research

To initiate the design work, the AMG team will conduct a field reconnaissance of the project area, including the existing conduit between the City Hall and SEB building, the communication room in SEB building, existing City Hall, the proposed conduit route along Weber Avenue, and the location of the TMC at the new City Hall. The AMG team will research and verify the public records of subdivision, parcel, corner records, and survey maps to determine the street right-of-way. AMG will research and review existing topographic mapping, photos, as-built plans, assessor maps, local street improvement plans and other available documents for the Weber Avenue.

Task 1.2: Surveying

Siegfried will perform a topographic and right of way survey. The survey will be in sufficient detail to properly prepare plans, layouts and exhibits needed for the plan deliverables.

Siegfried will conduct a field reconnaissance of the project area. Siegfried will review and verify the location and type of existing improvements and equipment. Siegfried will conduct field reconnaissance along with the AMG team. During the field survey visual utility conflict would be determined along the Weber Avenue corridor. In addition, to avoid going closer to McLead Lake, we are assuming that the conduit would be pulled on the southside of Weber Avenue. However, this would be determined during the field reconnaissance. To reduce scope and cost, it is assumed that survey will be conducted on one side of the street between the SEB building and the new City Hall. Adequate survey would be conducted to determine the best location to cross over to the new City Hall near the Waterfront Towers.

Deliverable: AutoCAD Topographic Survey Base Map with 3D Surface Points Files

Task 1.3 – Utility Coordination

Siegfried will be responsible for utility investigations and coordination with utility owners throughout the project, including:

1. Preparation of a project limits map and request for utility information from each utility owners within the area of work.
2. Prepare Utility Letter "A" during preliminary design phase to the affected utility owners for City to review and approve prior to transmitting to utility owners. Information on existing utilities obtained as a result of the "A" letter will be transferred to base maps in both plan and profile view. A copy of the utility data obtained from utility owners will be provided to the City and the originals will be filed in the project files.

Siegfried will need to prepare utility letters and project location exhibits; utility requests need to be on City letter head to avoid paying fees for utility information. If potholing is required, this will be the responsibility of the utility company. Siegfried will need to coordinate with the City to the maximum extent possible to route this information to utility companies. Siegfried must show all existing utilities that will be impacted or cause impact by the proposed project. Siegfried will need to prepare Utility A, B, and C letters and provide copies of utility correspondence for City files.

Deliverable: A, B, and C Letters

TASK 2: ENVIRONMENTAL SERVICES

EXHIBIT A

Task 2.1 - Project Management and Meetings

GPA believes environmental coordination in all phases of the project is critical to project delivery. GPA understands the importance of following the project schedule and meeting design milestones. GPA anticipates that coordination and project management will need to occur with the project engineers, City staff, and Caltrans. GPA will maintain a clear line of communication with the project team and conduct regular status checks to ensure all environmental tasks are on schedule and within budget. GPA will prepare monthly progress reports that include the progress of each task, new and ongoing issues, proposed resolutions, and estimated impacts on the schedule. GPA will also maintain electronic copies of the complete environmental record and will provide the City with a copy of the environmental record upon project completion. GPA has experience with projects with similar time constraints and understands that consistent communication in all phases of the project will help ensure that all milestones will be achieved within the required schedule and budget.

The GPA Project Manager and two additional staff will participate in a project kick-off meeting teleconference (2 hours) and up to two additional Project Development Team (PDT) calls (1 hour each).

Deliverables: Monthly Progress Reports, budget and schedule management, team coordination, and participation of three staff in the kick-off meeting (via teleconference) and up to two PDTs (via teleconference).

Task 2.2 - Project Initiation/Project Description

At project initiation, GPA will work closely with the City and AMG to prepare an information request and obtain information necessary to support preparation of the technical studies. Once all the necessary information is gathered and reviewed, GPA will work closely with the City and AMG to define a project description and delineate a project study area sufficient to support the completion of the required technical studies. The project description will identify the project purpose and need, project objectives, project components, project location, and timing of the project. To the extent feasible, GPA will use existing information included in the PES form approved by Caltrans.

Deliverables: One (1) electronic copy of the Project Description.

Task 2.3 - Hazardous Materials Memo

GPA understands that the City has obtained a PES form approved by Caltrans District 10, which states that the Environmental Document must contain a discussion of Hazardous Materials to obtain NEPA clearance. Based on GPA's experience with Caltrans District 10 practices for similar projects where this level of documentation is required, GPA anticipates that this discussion will be a memo to file prepared by Caltrans. However, GPA has included preparation of a Hazardous Materials Memo in our scope of work in the event Caltrans would prefer the City to complete this task.

If required, GPA will conduct a review of publicly accessible databases, including the California Department of Toxic Substances EnviroStor database and California State Water Resources Control Board GeoTracker database, to obtain information regarding the potential presence of hazardous materials/wastes at or adjacent to the project area. GPA will prepare a one-page memo summarizing the findings of database searches and will qualitatively describe the potential for environmental impairment. If necessary, the memo will also provide recommendations for additional environmental services.

Deliverables: One (1) electronic copy of the Hazardous Materials Memo.

Task 2.4 - Air Quality Memo

GPA understands that the City has obtained a PES form approved by Caltrans District 10, which states that the Environmental Document must contain a discussion of Air Quality to obtain NEPA clearance. Based on GPA's experience with Caltrans District 10 practices for similar projects where this level of documentation is required, GPA anticipates that this discussion will be a memo to file prepared by Caltrans. However, GPA has included preparation of an Air Quality Memo in our scope of work in the event Caltrans would prefer the City to complete this task.

If required, GPA will prepare memo for submittal to the San Joaquin Council of Governments (SJCOC) summarizing the project description and requesting concurrence that the project is exempt from Air Quality conformity.

Deliverables: One (1) electronic copy of the Air Quality Memo for submittal to SJCOC.

Task 2.5 - Cultural Resources Studies – Area of Potential Effect Map/Historic Property Survey Report/Archaeological Survey Report/Native American Consultation for AB 52/Section 106 Consultation Support

This area is highly sensitive for subsurface prehistoric and historic-period archaeological resources, with known resources within the excavation limits. Prehistoric archaeological resources in this area may also qualify as Traditional Cultural Resources as defined by CEQA. As such, the archaeological resources study for this project will focus on this portion of the project area that will require excavation within Weber Avenue (East Weber Avenue and West Weber Avenue) from approximately Mormon Slough to North El Dorado Street. The purpose of the excavation is to install fiber optic line, which will extend the overall fiber trunk line from City Hall to an existing City-owned conduit structure. For this proposal, this portion of the project area is referred to as the Archaeological Study Area (ASA).

GPA's subconsultant for this task, InContext, has conducted cultural resources studies within the ASA, as well as the archaeological evaluation and data recovery excavation for what is now referred to as the WorkNet site (a.k.a., Washington Street Office Project, 2002). In addition, InContext conducted a records search for this proposal to review the two cultural resources reports completed subsequent to the 2002 WorkNet project (Pacific Legacy 2010; Far Western 2019). These reports confirm InContext's understanding of the sensitivity of the ASA and the types of archaeological resources likely within the ASA: prehistoric habitation, Native American burials, and historic-period industrial.

Because the ASA is within currently functioning roadway, InContext assumes it will be infeasible to fully identify and evaluate subsurface archaeological resources within the project's area of potential effect (the full horizontal and vertical extent of proposed ground disturbance) through archaeological excavation prior to actual project-related ground disturbance. In instances such as this, the PA (Stipulation XV.A) requires a plan for treatment of historic properties if/when they are discovered during implementation of the project. The PA also requires consultation with any Indian tribe that may attach religious or cultural significance, or any other consulting party that may have a demonstrated interest in, historic properties likely present in the APE. Caltrans is required to consider Indian tribe or any other consulting party's concerns in developing, modifying, and implementing the plan. The effort and results of considering consulting parties' concerns is documented through a MOA.

The documents required to complete the archaeological study and resolve adverse effects in compliance with the PA are as follows: 1) APE; 2) ASR; 3) FOE; 4) HPSR; 5) MOA; and 6) Post-Review

Discovery Plan. The scope of work for the anticipated cultural resources technical reports based on our understanding of the project is provided below.

Task 2.5.1 - Area of Potential Effects Map, Archeological Study Report, Historic Properties Study Report, and Finding of Effect

Work Plan. This task will begin with consultation with the City and Caltrans District 10 Professionally Qualified Staff (PQS) assigned to the project to review and determine the most efficient plan of work. If necessary, adjustments to the scope of work will be made in consultation with the City.

Deliverables: One (1) electronic copy of the Caltrans-concurred Work Plan.

Research and Survey. Previously prepared cultural resources documents and site records will be reviewed. Because InContext has already conducted a records search at the Central California Information Center, the only other additional documents necessary would be obtained from the City and/or Caltrans District 10. Having reviewed many studies already and having conducted research in the ASA previously, it is not anticipated that InContext would need to conduct any additional research to provide the most up to date and thorough presentation of the sensitivity for, location of, and types of archaeological resources that may occur within the Area of Potential Effects (APE). Field survey may be conducted, if determined necessary by Caltrans, to inform the sensitivity analysis in the ASR.

Deliverables: Obtain documentation from City and Caltrans; conduct an archaeological resources survey, if required.

Outreach to Section 106 Potential Consulting Parties and Assembly Bill 52 Consulting Tribes.

Compliant with Caltrans District 10 recommended procedures, a single letter inviting potential consulting parties to consult pursuant to Section 106 and notification of the project pursuant to AB 52 will be mailed via certified return receipt to all such parties. InContext will draft the letter for City review, will mail the letters on the City's behalf, and will fully document the legally required process and good faith effort. Parties responding that they wish to consult will be referred directly to the City and/or Caltrans District 10 as required. The letters will inform the addressees of the sensitivity of the APE and the expected need for an MOA and Post-Review Discovery Plan. Doing so at this early phase of the archaeological study is in keeping with Caltrans consultation guidelines and will help to expedite the MOA process once it begins.

Deliverables: One (1) electronic copy of Consulting Parties Letter and AB 52 notification to consulting Tribes and hard copies sent out to each party.

Draft APE, ASR, FOE, HPSR. All documents will be prepared in compliance with the PA and in accordance with guidelines provided in the Caltrans Standard Environmental Reference (SER) for Cultural Resources. A preliminary draft of the APE will be submitted to Caltrans District 10 for review at the time Work Plan is begun to ensure the full extent of potential area is considered during the research and outreach tasks (described above). The Draft APE, ASR, FOE, and HPSR will be prepared as one deliverable for sequential review by the City, Caltrans District 10, Caltrans CSO, and the SHPO. It is anticipated that the Finding of Effect will specifically be a Finding of No Adverse Effect without Standard Conditions, with the recommendation that an MOA and Post-Review Discovery Plan be prepared.

Deliverables: One (1) electronic copy of the Draft APE, ASR, FOE, and HPSR.

Final APE, ASR, FOE, HPSR. After comments from the SHPO, if any, have been addressed by InContext, Caltrans District 10 and the CSO will review the Preliminary Final deliverables. Caltrans District 10 and the CSO may have additional recommendations to address SHPO comments. InContext

will seek to reduce the likelihood for such additional recommendations by consulting informally with Caltrans PQS throughout the draft and final deliverable process. Once the SHPO has concurred with the deliverables, the Final signed deliverables will be prepared. This requires two hard copies of each document to be submitted to Caltrans District 10 and the CSO.

At the point the SHPO's comments have been addressed to Caltrans' satisfaction, the City may move forward with the CEQA cultural resources process by identifying a less-than-significant impact to archaeological resources with mitigation. Mitigation would include the requirement that a Post-Review Discovery Plan be in place prior to project implementation.

Deliverables: One (1) electronic copy and two hard copies of the Final APE, ASR, FOE, and HPSR.

Task 2.5.2. Draft MOA and Post-Review Discovery Plan

Upon completion of the Work Plan, InContext will begin drafting the MOA and Post-Review Discovery Plan (Plan), alongside the first four deliverables. Much of these documents consist of standardized text and it may be possible to submit these drafts at the same time as the first four deliverables. Both documents will be prepared in compliance with the PA and in accordance with guidelines provided in the Caltrans SER for Cultural Resources. The Draft MOA and Plan will be submitted for sequential review by the City, Caltrans District 10 PQS, the CSO, and the SHPO.

Deliverables: One (1) electronic copy of the Draft MOA and Post-Review Discovery Plan.

Task 2.5.3. Final MOA and Post-Review Discovery Plan

After comments from the SHPO have been addressed, the Caltrans PQS or CSO will send the MOA and Plan to potential consulting parties to invite them to comment on, or otherwise provide input to, the content of both documents. Although there is no legally mandated review time for consulting parties, Caltrans District 10 and CSO may move forward with finalizing the document if and when they have determined a good faith effort to consider consulting parties' concerns has been made and documented. It is not anticipated that InContext would be involved in this consultation process, as it is required to be solely a government-to-government process.

Deliverables: One (1) electronic copy of the Final MOA and Post-Review Discovery Plan.

Task 2.5.4. Historical Resources Evaluation Report or other Caltrans-required Evaluation/Data Recovery Report (Optional Task)

Based on the scope of work and existing highly developed and urbanized condition of the project area, InContext assumes that archaeological resources within the APE cannot be accessed to the extent necessary to evaluate them for eligibility for listing in the California Register of Historical Resources (CRHR) or the National Register of Historic Places (NRHP), as is required for CEQA consideration and Section 106 procedures. Therefore, it is not anticipated that a HRER would be required for this project. However, the event that the subsurface extent of the APE is accessible before construction begins or in the instance that post-review discoveries include historic-period or prehistoric archaeological resources that must be addressed, InContext will prepare a HRER or other Caltrans required evaluation/data recovery report. At this point, however, the specific requirement and cost for one or more of these

documents cannot be determined and a cost for InContext to perform this task is not included in the proposed fee at this time.

Deliverables: One (1) electronic copy of the HRRR or Caltrans-required Evaluation/Data Recovery Report.

Task 2.6: CEQA Documentation

The AMG team will prepare the Draft Notice of Determination (NOD) and submit it to the City for review. The AMG Team will coordinate as needed to make further revisions and obtain approval to finalize the document. The City must sign and file the NOD with the County Clerk and pay required filing fees within five days of project approval. If required, the AMG team will coordinate with the City to submit the NOD with the SCH.

Deliverables: Electronic copy of NOD for City's signature.

Assumptions

This scope has been prepared based on the following assumptions:

- If Caltrans identifies the need for preparation of additional technical studies not included in this scope, GPA will complete these studies under an amended scope of work and budget.
- This scope of work is based on the project information provided by the City/design engineering team. If the limits of the project area or scope of the project change substantially, GPA will provide an amended scope of work and budget to support this effort.
- A high-resolution aerial map with the project boundaries will be provided by the engineer for GPA use in the APE, BSA, and other maps.
- Thirty five percent plans and associated CAD/MicroStation files will be provided prior to initiating technical studies.
- The project would be constructed entirely within existing City-owned rights-of-way and no acquisition would be required.
- Up to two rounds of comments on each deliverable (one combined from engineers/City and one from Caltrans). If responses to additional comments are requested, GPA will provide an additional scope of work and budget to support this effort.
- GPA assumes that a site visit will not be required for preparation of the Phase I Site Assessment Memo.
- GPA assumes that the documents required to complete the archaeological study and resolve adverse effects in compliance with the PA are as follows: 1) Area of Potential Effects; 2) Archaeological Survey Report; 3) Finding of Effect; 4) Historic Property Survey Report; 5) Memorandum of Agreement; 6) Post-Review Discovery Plan.
- Because the City and Caltrans are already aware of the highly sensitive nature of the ASA, GPA assumes that the APE, ASR, HPSR, and FOE may be prepared as one deliverable. This would be confirmed with Caltrans during the project kick-off meeting or during development of the cultural resources Work Plan.
- If archaeological resources are identified during project implementation, the Post Review Discovery Plan provides the specific procedures and research bases for evaluation and data

recovery. Additional documents that may be necessary include a Historical Resources Evaluation Report, Archaeological Evaluation Report, or Archaeological Data Recovery Report; if these documents are needed, the GPA team would provide them under an amended scope and budget.

- An IS/MND will be the appropriate level of CEQA documentation, and a Categorical Exclusion will be the appropriate level of NEPA documentation. If the environmental analysis would require consideration of more than one build alternative, or if the project description changes, the environmental scope may need to be revised.
- The City will be responsible for circulating the NOI in local newspaper publications and/or for posting the NOI at locations required by the City, as required by CEQA, and for the cost of publication and posting.
- Required CEQA filing fees will be paid by the City.
- The City will sign and file the CEQA NOD with the County Clerk within five days of project approval.
- The SCH currently accepts CEQA documents via an online database. In order for GPA to submit CEQA documentation on behalf of the City, the City (as Lead Agency) will delegate GPA as an approved submitter through the SCH's online database system.
- Caltrans would prepare the NEPA CE and Environmental Commitments Record following their approval of technical studies.
- No regulatory agency permits, or coordination would be required for the project.
- Environmental monitoring support prior to or during construction is not included in this scope. If requested, GPA will provide an additional scope of work and budget to support these efforts.
- The AMG team assumes that the project would be Categorical Exempt. The scope does not include preparing ISMND for this project.

TASK 3 – PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)

Task 3.1: Base Map

The AMG team will create a base map with the topographic survey for the fiber installation. The base map shall include but is not limited to the following:

- Vertical and horizontal control tied to the City of Stockton Horizontal and Vertical System,
- All existing topography, along Weber Avenue, including all existing utility facilities that are visible or that are available from utility company, and record drawings,
- If right of way dedications are required for any stage of the Project work, AMG shall rely on the City to provide the required title reports.

The AMG team will complete the topographic survey and AutoCAD base for design of the project improvements.

The location of the existing conduit between the City Hall and the SEB building would be field verified and included in the Base Map.

AMG would request a floor plan of the new TMC location. AMG would field verify the floor plan and include other pertinent details as needed to create the Base Map for the TMC design.

The upgrade of controllers and conversion to IP based system for videos would be shown either on as-builts provided by the City or on aerial photographs. The Base Map for those locations would show the cabinet location and the location of the cameras that needs to be upgrade.

Task 3.2: 50% Design

Prior to initiating the 50% PS&E, AMG will submit a memo to the City that summarizes the findings of our initial field review. AMG will prepare a preliminary site plan for the TMC identifying the location of the TMC devices and the video wall. The preliminary site plan would serve as the starting point that would reflect all data gathered at the kickoff meeting, field review, and information from the ITS Master Plan. This preliminary design will include a description of all work to be included in the PS&E, including fiber optic design, field modification of video and controllers, TMC upgrade and equipment, modification to field and center network switches, etc.

Once the preliminary design is reviewed by the City, AMG will commence with the preparation of the 50% design plans. All design will be produced in AutoCAD format. AMG will visit the project site for an additional field review, including verification of survey data and existing facilities. We will make field observations, investigations, and review details of existing conditions. The AMG team will coordinate with all utilities in accordance with Caltrans "Manual on High and Low Risk Underground Facility Within Highway Rights of Way" to eliminate conflicts encountered during construction.

AMG will use the base map to prepare the 50% design level plan showing the layout of the TMC and all traffic signal and center upgrades. Designs will be in accordance with Caltrans design standards, California MUTCD guidelines, and the City of Stockton's current design standards. The design will include all traffic signal equipment upgrades, integration to existing fiber communication and communication back to the new City's TMC, conduit installation detail, etc.

AMG will then finalize the 50% PS&E and submit to City staff for review and input. Opinion of probable construction cost (estimate) will be prepared at the 50% design submittal. The estimate will be based on the latest pricing data available from Caltrans based on recent similar bids.



Deliverables: 50% plans, project specifications, and construction estimate.

Task 3.3: 95% Design

After the City's review of the 50% design documents, AMG will set up a review meeting with City staff. At this meeting we will go through the comments together and reach a resolution on moving forward with the design. AMG will prepare a resolution matrix based on the 50% design review meeting.

Once the resolution matrix is accepted, AMG will proceed and make revisions based to the 50% plans and start preparing the 95% plans.

AMG will prepare 95% construction drawings, contract specifications, and a detailed opinion of probable construction cost estimate incorporating all comments from City staff.

The 95% design package will be submitted to the City for their review and approval.

Deliverables: 95% plans, project specifications, and construction estimate.

Task 3.4: 100% Design

After the City's review of the 95% design documents, AMG will set up a review meeting with City staff. At this meeting we will go through the comments together and reach a resolution on moving forward with the design. AMG will prepare a resolution matrix based on the 95% design review meeting and submit it to the City for their approval. Once the resolution matrix is accepted, AMG will proceed and revise the 95% plans and start preparing the 100% plans.

AMG will prepare 100% construction drawings, contract specifications, and a detailed opinion of probable construction cost estimate incorporating all comments from City staff. AMG will prepare and submit the 100% construction drawings, contract specifications, and a detailed opinion on probable construction cost estimate and submit for City staff review.

Deliverables: 100% plans, project specifications, and construction estimate

Electronic Files (Plans in AutoCAD, Specification in MS Word, and Estimates in Excel format.)

Task 3.5: Final PS&E

After the City's review of the 100% design documents, AMG will set up a review meeting with City staff. At this meeting we will go through the comments together and reach a resolution on moving forward with the design.

If City has minor editorial comments, AMG will update the plans to reflect those changes as the Final Plans for the project. The Final Plans will be signed by the project manager, a licensed professional engineer in the state of California. The final plans will be provided to the City as Mylars and in electronic format.

Deliverables: Comment Matrix, Final plans, project specifications, and construction estimate in Electronic Files (Plans in AutoCAD, Specification in MS Word, and Estimates in Excel format and PDF format).

One complete plan set of reproducible 24"x36" on mylars (after editorial review of 100% plan check via Bluebeam)

TASK 4: PRESERVING AND PERPETUATING SURVEYING MONUMENTS

The AMG team will identify, list, tie out and perform construction staking of survey monuments, and show existing survey monuments on construction plans. We will file all pre-construction Corner Records or Records of Survey with San Joaquin County and submit a copy to the City. The Corner Records or

record of Survey will show monuments within the area of construction reasonably subject to removal or disturbance not shown on a recent record document.

The PS&E package will include language to preserve all monumentation affected by the work being performed in accordance with Section 8771 of the Professional Land Surveyors Act in the Business and Professionals Code of the State of California.

TASK 5 – COORDINATION / MEETINGS

Key members of the AMG team will attend a project kick-off meeting to aid in establishing and maintaining clear and consistent communication with City Staff to discuss the progress of the design. Additionally, we will attend meetings or participate in conference calls with City Staff as needed to discuss and finalize the design. We will meet with City Staff to review Consultant Performance Evaluation at the contract close-out and attend one pre-construction meeting and one post-construction meeting if necessary.



Upon notice of selection, AMG will:

- Prepare an agenda for a project initiation meeting. The meeting agenda will include the following:
 - Introduction to the meeting.
 - Establish a protocol for communicating project information.
 - Review scope of work and project specifics.
 - Project schedule in Microsoft Project format, including time for City reviews. The project schedule will show tasks, duration, milestones, assignment, and critical paths for the project.
 - Review available information, including:
 - Aerial photos in digital form, if available (or Google Earth Pro will be used).
 - As-built plans for each study intersection.
 - Building floor plans
 - Existing conduit run between City Hall and SEB Building
 - Formats for drawings and specifications.
 - Construction and procurement support.
 - Other issues, as appropriate.
 - Milestones and invoicing information.
- Coordinate with utility companies.
- Attend one pre-construction meeting before starting of construction, as necessary.
- Attend one post-construction meeting after completion of construction, as necessary.
- Meet with City staff, as needed, during the design phase of the project to review the PS&E.
- Attend meetings, as needed, during construction to assist City staff.
- Resolve any utility issues.
- Maintain and monthly updates to Microsoft Project schedule for the project with baseline information.

Deliverables: Monthly CPM schedule, agendas, meeting minutes, action items and meeting packages as required, invoice package including monthly progress reports

TASK 6: DESIGN SUPPORT DURING BIDDING AND CONSTRUCTION



AMG will answer bidders' questions and provide clarifications to the bid documents during the bidding process. Specifically, we will assist the City as follows:

- Answer contractor bid questions and requests for information/clarification (RFI) of the design and/or construction documents.
- Attend the pre-construction meeting.
- Answer contractor's RFIs. AMG will provide clarifications and respond to contractor's questions during the construction phase, as needed. We will make changes to the design plans to address any design changed needed. We will review and respond to contractor's RFIs during construction within two working days.
- Assist the City inspector with specific design issues during construction.
- When requested by City staff, AMG will attend meetings to answer design questions and clarify design elements.

TASK 7: AS-BUILT DRAWINGS





Upon project completion, we will prepare record drawings with red lines from the contractor. We will mark-up the original mylar sheets with revisions made during construction, and As-Built drawings will reflect all changes to all improvements constructed. Electronic files of the As-Built drawings will be provided in addition to the original As-Built mylars in PDF and AutoCAD (dwg) format.

Deliverables: Electronic files of the As-Built drawings (in standard pdf format) and AutoCAD (dwg) shall be provided in addition to the original As-Built mylars.

EXHIBIT B

Cost Proposal for TMC Equipment Upgrade

	AMG																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
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	Habib Shamskhov Principal In Charge/Quality Control						Joy Bhattacharya, PE, PTOE Project Manager			Vasavi Pannala, PE Fiber Design Lead		Kasra Behbahani TMC Design Lead		Shahin Sotoudeh IT Support/CAV Lead		Chris Higbee, PE Fiber and TMC Design		Shel Leader Communications Subject Matter Expert		Sr. Support Engineer		Jr. Support Engineer		Contract Administrator/Support Admin/Graphics		See 10-H for details		See 10-H for details		Total Hours	Other Costs (Expenses)	Total Cost by Deliverable																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																	
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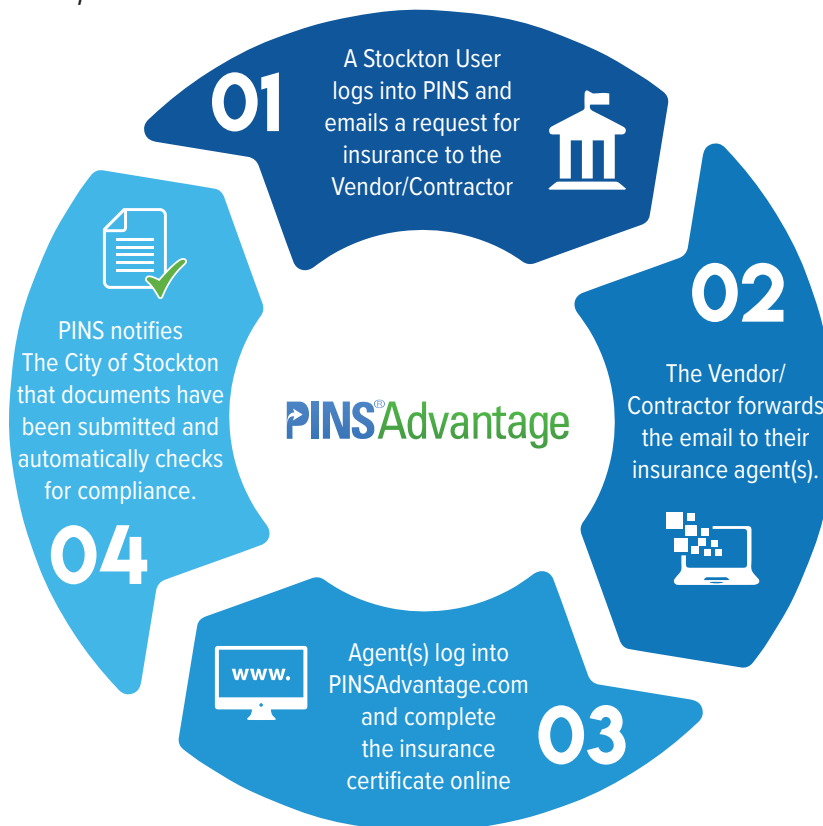
The City of Stockton is now using www.PINSAdvantage.com to track Insurance Certificates and all related documents.

WHAT IS THE PROCESS?

The PINS system starts with **The City of Stockton**. A **Stockton User** logs into PINS and emails a request for proof of insurance to the **Vendor/Contractor**. The **Vendor/Contractor** forwards the request email to their **Insurance Agent(s)**. The **Insurance Agent(s)** logs into www.PINSAdvantage.com and completes the insurance certificate online.

Note: Vendors will receive the insurance request email from: no-reply@pinsadvantage.com

Thank you for your compliance!



PINS Advantage

www.pinsadvantage.com
+ 1 626 844 1838

NOTE: The City of Stockton is now using the online insurance program PINS Advantage. Once you have been awarded a contract you will receive an email from the City's online insurance program requesting you to forward the email to your insurance provider(s).

Insurance Requirements for Professional Services

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability**: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
(Not required if Contractor provides written verification it has no employees)
4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limit no less than **\$2,000,000** per occurrence or claim, \$2,000,000 aggregate. (If Claims-made, see below.)

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater. No

representation is made that the minimum insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

Limits of Insurance

The limits of insurance required in this agreement 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 non-contributory basis before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City of Stockton.**

Waiver of Subrogation

Contractor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Contractor, its employees, agents and subcontractors.

Self-Insured Retentions

All Self-insured retentions must be disclosed to Risk Management for approval and shall not reduce the limits of liability. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Stockton.

Claims Made Policies (note – applicable only to professional liability)

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of **five (5)** years after completion of contract work.

Verification of Coverage

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Contractor shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its declarations page(s) and endorsement page(s) for each of the required policies.

Subcontractors

Contractors shall require and verify that all subcontractors, or other parties hired for this work, purchase and maintain coverage for indemnity and insurance requirements as least as broad as specified in this agreement to the extent they apply to the scope of the subcontractor's work with the same certificate of insurance requirements and naming as additional insureds all parties to this contract. Contractor shall include the following language in their agreement with Subcontractors: *"Subcontractors hired by Contractor agree to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under the contract documents and provide a valid certificate of insurance and the required endorsements included in the agreement as proof of compliance prior to commencement of any work and to include this same requirement for any subcontractors they hire for this work. A copy of the owner contract document indemnity and insurance provisions will be furnished to the subcontractor upon request."* Contractor shall provide proof of such compliance and verification to the City upon request.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder Address

Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton Attn: City Risk Services
400 E Main Street, 3rd Floor – HR
Stockton, CA 95202

CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 1 of 14
	Effective Date: 5/1/2015	Revised From: 7/27/09 4/6/09 3/1/2010 (see below)

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
 PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

I. PURPOSE

The purpose of this policy is to reaffirm the City's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace. This policy defines prohibited behavior and conduct, and sets forth a procedure for reporting, investigating and resolving complaints of discrimination, harassment, in the workplace, including retaliation and hostile work environment.

II. POLICY

- A. The City of Stockton prohibits any form of discrimination and/or harassment of any person based on race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute consistent with state or federal law. All such discrimination and harassment is unlawful and shall not be tolerated. In addition, under the federal Affordable Care Act (ACA), the City of Stockton prohibits discrimination and/or harassment, or retaliation against an employee who obtains coverage, receives a tax credit or subsidy through the Health Care "Market Place" or "Exchange."
- B. It is an unlawful employment practice to discriminate against or to harass an unpaid intern or volunteer on the basis of any legally protected classification unless an exception applies, such as a bona fide occupational qualification.
- C. The City will neither tolerate nor condone discrimination and/or harassment of employees by managers, supervisors, co-workers, or non-employees with whom City employees have a business service, or professional relationship.
- D. All City employees and non-employees share a responsibility to assist in

CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 2 of 14
	Effective Date: 5/1/2015	Revised From: 7/27/09 4/6/09 3/1/2010 (see below)

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

maintaining an employment environment free of discrimination and harassment. This policy applies to all aspects of City employment, including, but not limited to, hiring, reassignment, placement, promotion, employment action, disciplinary action, layoff, reemployment, transfer, leave of absence, compensation and benefits, training; or other terms of treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer.

- E. All allegations of discrimination and/or harassment shall be investigated immediately by the City, in accordance with this policy. If it is determined that any prohibited activity has occurred, remedial action shall be taken. Such action may include discipline up to and including discharge. In addition, under applicable law, individual supervisors and employees may be subject to personal liability and/or punitive damages in any litigation arising as a result of such conduct.
- F. All new hires shall attend harassment awareness training, and supervisors and managers shall attend harassment awareness and prevention training for supervisors every two years.
- G. The City of Stockton prohibits retaliation against any employee or non-employee by another employee, non-employee, supervisor, or manager for reporting, filing, testifying, assisting or participating in any manner in any investigation, proceeding, or hearing conducted by the employer or a federal or state enforcement agency.
- H. This policy applies to all officials, employees, volunteers, unpaid interns, agents, or contractors of the City.
- I. This policy shall be administered by the Director of Human Resources.

CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 3 of 14
	Effective Date: 5/1/2015	Revised From: 7/27/09 4/6/09 3/1/2010 (see below)

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT

- A. "Discrimination," as used in this policy, is any action, behavior, practice, or process that is intended to deny, or results in the denial of, employment rights, privileges, or benefits because of a person's race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other prohibition identified under state and federal law. The following are examples of conduct that may constitute discrimination:
1. Soliciting applications from a source where all or most of potential workers are of the same race or color.
 2. Considering a person's gender as the basis for differences in pay, work assignments, performance evaluations, training, discipline, or any other area of employment; and
 3. Questioning a job applicant about the existence, nature and severity of a disability.
- B. "Harassment," as used in this policy, consists of any conduct affecting another person because of his or her race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute identified under state and federal law when such conduct has the purpose or the effect of: (1) creating an intimidating, hostile or offensive work environment; (2) unreasonably interfering with the employee's or non-employee's work performance; or (3)

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otherwise adversely affecting an employee's or non-employee's employment opportunities.

Harassment may take many forms, including, but not limited to, the following examples:

1. Verbal Harassment: Epithets, derogatory and offensive comments or slurs based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
 2. Physical Harassment: Assault, impeding or blocking movement that results in the physical interference with normal work or movement on the basis of race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
 3. Visual Harassment: The displaying of posters, photography, notices, bulletins, e-mails, cartoons or drawings with derogatory and offensive content based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
- C. "Sexual harassment," as used in this policy, is a subcategory of harassment, and is specifically defined by law as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:
1. Submission to such conduct is made a term or condition of employment; or
 2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or

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3. Such conduct has the purpose or effect of unreasonably interfering with an employee's or non-employee's work performance or creating an intimidating, hostile or offensive working environment because of the persistent, severe or pervasive nature of the conduct.

Examples of Sexual Harassment include, but are not limited to the following:

- a. Unwelcome sexual overtures or propositions.
- b. Offering employment benefits or status in exchange for sexual favors.
- c. Making or threatening retaliation after a negative response to sexual advances.
- d. Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- e. Verbal conduct such as using epithets or slurs, telling sexually explicit jokes, or making derogatory or suggestive comments about a person's body or dress.
- f. Written communications of a sexual nature distributed in hard copy, soft copy or via a computer network.
- g. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- h. Physical conduct such as touching, assaulting, impeding or blocking movements.

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- i. Retaliation for making harassment reports or threatening to report harassment.

D. Affordable Care Act (ACA) Anti-Retaliation

Pursuant to section §1558 of the Affordable Care Act, the City prohibits discrimination or retaliation towards any employee who:

1. Receives a health insurance tax credit or subsidy through the Health Care "Marketplace" or "Exchange", by which can trigger a penalty payable by the employer;
2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things;
3. Testifies in a proceeding concerning such violation;
4. Assists or participates in a proceeding concerning a violation; or
5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of the Title I of the Act.

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of section §1558 of the Affordable Care Act may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.

IV. REPORTING AND COMPLAINT PROCEDURES

A. Immediate Action Required

The City's reporting and complaint procedures provide for an immediate, thorough and objective investigation of discrimination or harassment claims, appropriate disciplinary action taken against any person found to have engaged in prohibited behavior, and appropriate alternative remedies to any

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employee or non-employee subject to discrimination or harassment. To accomplish this, such incidents must be reported immediately to a supervisor or manager.

1. Employee's and Non-Employee's Responsibilities when Subjected to Discrimination and/or Harassment
 - a. Employees or non-employees who believe they have been subjected to discrimination or harassment, or are aware of discrimination or harassment against others, shall report the situation immediately to his/her supervisor or manager, except as specified in subsection (b), below. Employees and non-employees shall report any such incidents occurring in the workplace, whether committed by coworkers, supervisors or managers, or third persons doing business with the City, such as customers or vendors, or other non-employees. If comfortable doing so, an employee or non-employee who has a complaint of discrimination or harassment is encouraged to directly inform the person(s) engaging in the behavior that such conduct is offensive and insist the behavior to stop.
 - b. Employees and non-employees must immediately contact a supervisor or manager to register a complaint of discrimination or harassment, unless that supervisor or manager is the individual engaging in the unwanted behavior. In that case, the employee or non-employee may contact someone at the next supervisory level. If the employee or non-employee feels uncomfortable dealing directly with his or her immediate supervisor or manager, he or she may contact the department head, or the Director of Human Resources (or either of their designees) to register a complaint of discrimination or harassment.
 - c. Employees and non-employees may file a formal complaint of harassment or discrimination with their department head or

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with Human Resources. To assist the City in conducting a thorough investigation, complaints shall be submitted in writing and shall include specific details of the incident(s), the names of the individuals involved, the names of any witnesses, and any documentary evidence (notes, pictures, cartoons, etc.) that will corroborate the allegations.

- d. Employees and non-employees shall immediately report any retaliation to a supervisor, manager, department head or Director of Human Resources (or designee). All retaliation complaints shall be immediately, objectively and thoroughly investigated in accordance with the investigation procedures. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including discharge shall be taken.

2. Supervisor's or Manager's Responsibilities to Eliminate Discrimination and/or Harassment

- a. A supervisor or manager is responsible for enforcing the City's discrimination and harassment policy. Supervisors or managers must ensure that all employees and non-employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members.
- b. A supervisor or manager shall be cognizant of employees' and non-employees' behavior and shall not permit any employee or non-employee under their supervision to be subjected to or engage in any conduct prohibited by this policy.
- c. A supervisor or manager who observes conduct prohibited by this policy shall immediately direct the employee or non-employee to cease the conduct.

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- d. A supervisor or manager who receives a complaint of prohibited conduct is required to take the complaint seriously, and report the matter immediately to the department head; be supportive of the complainant; ensure there is no retaliation against the complainant; conduct an internal fact-finding review into the allegations; obtain as much detailed information as possible; thoroughly document the findings; communicate in written form to the parties the resolution of the complaint; and report to and consult with the Human Resources Department promptly, without delay.
- B. Confidentiality. The City will make every effort to protect the privacy and confidentiality of all parties involved, as well as any information and/or documentation obtained, to the extent possible consistent with a thorough investigation.
- C. Penalty for Non-Compliance. The City shall take disciplinary action, up to and including discharge, against any supervisor or manager who fails in his/her responsibility to take immediate action in response to an employee's or non-employee's complaint of discrimination or harassment. Further, such disciplinary action shall be taken against a supervisor or manager who fails to stop discriminatory or harassing conduct committed in his/her presence or to stop such conduct about which the supervisor or manager has knowledge.

V. INVESTIGATION PROCEDURES

A. Determination of Responsibility for Investigation

If a formal complaint is filed with the department head or the Director of Human Resources (or either of their designees), the department head and the Director of Human Resources shall consult with one another to determine whether the department or Human Resources shall conduct the fact-finding investigation into the allegations. Either the department head or the Director of Human Resources (or either of their designees), depending on who is

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responsible for the investigation, shall issue written notification to the complainant and alleged harasser(s). The notification shall specify the nature of the complaint, and inform the parties that an investigation into the allegations of discrimination and/or harassment shall be conducted.

B. Investigative Guidelines

The investigation shall include the following steps taken in the order best suited to the circumstances:

1. Identify and preserve the evidence.
2. Confirm the name and position of the complainant. Interview the complainant.
3. Allow the complainant the opportunity to place the complaint in writing.
4. Obtain the identity of the alleged harasser(s).
5. Obtain as many details as possible regarding the incident(s) that prompted the complaint, including the number of occurrences, dates, times, locations, and witnesses (if applicable).
6. Ascertain how the complainant felt about the alleged incident when it occurred; complainant's response(s) to the alleged behavior; and witness statements (if applicable).
7. Ascertain if any threats or promises were made in connection with the alleged harassment.
8. Ascertain if the complainant knows of or suspects that there are other victims of harassment by the same person(s).
9. Ascertain whether the complainant has spoken to anyone, especially

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supervisors, about the harassment.

10. Ascertain what resolution would be acceptable to the complainant.
11. Interview the alleged harasser to get his or her side of the story, including any possible motivation for a false allegation.
12. Interview witnesses who were identified by the complainant regarding the alleged harasser or other persons identified during the investigation.
13. Interview witnesses who were identified by the alleged harasser or other persons identified during the investigation.
14. Advise all participants that the investigation is "confidential" and not to engage in any retaliatory conduct, as such conduct is subject to disciplinary action up to and including discharge. Confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Director of Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction.
15. Conduct follow-up interviews, if warranted.
16. Prepare report of findings and discuss with management and designated legal staff.

VI. RESPONDING TO THE COMPLAINT

- A. Following the completion of the fact-finding investigation, either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation, shall

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make a report of findings, along with a recommendation regarding the appropriate remedial action to be taken, if warranted. The recommendation shall be made after reviewing the findings of the investigation, giving consideration to all factual information, the nature of the alleged conduct, and the totality of the circumstances. If the investigation was conducted by the Director of Human Resources, or designee, the Director, or designee, shall confer with the affected department head and both shall concur on the remedial action to be taken, if any. If the investigation was conducted by the department head, the department head shall confer with the Director of Human Resources prior to making the report of findings and both shall concur on the remedial action to be taken, if any.

- B. If either the department head or the Director of Human Resources does not concur with the findings and recommendation of the other, the City Attorney (or designee) shall review and resolve the matter in dispute.
- C. Report of findings and recommendation shall be treated as a confidential document and no other distribution shall be made without first consulting with the City Attorney's Office. A completed investigation report will not be disclosed, except as it is deemed necessary to support a disciplinary action, to take remedial action, to defend the City in adversarial proceedings, or to comply with the law or court order.
- D. Either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation shall provide a written response to the complainant and the person alleged to have committed the misconduct, discrimination and/or harassment. The response shall include a copy of the City's discrimination and harassment policy and a memorandum indicating the City's determination as to whether the complaint is:
 - 1. Unsustained: The investigation failed to disclose sufficient evidence to substantiate the allegation(s).
 - 2. Unfounded: The investigation proved that the act(s) or omission(s)

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complained of did not occur. The finding also applies when the individual employee(s) named in the complaint were not involved in the act(s) or omission(s) alleged.

3. Sustained: The investigation disclosed sufficient evidence to substantiate the allegation(s) made in the complaint; appropriate action will be taken.

E. Details regarding any specific fact-findings or disciplinary action to be taken will not be communicated to the complainant. The City Attorney shall review the response for legal sufficiency before dissemination.

F. The City shall close and retain the investigation file, in accordance with applicable laws, regulations, and City policy regarding retention of City records.

VII. DISCIPLINE

Disciplinary action imposed as a result of any investigation conducted pursuant to this policy shall be commensurate with the severity of the offense, up to and including discharge, even for a first offense.

VIII. ALTERNATIVE REMEDIES

If upon exhausting all internal remedies to file, investigate, and respond to a charges of discrimination/harassment, pursuant to title VII of the Federal Civil Rights Act of 1964 (42 U.S.C §§ 2000e *et seq.*), any person has a right to file a charge of discrimination/harassment with the Equal Employment Opportunity Commission ("EEOC"). In addition, pursuant to the California Fair Employment and Housing Act (Gov. Code §§ 12900 – 12996.) a person may also file a complaint of discrimination/harassment with the California Department of Fair Employment and Housing ("DFEH"). Employees or non-employees who believe that they have been subjected to discrimination/harassment may file a complaint with either of these

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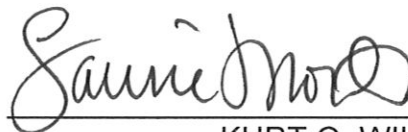
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

IX. COMMUNICATION OF POLICY

This policy shall be provided to all managers, supervisors, employees, volunteers, unpaid interns, agents or contractors of the City and shall be posted in the appropriate places. All employees shall participate in City approved harassment awareness training as directed by management or Human Resources; and all supervisors, as required by law, shall participate in City approved interactive harassment awareness training and education sessions at least once every two years, or as otherwise specified by law.

APPROVED:



KURT O. WILSON
CITY MANAGER

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EXHIBIT E

Federal-Aid Consultant Contract Provisions
TRANSPORTATION MANAGEMENT CENTER EQUIPMENT UPGRADE
City Project No. WT21010/Federal-Aid Project No. CML-5008(191)

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EXHIBIT E

ARTICLE I INTRODUCTION

The provisions contained in this exhibit are hereby made a part of the consultant contract for this project. The provisions are additive to the Professional Services Contract and shall be physically attached to the Contract.

“Scope of Services” in the following articles is defined as the combination of the project scope of work and the corresponding fee to complete the scope of work.

ARTICLE II CONSULTANT’S REPORTS OR MEETINGS

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

ARTICLE III STATEMENT OF WORK

- A. CONSULTANT Services
See Exhibit “A”, Scope of Services of the Professional Services Contract.
- B. Right of Way
See Exhibit “A”, Scope of Services of the Professional Services Contract.
- C. Surveys
See Exhibit “A”, Scope of Services of the Professional Services Contract, to determine if Consultant will be providing survey services.
- D. Subsurface Investigations
See Exhibit “A”, Scope of Services of the Professional Services Contract.
- E. Local Agency Obligations
See Section 7 “Rights and Duties of City”, of the Professional Services Contract.
- F. Conferences, Site Visits, Inspection of Work
The Consultant and any subcontractor shall permit the CITY, the state, and the FHWA if federal participating funds are used in this contract; to meet, 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. Cost incurred by Consultant for meetings, subsequent to the initial meeting shall be included in the fee.
- G. Checking Shop Drawings
See Exhibit “A”, Scope of Services of the Professional Services Contract.
- H. CONSULTANT Services During Construction

EXHIBIT E

See Exhibit “A”, Scope of Services of the Professional Services Contract, to determine if Consultant will be providing services during construction, such as materials testing, construction surveys, etc. Also see Exhibit “B,” Compensation to the Professional Services Contract, for method of payment requirements.

I. Documentation and Schedules

The Consultant shall document the results of their services to the satisfaction of the CITY, and if applicable, the state and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the scope of work objectives.

J. Deliverables and Number of Copies

See Exhibit “A”, Scope of Services of the Professional Services Contract.

ARTICLE IV PERFORMANCE PERIOD

A. Effective Contract Dates

See Section 5 – Schedule and Term of the Professional Services Contract.

B. Contract Award

Consultant is advised that any recommendation for contract award is not binding on the CITY until the contract is fully executed and approved by the CITY.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

- A. The method of payment for this contract will be based on actual cost plus a fixed fee. The CITY will reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the work. Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant’s Scope of Services, unless additional reimbursement is provided for by contract amendment. In no event, will Consultant be reimbursed for overhead costs at a rate that exceeds the CITY’s approved overhead rate set forth in the Scope of Services. In the event, that the CITY determines that a change to the work from that specified in the Scope of Services and contract is required, the contract time or actual costs reimbursable by the CITY shall be adjusted by Contract Change Order to accommodate the changed work. The maximum total cost as specified in Paragraph “H” shall not be exceeded, unless authorized by Contract Change Order.
- B. In addition to the allowable incurred costs, the CITY will pay Consultant a fixed fee of (See Exhibit B to Professional Services Contract). The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by Contract Change Order.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Compensation Schedule- Exhibit B to the Professional Services Contract.
- D. When milestone cost estimates arrears included in the approved Scope of Services, shall obtain prior written approval for a revised milestone cost estimate from the Project Manager before exceeding such cost estimate.
- E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of Consultant’s fixed fee will be included in the monthly progress payments. If Consultant fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, the CITY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.

EXHIBIT E

- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.
- G. Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the CITY's Project Manager of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Scope of Services and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due the CITY including any equipment purchased under the provisions of Article XV Equipment Purchase of this contract. The final invoice should be submitted within 60 calendar days after completion of Consultant's work. Invoices shall be mailed to the CITY's Project Manager at the following address:

City of Stockton, Public Works Department
22 E. Weber Avenue, Room 301
Stockton, CA, 95202

- H. The total amount payable by the CITY including the fixed fee shall not exceed the amount noted in Section 2 – Compensation of the Professional Services Contract.
- I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Scope of Services and is approved by the Public Works Director.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

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

ARTICLE VI TERMINATION

- A. Termination of Contract
See Section 11 of the Professional Services Contract.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

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ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

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

ARTICLE VIII RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

ARTICLE IX AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to

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ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.

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4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.
- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.
- F. Prompt Progress Payment

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

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

- G. Prompt Payment of Withheld Funds to Subconsultants

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The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances.

The LOCAL AGENCY shall hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY of the contract work and pay retainage to CONSULTANT based on these acceptances. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the LOCAL AGENCY. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT; deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

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

ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
 - 1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit 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.

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2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

ARTICLE XII STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
 1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the

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Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.

- c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
 1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
 2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.

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3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor

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

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all

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applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII CONFLICT OF INTEREST

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

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING (Applies only to contracts over \$150,000)

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:

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1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.

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- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 3. Does not have a proposed debarment pending; and
 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

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- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

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

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

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

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

This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this AGREEMENT is 11%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-Q2: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information –

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Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. Contract Assurance

Under 49 CFR 26.13(b):

CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the 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 the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying CONSULTANT from future proposing as non-responsible

E. Termination and Substitution of DBE Subconsultants

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

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

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The LOCAL AGENCY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the LOCAL AGENCY's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.

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10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The LOCAL AGENCY determines other documented good cause.

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

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

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. Notices from the DBEs to CONSULTANT regarding the request.

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

F. Commitment and Utilization

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

The LOCAL AGENCY shall request CONSULTANT to:

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

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

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to the LOCAL AGENCY. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the LOCAL AGENCY within 30 days of contract acceptance.

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

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the form is submitted. The LOCAL AGENCY will release the withhold upon submission of the completed form.

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

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

ARTICLE XIX INSURANCE

See Section 3 of the Professional Services Contract.

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ARTICLE XX FUNDING REQUIREMENTS

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

ARTICLE XXI CHANGE IN TERMS

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

ARTICLE XXII CONTINGENT FEE

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

ARTICLE XXIII DISPUTES

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

(Choose either Option 1 or Option 2)

(Option 1 - Use paragraphs A through C below for all AGREEMENTs without PS&E submittal)

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's

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Contract Administrator, who may consider written or verbal information submitted by CONSULTANT.

- B. Not later than thirty (30) calendar days after completion of all work under the AGREEMENT, 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 AGREEMENT.

(Option 2 - Replace Paragraph B, above, with the following for AGREEMENTs requiring the submission of PS&E)

- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

ARTICLE XXIV INSPECTION OF WORK

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

ARTICLE XXV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by 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 Vehicle Code §591, 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.

(Add the following paragraph to all AGREEMENTs, which may require trenching of five feet or deeper)

- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

ARTICLE XXVI OWNERSHIP OF DATA

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

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CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.

- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. 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 AGREEMENT.
- 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 AGREEMENT 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 AGREEMENT, 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 AGREEMENT, 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 AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- 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 AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

ARTICLE XXX EVALUATION OF CONSULTANT

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

ARTICLE XXXI PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT

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

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

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ARTICLE XXXII NOTIFICATION

See Section 15- Notices of the Professional Services Contract.

ARTICLE XXXIII CONTRACT

Refer to the Professional Services Contract.

ARTICLE XXXIV SIGNATURES

Refer to the Professional Services Contract.

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: City of Stockton 2. Contract DBE Goal: 11%
 3. Project Description: Transportation Management Center Equipment Upgrade
 4. Project Location: City of Stockton
 5. Consultant's Name: Advanced Mobility Group 6. Prime Certified DBE: ☐ 7. Total Contract Award Amount: 217,778.44
 8. Total Dollar Amount for ALL Subconsultants: 73,844 9. Total Number of ALL Subconsultants: 2

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Project Management, Hazardous Materials Memo, Air Quality Memo,	36278	GPA Consulting 231 California Street	54,638
		El Segundo, CA 90245 Andrea Galvin 310-792-2690	
Local Agency to Complete this Section			
20. Local Agency Contract Number: _____			\$ 54,638
21. Federal-Aid Project Number: _____			25.1 %
22. Contract Execution Date: _____			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
23. Local Agency Representative's Signature _____			
24. Date _____			
25. Local Agency Representative's Name _____			
26. Phone _____			
27. Local Agency Representative's Title _____			
			14. TOTAL CLAIMED DBE PARTICIPATION
			IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.
			2/2/2021
			15. Preparer's Signature _____
			16. Date _____
			Beth S. Clement
			925-451-1051
			17. Preparer's Name _____
			18. Phone _____
			Ops Mgr/Board Secretary
			19. Preparer's Title _____

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

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.