

**AGREEMENT FOR DESIGN PROFESSIONAL SERVICES  
BETWEEN  
THE CITY OF CATHEDRAL CITY, CALIFORNIA  
AND  
STC TRAFFIC INC.  
FOR  
SB 821 PROJECT:  
WHISPERING PALMS TRAIL CLASS III BIKE ROUTES (C08672)**

This Agreement for Design Professional Services ("Agreement") is entered into as of December 11, 2024 ("Effective Date") by and between the City of Cathedral City, a municipal corporation ("City") and STC Traffic Inc., a Southern California incorporation ("Design Professional"). City and Design Professional are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

**RECITALS**

A. City has sought, by Request for Proposals, the performance of the engineering and environmental services for the SB 821 Projects: Perez Road Class IV Separated Bikeways (C08673) and Whispering Palms Trail Class III Bike Routes (C08672), defined and described particularly in Section 2 of this Agreement.

B. Design Professional, following submission of a proposal for the performance of the services defined and described particularly in Section 2 of this Agreement, was selected by the City to perform those services.

C. Design Professional was selected by the City on the basis of Design Professional's demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required.

D. Pursuant to the City of Cathedral City's Municipal Code, City has authority to enter into this Design Professional Services Agreement and the City Manager has authority to execute this Agreement.

E. The Parties desire to formalize the selection of Design Professional for performance of those services defined and described particularly in Section 2 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

## **SECTION 1. TERM OF AGREEMENT.**

Subject to the provisions of Section 27 "Termination of Agreement" of this Agreement, the Term of this Agreement is for 12 months commencing on the Effective Date.

## **SECTION 2. SCOPE OF SERVICES & SCHEDULE OF PERFORMANCE.**

(a) Scope of Services. Design Professional agrees to perform the services set forth in Exhibit "A" "Scope of Services" (hereinafter, the "Services") and made a part of this Agreement by this reference.

(b) Schedule of Performance. The Services shall be completed pursuant to the schedule specified in Exhibit "A." Should the Services not be completed pursuant to that schedule, the Design Professional shall be deemed to be in Default of this Agreement. The City, in its sole discretion, may choose not to enforce the Default provisions of this Agreement and may instead allow Design Professional to continue performing the Services.

## **SECTION 3. ADDITIONAL SERVICES.**

Design Professional shall not be compensated for any work rendered in connection with its performance of this Agreement that are in addition to or outside of the Services unless such additional services are authorized in advance and in writing in accordance with Section 34 "Administration and Implementation" or Section 36 "Amendment" of this Agreement. If and when such additional work is authorized, such additional work shall be deemed to be part of the Services.

## **SECTION 4. SAFETY**

(a) Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by City Safety Officer and other City representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.

(b) Pursuant to the authority contained in Vehicle Code §591, City has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

(c) Any subcontract entered into as a result of this agreement, shall contain all of the provisions of this Section.

(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.

## **SECTION 5. COMPENSATION AND METHOD OF PAYMENT.**

(a) The method of payment for this Agreement will be based on lump sum. The total lump sum price paid to Consultant will include compensation for all work and deliverables, including travel and equipment. No additional compensation will be paid to Consultant, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between Consultant and City. Adjustment in the total lump sum compensation will not be effective until authorized by Agreement amendment and approved by the City.

(b) Progress payments may be made monthly in arrears based on the percentage of work completed by Consultant. If Consultant fails to submit the required deliverable items according to the schedule, City shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Section 27 "Termination of Agreement".

(c) Consultant shall not commence performance of work or services until this Agreement has been approved by City and notification to proceed has been issued by City Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this Agreement.

(d) Consultant will be reimbursed within thirty (30) days upon receipt by City Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this project number and project title. Final invoice must contain the final cost and all credits due City that include any equipment purchased under the provisions of Section 11 "Equipment Purchase". The final invoice must be submitted within sixty (60) calendar days after completion of Consultant's work unless a later date is approved by the City. Invoices shall be mailed to the City in accordance with Section 32 "Notices".

(e) The total amount payable by City shall not exceed \$63,520.

## **SECTION 6. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS.**

(a) The Consultant agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.

(b) The Consultant also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(c) Any costs for which payment has been made to the Consultant that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the Consultant to City.

(d) When a Consultant or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

## **SECTION 7. AUDIT REVIEW PROCEDURES.**

(a) Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by Agreement, shall be reviewed by City's Chief Financial Officer.

(b) Not later than thirty (30) days after issuance of the final audit report, Consultant, may request a review by City's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

(c) Neither the pendency of a dispute nor its consideration by City will excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

(d) Consultant and subconsultant Agreements, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an Agreement audit, and incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, Cost Proposal and ICR, and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review, it is Consultant's responsibility to ensure federal, state, or local government officials are allowed fully access to the CPA's work papers including making copies as necessary. The Agreement, Cost Proposal, and ICR shall be adjusted by Consultant and approved by City to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by City at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state, or local governments have access to CPA work papers, will be considered a breach of Agreement terms and cause for termination of the Agreement pursuant to Section 27 "Termination of 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 City 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 pursuant to Section 27 "Termination of Agreement" and disallowance of prior reimbursed costs.

(i) 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, City will reimburse the Consultant at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a) If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
- b) If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
- c) If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

(ii) 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.

(iii) 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.

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

## **SECTION 8. DISPUTES.**

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

(a) 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 City Manager and City Engineer, who may consider written or verbal information submitted by Consultant.

(b) Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, Consultant may request review by City 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.

## **SECTION 9. SUBCONTRACTING.**

(a) Nothing contained in this Agreement or otherwise, shall create any contractual relation between City and any subconsultant(s), and no sub-agreement shall relieve Consultant of its responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to City for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from City's obligation to make payments to Consultant.

(b) Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization in accordance with Section 34 "Administration and Implementation" of this Agreement, except that, which is expressly identified in the approved Cost Proposal.

(c) Any sub-agreement entered into as a result of this Agreement, shall contain all the provisions stipulated in this entire Agreement to be applicable to Subconsultants unless otherwise noted.

(d) Consultant shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to Consultant by City.

(e) Any substitution of subconsultant(s) must be approved in writing by City in accordance with Section 34 "Administration and Implementation" of this Agreement 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.

## **SECTION 10. RETENTION OF FUNDS.**

(a) Any sub-agreement entered into as a result of this Agreement shall contain all of the provisions of this section.

(b) No retainage will be held by the City from progress payments due to Consultant. Consultants and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall subject the violating Consultant or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by Consultant, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

## **SECTION 11. EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES.**

(a) Prior authorization in writing, by City in accordance with Section 34 "Administration and Implementation" of this Agreement 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 the Consultant's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by City in accordance with Section 34 "Administration and Implementation" of this Agreement; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

(c) Any equipment purchased as a result of this Agreement is subject to the following:

(i) Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, City shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated pursuant to Section 27 "Termination of Agreement" of this Agreement, Consultant may either keep the equipment and credit City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit City in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by City and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by City.

(ii) 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.

## **SECTION 12. INSPECTION AND FINAL ACCEPTANCE.**

Consultant and any subconsultant shall permit City, the state, and the FHWA if federal participating funds are used in this Agreement; to review and inspect the project activities and files at all reasonable times during the Term of Agreement including review and inspection on a daily basis. City shall reject or finally accept Consultant's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Consultant's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of Consultant's work by City shall not constitute a waiver of any of the provisions of this



Agreement including, but not limited to, Section 23 "Indemnification" and Section 24 "Insurance."

### **SECTION 13. OWNERSHIP OF DOCUMENTS.**

(a) It is mutually agreed that all materials prepared by Consultant under this Agreement shall become the sole property of City, and Consultant shall have no property right therein whatsoever. Immediately upon completion, expiration or termination, City shall be entitled to, and Consultant shall deliver to City, all original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files, investigations, appraisals, inventories, analyses, estimates, and other documents prepared, developed or discovered by Consultant in the course of providing the Services pursuant to this Agreement to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by Consultant in performing this Agreement which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to City which is in Consultant's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this Agreement must be approved in writing by City.

(b) Additionally, it is agreed that the Parties intend this to be an Agreement for services and each considers the products and results of the services to be rendered by Consultant hereunder to be work made for hire. Consultant acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City, and may be used, reused or otherwise disposed of by City without the permission of the Consultant.

(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 Agreement. Any reuse by City for another project or project location shall be at City's sole risk. If and to the extent that City utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files, investigations, appraisals, inventories, analyses, estimates, or other documents prepared, developed or discovered by Consultant in the course of providing the Services pursuant to this Agreement, Consultant's guarantees and warranties in Section 15 "Standard of Performance; Familiarity With Work" of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files, investigations, appraisals, inventories, analyses, estimates, or other documents.

(d) Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).

(e) City may permit copyrighting reports or other agreement products. If copyrights are permitted; the Agreement shall provide that the City 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.

#### **SECTION 14. DESIGN PROFESSIONAL'S BOOKS AND RECORDS.**

(a) For the purpose of determining compliance with Gov. Code § 8546.7, Consultant shall maintain any and all documents and records demonstrating or relating to Consultant's performance of the Services. The Consultant, Subconsultants, and City shall maintain any and all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City pursuant to this Agreement, including, but not limited to, the costs of administering the Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant pursuant to this Agreement. All parties, including the Consultant's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon request by City or its designated representative. Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Consultant's address indicated for receipt of notices in this Agreement. The State, State Auditor, or City, 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.

(c) Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Consultant's business, City may, by written request, require that custody of such documents or records be given to the City. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

#### **SECTION 15. STANDARD OF PERFORMANCE; FAMILIARITY WITH WORK.**

(a) Design Professional represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the Services required under this

Agreement in a thorough, competent and professional manner. Design Professional shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services. In meeting its obligations under this Agreement, Design Professional shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to the Services required of Design Professional under this Agreement, and shall use such skill, prudence, and diligence as other members of Design Professional's profession commonly possess and exercise. In addition to the general standards of performance set forth this section, additional specific standards of performance and performance criteria may be set forth in Exhibit "A" "Scope of Work" that shall also be applicable to Design Professionals work under this Agreement. Where there is a conflict between a general and a specific standard of performance or performance criteria, the specific standard or criteria shall prevail over the general.

(b) Design Professional warrants that (1) it has thoroughly investigated and considered the work to be performed, (2) it has investigated the issues, regarding the scope of services to be provided, (3) it has carefully considered how the work should be performed, and (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

#### **SECTION 16. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.**

Design Professional shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Design Professional shall obtain any and all licenses, permits and authorizations necessary to perform the Services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Design Professional to comply with this section.

#### **SECTION 17. STATE PREVAILING WAGE RATES.**

(a) No Consultant or Subconsultant may be awarded an Agreement containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this Agreement, including any subsequent amendments.

(b) The Consultant shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this Agreement are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this Agreement by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at City construction

sites, at City facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve City projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

(c) General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.

(d) Payroll Records

(i) 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:

(1) The information contained in the payroll record is true and correct.

(2) 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.

(ii) The payroll records enumerated under paragraph (1) above shall be certified as correct by the Consultant under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by City representative's at all reasonable hours at the principal office of the Consultant. The Consultant shall provide copies of certified payrolls or permit inspection of its records as follows:

(1) 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.

(2) A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of City, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to City, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the Consultant.

(3) The public shall not be given access to certified payroll records by the Consultant. The Consultant is required to forward any requests for certified payrolls to the City Contract Administrator by both email and regular mail on the business day following receipt of the request.

(iii) 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.

(iv) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by City shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the Consultant or Subconsultant performing the work shall not be marked or obliterated.

(v) The Consultant shall inform City of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

(vi) The Consultant or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the Consultant or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to City, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by City from payments then due. Consultant is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.

(e) When prevailing wage rates apply, the Consultant is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the City.

(f) Penalty

(i) The Consultant and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the Consultant and any Subconsultant shall forfeit to the City a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the Agreement by the Consultant or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

(ii) 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.

(iii) 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.

(iv) 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:

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(v) Pursuant to Labor Code §1775, City shall notify the Consultant on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.

(vi) If City determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if City did not retain sufficient money under the Agreement to pay those employees the balance of wages owed under the

general prevailing rate of per diem wages, the Consultant shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by City.

(g) Hours of Labor

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

(h) Employment of Apprentices

(i) Where either the prime Agreement or the sub-agreement exceeds thirty thousand dollars (\$30,000), the Consultant and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

(ii) 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.

**SECTION 18. NONDISCRIMINATION 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 City to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

(d) Consultant shall permit access by representatives of the Department of Fair Employment and Housing and the City upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or City shall require to ascertain compliance with this clause.

(e) Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

(f) Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

(g) The Consultant, with regard to the work performed under this Agreement, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

(h) The Consultant shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.



## **SECTION 19. UNAUTHORIZED ALIENS**

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of the Services, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

## **SECTION 20. CONFLICTS OF INTEREST.**

(a) Design Professional covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Design Professional's performance of the Services. Design Professional further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Design Professional agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

(b) City may determine that Design Professional must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests. If such a determination is made, Design Professional shall file the subject Form 700 with the City Clerk's Office pursuant to the written instructions provided by the Office of the City Clerk within ten (10) days of the request.

(c) City understands and acknowledges that Design Professional is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Design Professional is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

(d) City understands and acknowledges that Design Professional will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement. Any such future service shall not be considered a conflict of interest for purposes of this section.

(e) During the term of this Agreement, the Consultant shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this Agreement or any ensuing City construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing City construction project which will follow.

(f) Consultant certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Consultant agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. Consultant further agrees to complete any statements of economic interest if required by either City ordinance or State law.

(g) 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.

(h) 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.

#### **SECTION 21. REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATION.**

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

#### **SECTION 22. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.**

(a) All financial, statistical, personal, technical, or other data and information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement,

then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(e) Permission to disclose information on one occasion, or public hearing held by City relating to the Agreement, shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.

(f) Consultant shall not comment publicly to the press or any other media regarding the Agreement or City's actions on the same, except to City's staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings or in response to questions from a Legislative committee.

(g) Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by City, and receipt of City's written permission.

(h) Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

(i) All information related to the construction estimate is confidential, and shall not be disclosed by Consultant to any entity, other than City, Caltrans, and/or FHWA. All of the materials prepared or assembled by Consultant pursuant to performance of this Agreement 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 Agreement, 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.

## **SECTION 23. INDEMNIFICATION.**

(a) Indemnification by Design Professional. As provided under Civil Code Section 2782.8, Design Professional shall indemnify, protect, defend and hold harmless

City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, actions and proceedings (whether at law or equity, administrative or judicial), demands, orders, judgments, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, (collectively "Claims") to the extent same arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional, its officers, agents, employees or sub-consultants (or any entity or individual that Design Professional shall bear the legal liability thereof) in the performance of professional services under this Agreement. In the event Claims are found by the trier of fact to have been caused by the joint or concurrent negligence of the City, its contractors and other design professionals, and Design Professional, damages and expenses from both indemnity and duty to defend obligations shall be borne by each party in proportion to its negligence. Notwithstanding the foregoing, in the event one or more defendants are unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Design Professional shall meet and confer with other parties regarding unpaid defense costs. The provisions of this section pertaining to Design Professional's duty to defend shall not apply if there is a project-specific general liability policy of insurance that insures all project participants for general liability exposure on a primary basis and also covers all design professionals involved with the project for their legal liability arising out of their professional services on a primary basis.

(b) Indemnification from Subcontractors. Design Professional agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-consultant, subcontractor or any other person or entity involved by, for, with or on behalf of Design Professional in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Design Professional fails to obtain such indemnity obligations from others as required here, Design Professional agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Design Professional and shall survive the termination of this Agreement or this section.

(c) City's Negligence. The provisions of this section do not apply to Claims occurring as a result of City's sole negligence. The provisions of this section shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officials, employees and agents.

## **SECTION 24. INSURANCE.**

Design Professional agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Exhibit "C" "Insurance" and made a part of this Agreement. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if

so approved in writing by the City Manager. Design Professional agrees to provide City with copies of required policies upon request.

## **SECTION 25. ASSIGNMENT.**

The expertise and experience of Design Professional are material considerations for this Agreement. City has an interest in the qualifications and capability of the persons and entities who will fulfill the duties and obligations imposed upon Design Professional under this Agreement. In recognition of that interest, Design Professional shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Design Professional's duties or obligations under this Agreement without the prior written consent of the City. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including termination of this Agreement pursuant to Section 27 "Termination of Agreement." City acknowledges, however, that Design Professional, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

## **SECTION 26. CONTINUITY OF PERSONNEL.**

Design Professional shall make every reasonable effort to maintain the stability and continuity of Design Professional's staff and subcontractors, if any, assigned to perform the Services. Design Professional shall notify City of any changes in Design Professional's staff and subcontractors, if any, assigned to perform the Services prior to and during any such performance.

## **SECTION 27. TERMINATION OF AGREEMENT.**

(a) City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days written notice of termination to Design Professional. In the event such notice is given, Design Professional shall cease immediately all work in progress.

(b) Design Professional may terminate this Agreement for cause at any time upon thirty (30) days written notice of termination to City.

(c) If either Design Professional or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Design Professional, or City may terminate this Agreement immediately upon written notice.

(d) Upon termination of this Agreement by either Design Professional or City, all property belonging exclusively to City which is in Design Professional's possession shall be returned to City. Design Professional shall furnish to City a final invoice for work performed and expenses incurred by Design Professional, prepared as set forth in Section 5 "Compensation and Method of Payment" of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 5 "Compensation and Method of Payment" of this Agreement.

(e) City may temporarily suspend this Agreement, at no additional cost to City, provided that Consultant is given written notice of temporary suspension. If City gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Agreement. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this section.

(f) Notwithstanding any provisions of this Agreement, Consultant shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this Agreement by Consultant, and City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due City from Consultant is determined.

(g) In the event of termination, Consultant shall be compensated as provided for in this Agreement, except as provided in Section 11 Equipment Purchase and Other Capital Expenditures Part C.

## **SECTION 28.        DEFAULT.**

In the event that Design Professional is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Design Professional for any work performed after the date of default. Instead, the City may give notice to Design Professional of the default and the reasons for the default. The notice shall include the timeframe in which Design Professional may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Design Professional is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Design Professional does not cure the default, the City may take necessary steps to terminate this Agreement under Section 27 "Termination of Agreement." Any failure on the part of the City to give notice of the Design Professional's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

## **SECTION 29.        EXCUSABLE DELAYS.**

Design Professional shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Design Professional. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

## **SECTION 30.        CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR.**

(a) If claims are filed by City's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with City's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

(b) Consultant's personnel that City considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from City. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this Agreement.

(c) Services of Consultant's personnel in connection with City's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to resolve the construction claims.

### **SECTION 31. COOPERATION BY CITY.**

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the Services shall be furnished to Design Professional in every reasonable way to facilitate, without undue delay, the Services to be performed under this Agreement.

### **SECTION 32. NOTICES.**

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City:	City of Cathedral City Attn: Engineering Department 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234
To Consultant:	<u>STC Traffic Inc.</u> <u>Attn: Jason Stack, President</u> <u>5793 Avenida Encinas, Suite 218</u> <u>Carlsbad, CA 92008</u>

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

### **SECTION 33. AUTHORITY TO EXECUTE.**

The person or persons executing this Agreement on behalf of Design Professional represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Design Professional to the performance of its obligations hereunder.

#### **SECTION 34. ADMINISTRATION AND IMPLEMENTATION.**

This Agreement shall be administered and executed by the City Manager or his or her designated representative. The City Manager shall have the authority to issue interpretations and to make amendments to this Agreement, including amendments that commit additional funds, consistent with Section 36 "Amendment" and the City Manager's contracting authority under the Cathedral City Municipal Code.

#### **SECTION 35. BINDING EFFECT.**

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

#### **SECTION 36. AMENDMENT.**

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Design Professional and by the City. The City Manager shall have the authority to approve any amendment to this Agreement if the total compensation under this Agreement, as amended, would not exceed the City Manager's contracting authority under the Cathedral City Municipal Code. All other amendments shall be approved by the City Council. The Parties agree that the requirement for written modifications cannot be waived and that any attempted waiver shall be void. Consultant shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been issued. 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 City.

#### **SECTION 37. WAIVER.**

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Design Professional shall not constitute a waiver of any of the provisions of this Agreement.

#### **SECTION 38. LAW TO GOVERN; VENUE.**

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in



state trial courts shall lie exclusively in the County of Riverside, California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

### **SECTION 39. ATTORNEYS FEES, COSTS AND EXPENSES.**

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing Party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

### **SECTION 40. CONTINGENT FEE.**

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

### **SECTION 41. DEBARMENT AND SUSPENSION.**

(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:

(i) Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

(ii) Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;

(iii) Does not have a proposed debarment pending; and

(iv) Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

(b) Any exceptions to this certification must be disclosed to City. Exceptions will not necessarily result in denial of recommendation for award but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

(c) Exceptions to the Federal Government excluded parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

#### **SECTION 42. NATIONAL LABOR RELATIONS BOARD CERTIFICATION.**

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

#### **SECTION 43. ENTIRE AGREEMENT.**

This Agreement, including the attached Exhibits "A" through "C", is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Design Professional and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid and binding.

#### **SECTION 44. PROMPT PAYMENT FROM CITY TO CONSULTANT**

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

(1) The City shall review each payment request as soon as feasible after receipt to verify it is a proper payment request.

(2) The City must return any payment request deemed improper by the City to the Consultant as soon as feasible, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall include documentation setting forth in writing the reasons why it is an improper payment request.

#### **SECTION 45. SEVERABILITY.**

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

**SECTION 46. ELECTRONIC SIGNATURE**

The Parties agree that, in accordance with the City's Electronic Signature Use Policy, adopted on August 10, 2023, and as amended thereafter, the Parties may use electronic signatures to execute this Agreement. Any use of electronic signatures to execute this Agreement shall comply with the City's Electronic Signature Use Policy, and such signatures shall have the same force and effect as if this Agreement were executed by hand. Contractor acknowledges that it has had an opportunity to request and review the City's Electronic Signature Use Policy, and Contractor agrees to comply with the Electronic Signature Use Policy. Contractor agrees to indemnify, defend, and hold the City harmless from any claim, damage, or liability associated with transmitting an electronic signature or an electronically signed record by electronic transmission.

**SECTION 47. CONFLICTING TERMS.**

Except as otherwise stated herein, if the terms of this Agreement conflict with the terms of any Exhibit hereto, or with the terms of any document incorporated by reference into this Agreement, the terms of this Agreement shall control.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date and year first-above written.

**CITY OF CATHEDRAL CITY**

**STC TRAFFIC INC.**

\_\_\_\_\_  
Charles P. McClendon  
City Manager

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Tracey R. Hermosillo, CMC  
City Clerk

**APPROVED AS TO FORM**

\_\_\_\_\_  
Eric S. Vail  
City Attorney

**NOTE: DESIGN PROFESSIONAL'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DESIGN PROFESSIONAL'S BUSINESS ENTITY.**

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

## ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE )

On \_\_\_\_\_, 2024,  
before me, \_\_\_\_\_,  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")  
personally appeared \_\_\_\_\_,  
Name of Signer(s)

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

## OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

### CAPACIT(IES) CLAIMED BY SIGNER(S)

### DESCRIPTION OF ATTACHED DOCUMENT

Signer's Name: \_\_\_\_\_

- .. Individual
- .. Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title or Type of Document

- .. Partner(s) .. Limited
- .. General

- .. Attorney-In-Fact
- .. Trustee(s)
- .. Guardian/Conservator
- .. Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

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

## ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE )

On \_\_\_\_\_, 2024  
before me, \_\_\_\_\_  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")  
personally appeared \_\_\_\_\_  
Name of Signer(s)

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

Though this section is optional, completing this information can deter alternation of the document or fraudulent reattachment of this form to an unintended document.

#### CAPACIT(IES) CLAIMED BY SIGNER(S)

#### DESCRIPTION OF ATTACHED DOCUMENT

Signer's Name: \_\_\_\_\_

- .. Individual
- .. Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title or Type of Document

- .. Partner(s) .. Limited
- .. General

- .. Attorney-In-Fact
- .. Trustee(s)
- .. Guardian/Conservator
- .. Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

## IV. Scope of Work

This section summarizes STC's scope of work, technical approach, and key deliverables to provide the engineering services required by the City. The tasks shown in the RFP have been modified to reflect the workflow and hours anticipated for the project.

### **Task 1. Project Management & Administration**

STC's Project Manager, Mr. Blough, P.E., T.E., will coordinate the day-to-day activities for the duration of the project and serve as the primary point of contact. Following the Notice to Proceed (NTP), Mr. Blough will schedule a project kick-off meeting with City staff and the Project Team to discuss the objectives, schedule, scope, and City policies and procedures.

Mr. Blough will coordinate progress meetings to discuss design development, staff comments on submittals, and action items. There will be meetings following each submittal to the City at the Preliminary Plan stage and at 90% and 100% PS&E submittals.

STC will prepare and email meeting agendas to City staff in advance of the meetings and email meeting minutes after each meeting. STC will also support the City by attending one City Council meeting to present the project for approval.

STC will submit a progress report with invoices to the City in an organized format and with sufficient detail and backup documentation to clearly identify personnel, hours worked, and tasks completed. STC will control all project documents and provide deliverables and final files to the City in both hard-copy and electronic format.

STC will maintain project files in an organized, logical fashion, and will be able to promptly retrieve and distribute project information to the City in the event of an audit or PRA request for information.

#### Task 1. Deliverables:

- *Schedule and Schedule Updates*
- *Monthly Progress Reports*
- *Meeting Agendas and Minutes*
- *Attend One City Council Meeting*

### **Task 2. Field Work, Preliminary Plans, Inventory & Standards**

The STC Team and City Project Manager, if available, will walk the project area and collect relevant information to aid in completing location optimization and preliminary plan development.

During the field review, STC will evaluate the project area for compliance with minimum safety standards as provided in the CA MUTCD, Americans with Disabilities Act (ADA), and City Standards. The project area will be observed, paying special attention to traffic signal operations, bike and pedestrian activity, vehicle speed, safety concerns, site constraints, and opportunities.

Following field review, a base map will be prepared showing all the proposed improvements, including the overlay and slurry seal, and laying out the preliminary improvement plans. A Basis of Design (BOD) technical memo will accompany the preliminary plans and document all assumptions and standards to support the design.



#### Task 2. Deliverables:

- *Field Notes with Photos*
- *Basis of Design Technical Memo*
- *Preliminary Plans*

#### **Task 3. Environmental Documentation**

STC will prepare the required environmental documentation that will include the Notice of Determination (NOD) or Notice of Exemption (NOE) and file with the County of Riverside and the State Clearinghouse at the Governor's Office of Planning and Research (OPR).

#### Task 3. Deliverables:

- *Prepare and File CEQA NOD or NOE Form with County of Riverside and State Clearinghouse*

#### **Plans, Specifications, and Cost Estimate (PS&E)**

The STC Team will prepare all drawings, specifications and engineers estimates adequate and sufficient for the City of Cathedral City to solicit bids for the award of the contract and construction. This work is summarized in the subsequent task.

#### **Task 4. Plans, Specifications, and Estimate (PS&E)**

STC will use the Basis of Design (BOD) technical memo and preliminary plans developed during Task 2 as the outline for developing 90% and 100% PS&E. The design will be developed in conformance with the latest City of Cathedral City requirements, Green Book, Caltrans Specifications and Standard Plans, AASHTO, California Manual on Uniform Traffic Control Devices (CA-MUTCD), and Riverside County Regional Standard Drawings.

Plans will be prepared utilizing AutoCAD software. All work identified on the plans will be approved and signed by a professional Civil Engineer registered in the State of California.

Signing and Striping Plans will be prepared at a horizontal scale of 1"=40'. The plans will include full geometry of the roadway and appropriate signing and striping removals and improvements. Bike loop detection will be incorporated into the signing and striping plans to reduce costs. The street overlay and slurry seal limits will also be included on the signing/stripping plans showing the limits and with a general note. This will not include detailed pavement design or full depth pavement construction. The plans will incorporate all aspects of existing and proposed signing and striping design.

STC will provide submittals at the 90% and 100% levels and will schedule a meeting with the City within two (2) weeks of submittal to discuss the plans, answer questions, and obtain direction from the City.

#### Task 4. Deliverables:

- *Project Plans, Specifications, Cost Estimate, and Bid Documents at the 90% and 100% Design Levels*

#### **Task 5. Bidding Assistance**

The STC Team will provide support for bidding during the pre-bidding phases of the project. This work will include, but is not limited to, responding to pre-bid questions from the City and contractor, interpretations of the plans and specifications by email or phone, responses to RFIs, and preparation of addendums if necessary.

STC will attend the pre-bid meeting and be available to answer questions and provide assistance to the City and contractor. All communication will be directed to the City for issuance to the Contractor. STC will have no direct contact with the Contractor.

Task 5. Deliverables:

- *Pre-Bid Meeting Attendance, Written RFI Responses, and Addenda*

**Task 6. Construction Support**

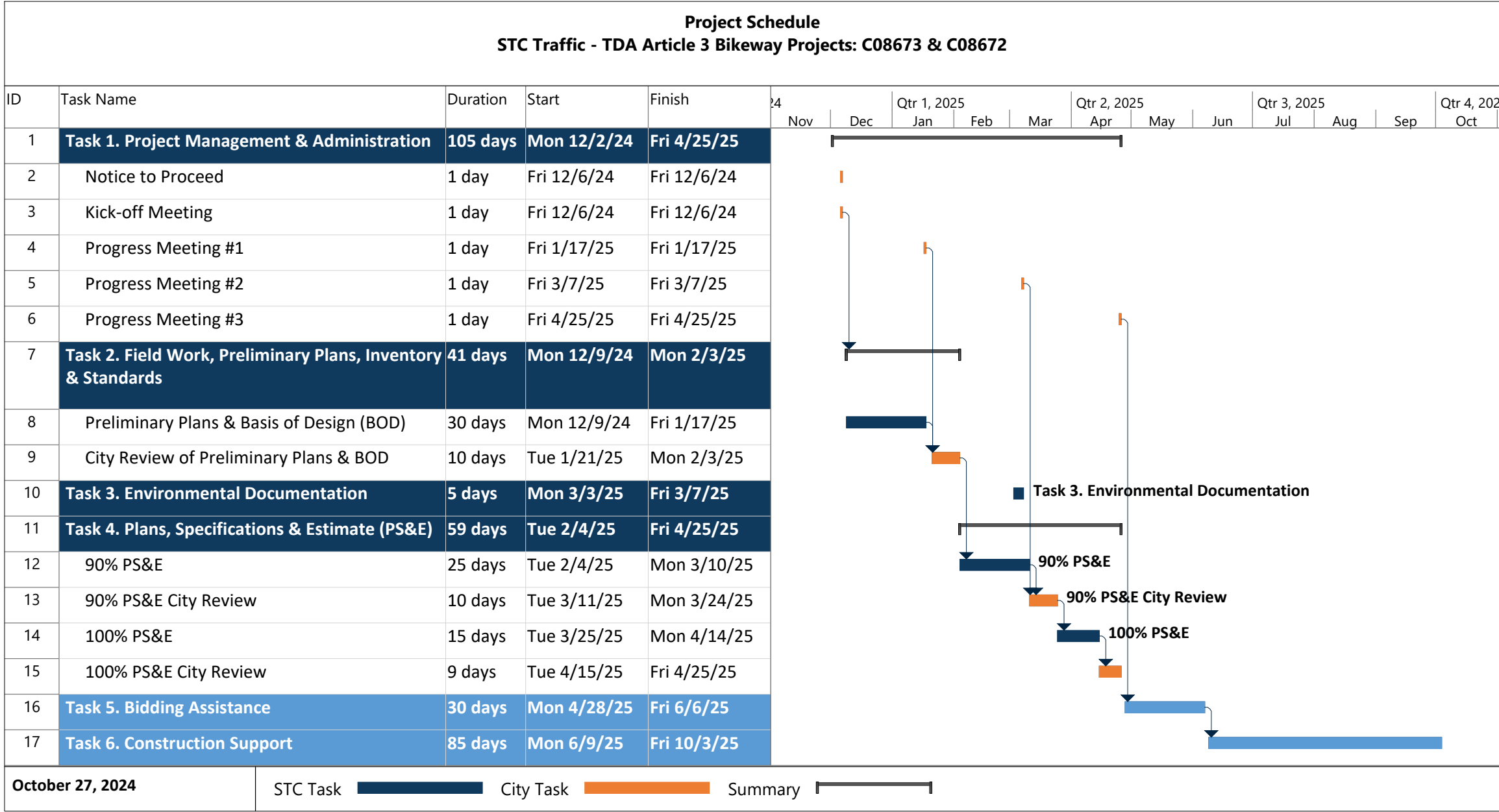
The STC Team will provide support during the construction phases of this project. This work will include, but is not limited to, responding to the Contractor's RFIs related to the plans and specifications, review of submittals, and prepare final record drawings based on the red-line copies of the plans from the contractor and inspector.

STC will attend the pre-construction meeting and be available to answer questions and provide assistance to the City and Contractor.

All communication will be directed to the City for issuance to the Contractor. STC will have no direct contact with the Contractor. This task excludes regularly scheduled construction observation.

Task 6. Deliverables:

- *Pre-Construction Meeting Attendance*
- *Written RFI Responses, Addenda, Shop Drawing Review and Acceptance*
- *Final Record Drawings*



**EXHIBIT "B"**  
**COMPENSATION**

# STC Traffic | City of Cathedral City - Detailed Cost Proposal

## Whispering Palms Trail Class III Bike Routes (C08672)

Employee Name	Blough, Rob	Kern, Phil	Pesaresi, Gianluca	O'Neal, Trevor
	Principal Manager	Senior Principal Manager	Project Engineer II	Project Engineer I
Standard Billing Rate	\$260.00	\$270.00	\$160.00	\$140.00

Task	Task Description					Total Hours	Total Cost
Task 1	Project Management & Administration	12	-	-	-	12	\$ 3,120.00
Task 2	Field Work, Preliminary Plans, Inventory & Standards	8	1	12	18	39	\$ 6,790.00
Task 3	Environmental Documentation	1	-	3	-	4	\$ 740.00
Task 4	Plans, Specifications & Estimate (PS&E) 90% and 100%	4	1	25	100	130	\$ 19,310.00
Task 5	Bidding Assistance	1		4	-	5	\$ 900.00
Task 6	Construction Support	1	-	4		5	\$ 900.00
Total Hours		27	2	48	118	195	
Subtotal Labor		\$7,020.00	\$540.00	\$7,680.00	\$16,520.00		\$31,760.00
						ODC: Other Direct Costs	\$ -
						TOTAL COST	\$ 31,760.00

## **EXHIBIT "C"**

### **INSURANCE**

A. Insurance Coverages. Service Provider shall provide and maintain insurance, acceptable to the City, in full force and effect throughout the term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by Service Provider, its agents, representatives or employees. Service Provider shall procure and maintain the following scope and limits of insurance:

**Only the following “marked” requirements are applicable:**

**X** **Commercial General Liability (CGL):** Insurance written on an occurrence basis to protect Service Provider and City against liability or claims of liability which may arise out of this Agreement in the amount of one million dollars (\$1,000,000) per occurrence and subject to an annual aggregate of two million dollars (\$2,000,000). Coverage shall be at least as broad as Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. additional insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**X** **Vehicle Liability Insurance:** Vehicle liability insurance in an amount not less than \$1,000,000 for injuries, including accidental death, to any one person, and subject to the same minimum for each person, in an amount not less than one million dollars (\$1,000,000) for each accident, and property damage insurance in an amount of not less than one million dollars (\$1,000,000). A combined single limit policy with aggregate limits in an amount of not less than \$2,000,000 shall be considered equivalent to the said required minimum limits. Coverage shall be at least as broad as Insurance Services Office form number CA 0001 covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the approval of the City.

**X** **Workers' Compensation Insurance:** Workers' Compensation insurance that includes a minimum of one million dollars (\$1,000,000) of employers' liability coverage. Service Provider shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives. In the event a claim under the provisions of the California Workers' Compensation Act is filed against City by a bona fide employee of Service Provider participating under this Agreement, Service Provider is to defend and indemnify the City from such claim.

**X** **Professional Liability Insurance:** Professional liability insurance appropriate to the Service Provider's profession in an amount not less than one million dollars

\$1,000,000 per occurrence. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to Services performed under this Agreement. The insurance must be maintained for at least three (3) consecutive years following the completion of Service Provider's services or the termination of this Agreement. During this additional three (3) year period, Service Provider shall annually and upon request of the City submit written evidence of this continuous coverage.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Coverages.

a. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either Party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to City.

b. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

2. Commercial General Liability and Automobile Liability Coverages.

a. City, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities Service Provider performs; products and completed operations of Service Provider; premises owned, occupied or used by Service Provider; or automobiles owned, leased, hired or borrowed by Service Provider. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, or employees.

b. Service Provider's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Service Provider's insurance.

c. Service Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

d. Any failure to comply with the reporting or other provisions of the insurance policies, including breaches of warranties, shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

e. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.

3. Workers' Compensation Coverage. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Service Provider.

C. Other Requirements. Service Provider agrees to deposit with City, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy City that the insurance provisions of this contract have been complied with. The City may require that Service Provider furnish City with copies of original endorsements effecting coverage required by this Exhibit "C". The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Service Provider shall furnish certificates and endorsements from each sub-contractor identical to those Service Provider provides.

2. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers, or the Service Provider shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit Service Provider's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.