

**E. Contract Amendment No. 1 to the Professional Services Agreement for Construction Engineering Services on Federal HSIP Projects - HSIP 9A and HSIP 9B**

Recommendation: To approve Amendment No. 1 to the Professional Services Agreements for construction engineering services on Federally-funded Highway Safety Improvements Program (HSIP) projects with Z&K Consultants on HSIP Cycle 9A –Traffic Signal Improvements at 12 Intersections Project (C08752) and with Willdan Engineering on HSIP 9B – Varner Road Safety Improvements Project (C08751); and, authorize the City Manager to execute the required Amendment documents.

**AMENDMENT NO. 1  
TO THE  
AGREEMENT FOR SERVICES  
BETWEEN  
THE CITY OF CATHEDRAL CITY, CALIFORNIA  
AND  
Z&K CONSULTANTS, INC.**

In accordance with the "Agreement for Services" dated March 27, 2024, (referred to as the "Agreement"), by and between the City of Cathedral City, a municipal corporation ("City") and Z&K Consultants, Inc., a women-owned, certified small business located in Southern California ("Consultant"), and in accordance with Section 28 of the Agreement, entitled, "Amendments", this Amendment Number One (1) to the Agreement is made and entered into this 14<sup>th</sup> day of August 2024, ("Effective Date").

**RECITALS**

A. City and Consultant entered into an Agreement for Services to provide on-call engineering support and grant administration services for state and federal funded transportation projects, initially approved by the City Council on March 27, 2024.

B. The Agreement is subject to certain contract requirements identified in the Caltrans Local Assistance Procedure Manual (LAPM). Amendment No. 1 includes all the latest Caltrans LAPM provisions.

C. The parties wish to amend the Agreement for the first time to: (1) incorporate current Caltrans LAPM requirements for professional design services agreements.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

**Section 1.** The foregoing Recitals are true, correct, and incorporated by this reference herein as material terms relied upon by the Parties in agreeing to and executing this Amendment No. 1.

**Section 2.** The following Articles from Caltrans LAPM provisions will be amended into the agreement:

"As used throughout the Addendum 1, LOCAL AGENCY shall mean City.

**ARTICLE II CONSULTANT'S REPORTS OR MEETINGS**

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

- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

#### **ARTICLE IV PERFORMANCE PERIOD**

- A. This AGREEMENT shall go into effect on March 27, 2024, contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on September 27, 2025, unless extended by AGREEMENT amendment.
- B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

#### **ARTICLE V ALLOWABLE COSTS AND PAYMENTS**

- 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 described in Exhibit A Scope of Services. 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 LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by LOCAL AGENCY.
- 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 set forth in Exhibit A Scope of Services, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval 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 LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI 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 LOCAL AGENCY. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following email addresses:

[ALee@cathedralcity.gov](mailto:ALee@cathedralcity.gov); [accountspayable@cathedralcity.gov](mailto:accountspayable@cathedralcity.gov).

- E. The total amount payable by LOCAL AGENCY shall not exceed Two Hundred Nine Thousand One Hundred Twenty-Four Dollars \$(209,124).

#### **ARTICLE VI TERMINATION**

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

#### **ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. The CONSULTANT agrees that 48 CFR 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 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 31 or 2 CFR 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.

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

#### **ARTICLE VIII RETENTION OF RECORD/AUDITS**

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

#### **ARTICLE IX AUDIT REVIEW PROCEDURES**

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

AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR (e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines) is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
  - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above,

IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.

3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

#### **ARTICLE X SUBCONTRACTING**

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

from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.

- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.
- F. Prompt Progress Payment

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

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

- G. Prompt Payment of Withheld Funds to Subconsultants

The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

**Method 1:** No retainage will be held by the LOCAL AGENCY 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 LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.



## **ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES**

- A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
  - 1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
  - 2. Regulation 2 CFR 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

## **ARTICLE XII STATE PREVAILING WAGE RATES**

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT

are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

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

D. Payroll Records

1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
  - a. The information contained in the payroll record is true and correct.
  - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
  - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
  - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards

Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.

- c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
  - 3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
  - 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
  - 5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
  - 6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
- 1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and

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

2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the CONSULTANT of the project is not liable for the penalties described above unless the CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the CONSULTANT fails to comply with all of the following requirements:
  - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
  - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
  - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the

CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.

- d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

#### G. Hours of Labor

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

#### H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to

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

#### **ARTICLE XIII CONFLICT OF INTEREST**

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

#### **ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

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

#### **ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

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

#### **ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

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

evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT,



subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

## **ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION**

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  3. Does not have a proposed debarment pending; and
  4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government excluded parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

## **ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

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

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate Good Faith Efforts (GFE) to meet this goal. It is CONSULTANT's responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible to document the verification record

by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

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

- ☐ 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- ☐ 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- ☐ Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

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

- B. The goal for DBE participation for this AGREEMENT is 20%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit 10- O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: Proposer/Contractor Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. Contract Assurance

Under 49 CFR 26.13(b):

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

Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

#### E. Termination and Replacement of DBE Subconsultants

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

##### Termination of DBE Subconsultants

After execution of the AGREEMENT, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the LOCAL AGENCY:

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

9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The LOCAL AGENCY determines other documented good cause.

CONSULTANT must use the following procedures to request the termination of a DBE or portion of a DBE's work:

1. Send a written notice to the DBE of the CONSULTANT's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the LOCAL AGENCY. The written notice to the DBE must request they provide any response within five (5) business days to both the CONSULTANT and the LOCAL AGENCY by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.
2. If the DBE does not respond within five (5) business days, CONSULTANT may move forward with the request as if the DBE had agreed to CONSULTANT's written notice.
3. Submit CONSULTANT's DBE termination request by written letter to the LOCAL AGENCY and include:
  - One or more above listed justifiable reasons along with supporting documentation.
  - CONSULTANT's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of CONSULTANT's written notice
  - The DBE's response to CONSULTANT's written notice, if received. If a written response was not provided, provide a statement to that effect.

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE termination request within five (5) business days.

#### Replacement of DBE Subconsultants

After receiving the LOCAL AGENCY's written authorization of DBE termination request, CONSULTANT must obtain the LOCAL AGENCY's written agreement for DBE replacement. CONSULTANT must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures shall be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the LOCAL AGENCY which must include:
  - a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.

- b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
    - Description of scope of work and cost proposal
    - Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
    - Revised Exhibit 10-O2: Consultant Contract DBE Commitment
2. If CONSULTANT has not identified a DBE replacement firm, submits documentation of CONSULTANT's GFes to use DBE replacement firms within seven (7) days of LOCAL AGENCY's authorization to terminate the DBE. CONSULTANT may request the LOCAL AGENCY's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:
  - Search results of certified DBEs available to perform the original DBE work identified and or other work CONSULTANT had intended to self-perform, to the extent needed to meet DBE commitment
  - Solicitations of DBEs for performance of work identified
  - Correspondence with interested DBEs that may have included contract details and requirements
  - Negotiation efforts with DBEs that reflect why an agreement was not reached
  - If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
  - Copies of each DBE's and non-DBE's price quotes for work identified, as the LOCAL AGENCY may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
  - Additional documentation that supports CONSULTANT's GFE

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE replacement request within five (5) business days.

#### F. Commitment and Utilization

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

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work

3. Maintain records including:

- Name and business address of each 1 -tier subconsultant
- Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
- Date of payment and total amount paid to each business (see Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

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

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

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

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

G. Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

CONSULTANT must perform CUF evaluation for each DBE working on a federal-aid contract, with or without a DBE goal. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the project.

CONSULTANT must provide written notification to the LOCAL AGENCY at least 15 days in advance of each DBE's initial performance of work or supplying materials for the Contract. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 days of a DBE initially performing work or supplying materials on the Contract, CONSULTANT shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business

Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

CONSULTANT must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation. CONSULTANT must submit to the LOCAL AGENCY these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

CONSULTANT must notify the LOCAL AGENCY immediately if they believe the DBE may not be performing a CUF.

The LOCAL AGENCY will verify DBEs performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional LOCAL AGENCY evaluations. The LOCAL AGENCY must evaluate DBEs and their CUF performance throughout the duration of a Contract. The LOCAL AGENCY will provide written notice to the CONSULTANT and the DBE at least two (2) business days prior to any evaluation. The CONSULTANT and the DBE must participate in the evaluation. Upon completing the evaluation, the LOCAL AGENCY must share the evaluation results with the CONSULTANT and the DBE. An evaluation could include items that must be remedied upon receipt. If the LOCAL AGENCY determines the DBE is not performing a CUF, the CONSULTANT must suspend performance of the noncompliant work.

CONSULTANT and DBEs must submit any additional CUF related records and documents within five (5) business days of LOCAL AGENCY's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE Commercially Useful Function Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If CONSULTANT and/or the LOCAL AGENCY determine that a listed DBE is not performing a CUF in performance of their DBE committed work, CONSULTANT must immediately suspend performance of the noncompliant portion of the work. LOCAL AGENCY may deny payment for the noncompliant portion of the work. LOCAL AGENCY will ask the CONSULTANT to submit a corrective action plan (CAP) to the LOCAL AGENCY within five (5) days of the

noncompliant CUF determination. The CAP must identify how the CONSULTANT will correct the noncompliance findings for the remaining portion of the DBE's work. LOCAL AGENCY has five (5) days to review the CAP in conjunction with the CONSULTANT's review. The CONSULTANT must implement the CAP within five (5) days of the LOCAL AGENCY's approval. The LOCAL AGENCY will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a commercially useful function on the Contract, CONSULTANT may have good cause to request termination of the DBE.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- L. For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY



administering the contract. If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report “no payments were made to subs this month” and write this visibly and legibly on Exhibit 9-P.

- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

## **ARTICLE XX FUNDING REQUIREMENTS**

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

## **ARTICLE XXI CHANGE IN TERMS**

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

## **ARTICLE XXII CONTINGENT FEE**

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing

business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE XXIII DISPUTES**

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

- 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 thirty (30) calendar days after completion of all work under the AGREEMENT, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

#### **ARTICLE XXIV INSPECTION OF WORK**

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

#### **ARTICLE XXV SAFETY**

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

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

#### **ARTICLE XXVI OWNERSHIP OF DATA**

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal- aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

#### **ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR**

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against

such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

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

#### **ARTICLE XXVIII CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

#### **ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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

comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

#### **ARTICLE XXX EVALUATION OF CONSULTANT**

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

#### **ARTICLE XXXI PROMPT PAYMENT**

##### **A. PROMPT PAYMENT FROM LOCAL AGENCY TO CONSULTANT**

The LOCAL AGENCY 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 contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY 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 LOCAL AGENCY shall act in accordance with both of the following:

- (1) The LOCAL AGENCY shall review each payment request as soon as feasible after receipt to verify it is a proper payment request.
- (2) The LOCAL AGENCY must return any payment request deemed improper by the LOCAL AGENCY 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.

##### **B. PROMPT PAYMENT CERTIFICATION**

For projects awarded on or after September 1, 2023: the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY administering the contract by the 15th of the month following the month of any payment(s). If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

The LOCAL AGENCY must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE commitment and prompt payment issues until the end of the project. The LOCAL AGENCY must email a copy of Exhibit 9-P to [DBE.Forms@dot.ca.gov](mailto:DBE.Forms@dot.ca.gov) before the end of the month after receiving the Exhibit 9-P from the CONSULTANT.

#### **ARTICLE XXXII TITLE VI ASSURANCES**

##### **APPENDIX A**

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations

relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by

the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

## **APPENDIX E**

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following non- discrimination statutes and authorities, including, but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**Section 3.** Except as specifically amended by this Amendment No.1, the remaining terms of the Agreement shall remain in full force and effect. In the event of a conflict between the provisions of this Amendment No. 1 and the provisions of the Agreement, the provisions of this Amendment No. 1 shall control.

#### **SUMMARY:**

Amendment No. 1 added latest Caltrans provisions identified in the LAPM for professional design services.



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. 1 to be executed as of the date first written above.

**CITY OF CATHEDRAL CITY**

**Z&K Consultants, Inc.**

.....  
**By:** Charles P. McClendon  
City Manager

.....  
**By:** Crystal Fraire  
President

**ATTEST:**

.....  
**By:** Tracey R. Hermosillo, CMC  
City Clerk

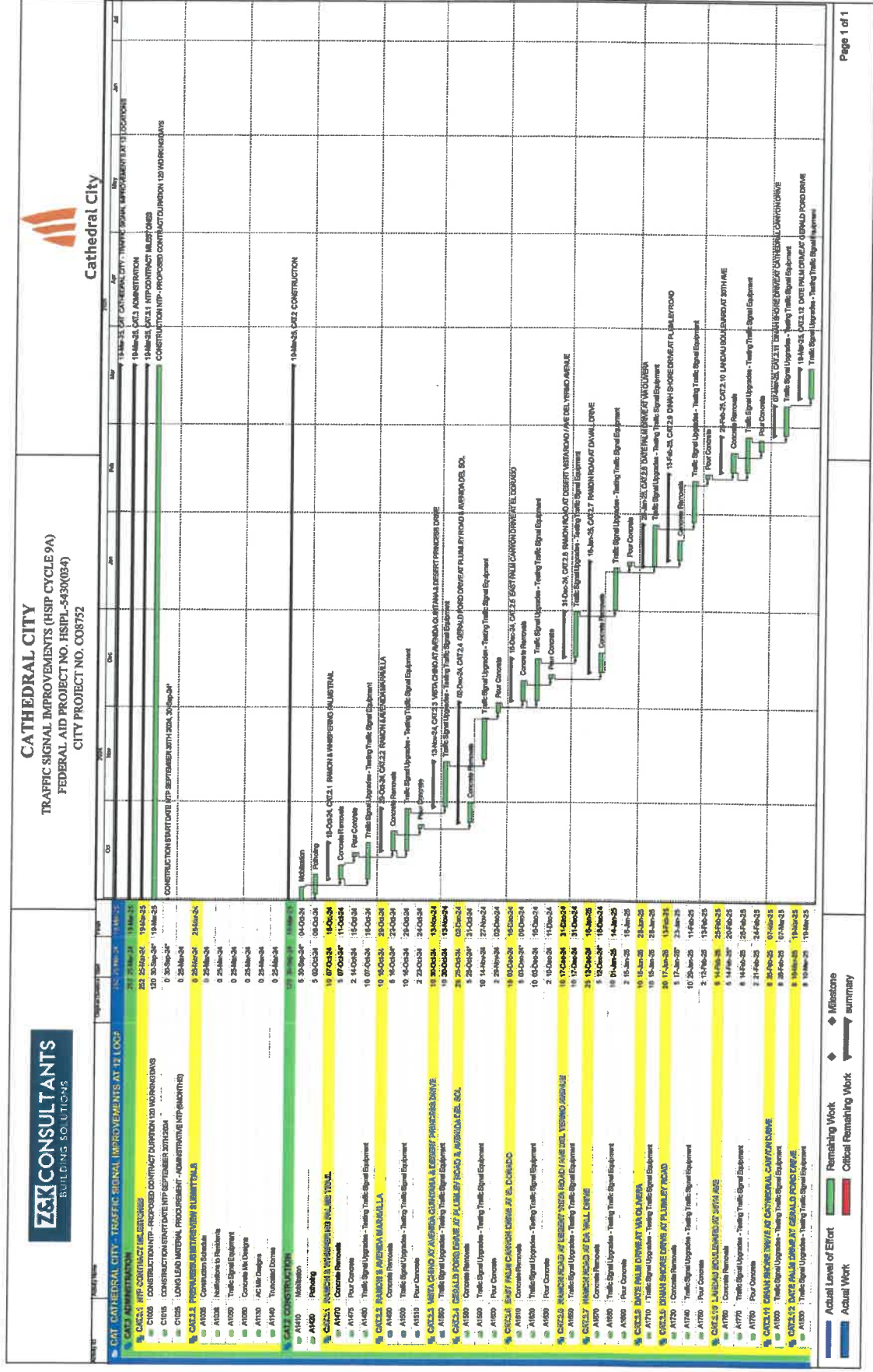
.....  
**By:**

.....  
**By:** Eric S. Vail  
City Attorney

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

# PROPOSED SCHEDULE

Our in-house design team and construction management team worked together to create the schedule since both thoroughly understand the City's expectations for this Project. Our proposed schedule was developed using Primavera P6 technology. This schedule includes the stages of work, time frames, and shows the ability to perform the required services in a timely manner.



### iii. PROJECT UNDERSTANDING AND APPROACH

The team proposed on this project have extensive experience in project management, construction management, construction inspection and design. We have successfully utilized CM/PM Agency delivery on a host of projects. Through this experience we have developed management procedures that promote collaboration and teamwork, improve quality and maximize the value of the above project. Z&K past performance with Cities, Counties, and other agencies shows our remarkable ability to control costs, guarantee great quality of work, and meet all project deadlines. We understand the importance of Schedule Control and are known in the industry for assisting the contractor to cut the project schedule and to yield significant savings for our clients through reduction of overhead management and construction costs.

**MANAGEMENT APPROACH** | The Z&K Team has successfully utilized CM Agency delivery on a host of projects. Through this experience we have developed project management procedures that promote collaboration and teamwork, improve quality and maximize the value of the above project. Z&K's past performance with Cities, Counties, and other agencies show our remarkable ability to control costs, guarantee great quality of work, and meet all project deadlines. We understand the importance of Schedule Control and are known in the industry for assisting the contractor to cut the project schedule and to yield significant savings for our clients through reduction of overhead construction management and construction costs. The most significant saving is less inconvenience to the traveling public and less City exposure due to shortened construction duration. This will help extend excess project funds into other important projects. Z&K Consultants, Inc. provides proven professional construction management techniques to ensure the safe construction of a quality project completed on time and within budget. Z&K accomplished this by establishing the systems, policies, and procedures necessary to ensure adequate project controls are in place. The Construction Manager must ensure all parties understand the basic responsibilities and interrelationships of all team member such as the Owner (both project management and operations), the Design Engineer, the Contractor, the construction management team, and the subconsultants. Additionally, a good Construction Manager must have the knowledge and experience to effectively understand the interrelationships between the key management components of time, information, cost, and quality. Decision making, including obtaining sufficient information to make reasoned decisions, is the key element leading to a successful project. The Z&K approach is founded on a thorough understanding of each of the management components critical to the project.

**TIME MANAGEMENT** | Time management uses scheduling to accurately manage and track the restrictive elements of time and resources throughout the project. The key to a successfully implemented and managed schedule is the development of an accurate, detailed, and realistic baseline schedule. Z&K will review the Contractor's baseline schedule to ensure it is accurate and reasonable. Activity durations and logic ties will be examined for accuracy and constructability. The schedule logic and activity durations will also be analyzed to ensure the Contractor does not use float suppression techniques. Schedule float is a valuable resource for the Owner and the Contractor. Schedule implementation and administration is the next step in proper time management. The Contractor's actual progress will be documented daily. The Z&K Team will review the progress with the Contractor at the weekly meetings. The Contractor's three-week-look-ahead schedule will be compared with the work plan on the record schedule to ensure the Contractor continues to use the record schedule as a management tool. We will check the record schedule for activities with start dates that did not begin during the review period. This proactive approach flags potential delay issues for further discussion.

**COST MANAGEMENT** | Z&K will take the lead to ensure a cost management system is properly implemented and maintained. Z&K's cost management role will be in two parts. The first is to track the value of the completed work to ensure accurate and detailed monthly progress billing by the contractor. Secondly, Z&K will proactively manage the change order process. The monthly progress billing may be tied to the construction schedule. A cost loaded critical path method (CPM) schedule is a valuable management tool. Each month, the Construction Inspector will review and approve the updated cost loaded CPM. Work activities and material deliveries will be assigned the correct completion percentage by the Contractor. This will be reviewed by the Construction Inspector and discrepancies will be addressed. If necessary, the Contractor will revise and resubmit the schedule of values. This process ensures the Owner is accurately billed for the completed work monthly. Changes in work and unforeseen conditions will be closely monitored. Any costs for changes will be managed by the Z&K construction management team. An ongoing log of potential change issues will be maintained. These issues will be discussed and updated at each weekly meeting.

**FUNDING MANAGEMENT** | Z&K will ensure that the City has all necessary information to comply with the funding requirements. Our team is experienced in complying with funding reporting and filing requirements. We pay close attention to these requirements and deadlines so that project funding remains unaffected and so that file audits are conducted quickly and efficiently. Our team is also experienced in ensuring that project documents show compliance with DBE reporting requirements, DBE goals, and/or good faith effort documented. Proper Project documentation is key in any audits. **Z&K is extremely familiar with state funded projects and has in-depth knowledge of the Caltrans Local Assistance Procedures Manual (LAPM), the Caltrans Construction Manual, and other Federal Highway Administration (FHWA) requirements.**

**QUALITY MANAGEMENT** | Quality management is an inherent CM responsibility. Z&K is knowledgeable and capable in all aspects of quality management. Quality assurance is the application of systematic methods to verify the effective implementation of quality control procedures. Z&K will manage the quality of the project by taking the quality assurance lead role and implementing the Z&K quality assurance program, which allocates quality control responsibilities to the various project participants to ensure the constructed product conforms to the contract plans and specifications. This includes a detailed inspection plan, inspection procedures, and documentation procedures for all inspection and test reports. Z&K will review the Contractor's quality control procedures to ensure adequacy. Quality control issues will be discussed at each weekly meeting. An ongoing deficiencies/corrective items list will be maintained, reviewed, and updated weekly. Quality assurance includes quality of the constructed work as well as the quality of the Contractor's document processes (such as the Contractor's submittals and RFIs).



**INFORMATION MANAGEMENT** | Proper information flow is crucial to the success of a project. A construction project generates a large amount of information, which must be distributed to all parties on a timely basis. The source of this information will cover the full spectrum including contracts, meeting minutes, drawings and specifications, submittals, RFIs, pay requests, invoices, inspection reports, and so forth. Z&K will act as the hub for the management of all information flow. Z&K has extensive experience providing document management solutions for its clients. Z&K's approach to information management also includes building a communication framework to foster partnering and teamwork relationships for all the project stakeholders. -

**CODES & PROCEDURES MANAGEMENT** | Z&K has a strong knowledge of the City, County, State, and Federal codes and procedures that are required to deliver a successful project. Z&K will ensure that all codes and procedures are properly followed for the City's Project.

Some of the requirements are as follows:

- o Project Construction Documents
- o California Building Code
- o California Plumbing Code
- o California Mechanical Code
- o California Electrical Code
- o California Building Energy Efficiency Standards
- o Title 24, Part 2, 2.5, 3, 4, 5, 6, 11
- o California Fire Code
- o California Residential Code
- o California Green Building Code
- o California Disabled Regulations
- o City Codes & Ordinances
- o City Grading Code & Manual
- o APWA "Greenbook" Standard Specifications for Public Works Construction
- o Caltrans Standards, Specifications, and Procedures
- o Caltrans Construction Manual
- o Caltrans Safety Manual
- o OSHA Construction Safety Orders
- o 10/30-hr OSHA Training Certification
- o Local Assistance Procedures Manual (LAPM)
- o City Standards and Design Manuals
- o State and Federal Building Codes (Site Accessibility)
- o County Procedures and Guidelines
- o Work Area Traffic Control Handbook (WATCH) Manual
- o Manual of Uniform Traffic Control Devices (MUTCD)
- o Project Safety Plan (PSP)
- o Site Health and Safety Plan
- o Activity Hazard Analysis (AHA)

## CONSTRUCTABILITY REVIEW COMMENTS

**Traffic Signal Turn-On** | The Engineer shall be notified at least three (3) working days prior to the intended traffic signal turn-on. The Contractor shall not proceed with the turn-on without the presence of the Engineer or his representative. The Contractor shall arrange to have a signal technician, qualified to work on the controller and employed by the traffic signal controller cabinet manufacturer or his representative, present at the time of turn-on to verify operation of the equipment.

**Material Delays** | The Contractor must consider possible material delivery delays due to specified products; Avg TS Materials could range from 20 - 40-week lead times.

**Existing Detection Maintained** | Existing detection shall be maintained at all times during construction. In the event of unexpected damage by the Contractor or any of their subcontractors as determined by the City Representative, the Contractor shall commence repairs immediately. The Contractor shall replace and restore to operation any damaged detector (inductive loop or other) within three (3) calendar days after damage occurs.

**Traffic Signals to Remain in Operation** | Contractor will be responsible for Existing Traffic Signals to REMAIN IN OPERATION until the new/modified installation has been satisfactorily tested and placed in operation and functional during the construction period. This includes Furnishing and Supplying Maintenance, providing Temporary materials and equipment needed with no additional cost compensation. There is no separate pay item for Operations or Maintenance during construction; Operations and Maintenance is considered incidental to the construction process.

**Traffic Signal Standard Pole Removals** | It is the Contractor's responsibility to field verify that all Traffic Signal Standard poles that call out for removal, as well as the exposed existing foundations not on the plans must have the Foundation excavated, removed complete, and backfilled complete with 2 Sack slurry at no extra cost to the City.

**Avenida Quintana / Vista Chino** | Pole F is not MUTCD/ ADA compliant with the top of Anchor bolts being roughly 2" below finish sidewalk Grade.

**Avenida Quintana / Vista Chino** | Pole G has existing unsafe liability dent damages beyond repair. Pole is outdated and should be replaced with a new standard.

**Gerald Ford Dr & Plumley Rd** | Pole F is not in MUTCD / ADA compliance 1. Anchor bolts and base plate is buried and covered in Rocks; Pole should be upgraded to new standard. 2. New proposed APS push button will not be in compliance mounted on this pole since there is no flat landing disability access to push button.

**E Canyon Plaza & E Palm Canyon Dr.** | 1. This intersection is within State (Caltrans) ROW Easements (CA111). The Contractor will be responsible for pulling Caltrans Permits and ROW easement boundary limits before work is performed. 2. Pole E APS push button will not be ADA compliant due to the distance of button compared to crosswalk landing. City will need to add a compliant push button post to plan detail. 3. Pole A is not to standard compliance while pole base is buried in dirt slope.

**Ramon Road & Avenida Del Yermo** | 1. Pole A proposed push button will not be in compliance due to not having a flat concrete sidewalk area for disability access. also distance from crossing stop bar exceeds 5ft from push button. 2. Pole C is located in the middle of Ramp. The Ramp should be shifted to accommodate a flat surface at APS PB or Relocate and upgrade pole to newest standards out of ramp.

## RISK MANAGEMENT LOG

Based on a comprehensive review of the project documents, Z&K has identified the following potential risks and response strategies.

ID	Risk Impact	Occurrence Probability	Risk Description	Project Impact	Response Strategy
1	High	High	Traffic Control/Street Closure Restriction	Safety & Public Inconvenience	Ensure that project phasing is followed for <b>lowest</b> impact to businesses and public. Our team will review the traffic control plans to ensure they comply with the WATCH manual and MUTCD requirements. We will review it for minimum lane widths and as well as continuous and safe access for pedestrians. We will ensure temporary pavement markings are implemented. Our team will work closely with the Contractor to provide advanced notice to first responders and essential services.
2	High	High	Long Lead Items	Schedule	Ensure the contractor begins process to order/procure possible long lead items or items that require coordination.
3	High	High	Agency Coordination	Schedule & Budget	Our Team will ensure that all agencies affected by this Project are invited to the pre-construction conference and informed of the Project schedule and progress. Z&K will ensure that the Project complies with all permit requirements and environmental mitigation measures.
4	High	High	Potential Hazardous Services & Utility Coordination	Schedule, Budget & Safety	Ensure that Dig Alert tickets are current and up to date prior to excavation. We will keep track of hazardous and non-hazardous and conflicting utilities during our regular progress meetings. We will ensure that the Contractor coordinates with Underground Service Alert and all utilities are marked prior to the start of construction. We will track existing utilities marked by Underground Service Alert to ensure that mark outs are recorded and documented. After mark outs, contractor will be required to pothole. Additionally, contractor shall notify all utility agencies to performing any work.
5	High	High	Extensive Change Order Claims	Schedule & Budget	Closely monitor the work and the change order process. Identify potential change orders early and proactively develop solutions.
6	High	High	Pedestrian Access During Construction	Safety & Schedule	The contractor is responsible to maintain pedestrian access around the project at all times.
7	High	High	Public/Community Outreach	Safety & Schedule	It is imperative that our community outreach does not only include property owners, business owners and residents, but also elected officials, management from the City, and all affected agencies. We will coordinate a Press Conference with the City, community, and elected officials. Prepare announcements and communicate to public early. Letters to residents will be critical as well as early placement of no parking signs.
8	High	Medium	Delays Due to Other Projects	Schedule & Budget	Z&K will work closely with the City to ensure that other scheduled projects do not interfere with our project. We will also work closely with local agencies to ensure project schedule overlap and conflicts do not occur.
9	High	Medium	Weekend Work/Overtime	Budget	All overtime shall be approved by the City prior to the commencement of work and all associated costs for inspection/construction management shall be at the expense of the contractor.
10	High	Medium	Public Safety	Safety	Z&K will work closely with the contractor to ensure that the Fire Department will be involved in the scheduling and planning stages for the streets. The Sheriff's Department will also be notified of all scheduled construction activity as this work will impact major traffic routes.
11	Medium	Medium	Damage to Private Properties	Public Inconvenience	Damage to private property and vehicles occasionally occurs during construction activities. Community outreach shall include a procedure to notify Z&K immediately if any damage occurs.
12	Medium	Medium	Job Site Housekeeping	Safety & Public Inconvenience	We will have the contractor commit to street sweeping during all construction activity. This item should not be left to the discretion of the Contractor but rather a specific directive from the City to the Contractor.



#### iv. SCOPE OF WORK

Our Team's relevant experience allows them to provide overall administration of the construction process based on their unique ability to fully understand the construction process, work proactively to identify problems early, and to mitigate each risk before it affects the project performance goals. Z&K proactively serves as the project's administrator and provides consistent coordination between all project stakeholders including the City, Design Engineer, and selected construction contractor and subcontractors. Z&K has thoroughly reviewed the Request for Proposal (RFP); we confirmed our team will provide all scope of work tasks as outlined in the RFP scope of services. The Z&K Team, at a minimum, will perform the following:

**CONSTRUCTION MANAGEMENT** | Z&K will perform a "third" party constructability review of the Project plans and specifications prior to the preconstruction conference and identify potential problems that may need attention before construction starts. We will review Project permit requirements and schedule and attend a field walk with inspector(s), design engineer, and City representatives. The team will schedule and chair a kick-off meeting with the City to discuss the proposed work plan and special concerns to be presented at the preconstruction meeting, and attend the Pre-Construction meeting. We will provide a preconstruction agenda to the City for concurrence, schedule a preconstruction meeting and notify attendees. It is envisioned that the preconstruction meeting will include all interested parties, including utilities, subcontractors, etc. The team will provide coordination of Project activities and prepare reports and documents, as necessary, for City review and action. We will maintain at the Project site, on a current basis: a record copy of all contracts, drawings, specifications, addenda, change orders, and other modifications, in good order and marked to record all changes made during construction; shop drawings, product data; samples; submittal; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions; other related documents and revisions which are relevant to the contract work.



Z&K will provide weekly status reports to the City as required. We will contact the Tribal Historic Preservation Office to arrange cultural monitoring. The team will review laboratory, shop, and mill test reports of materials and equipment, and coordinate as required with the design engineer(s), as well as prepare and send a Weekly Statement of Working Days, noting the controlling operations, to the contractor. We will monitor contractor and sub-contractor compliance with State and Federal labor laws and paperwork requirements including: monitor Contractor's certified payroll; spot check payrolls for prevailing wage compliance; conduct employee interviews; maintain evidence of apprentices employed on the Project; and ensure that the contractor has posted all required posters, notices, and wage determinations at the job site. Z&K will prepare daily/weekly Resident Engineer reports listing the type of work done, controlling operation, weather conditions, important discussions/agreements with the Contractor, and any other important facts pertaining to the Project that are not specifically covered elsewhere in the contract records. We will monitor and document domestic water or sanitary sewer improvements for compliance with the Project plans and specifications and for any requirements from Coachella Valley Water District or Desert Water Agency.

The team will administer the construction contract in conformance with the requirements set forth in the Project plans and specifications including applicable requirements from Caltrans' Standard Plans and Specifications, Local Assistance Procedures, Standard Specifications for Public Works Construction and the City of Cathedral City. We will receive, log, and respond to contractor Request for Information (RFI) and conduct weekly construction progress meetings with the Contractor, Sub-contractors, City Staff, Design Engineer, Sub-consultants, affected outside agencies, general public, business owners, other consultants, etc. to discuss matters such as procedures, progress, problems, and scheduling; we will then prepare and distribute meeting minutes. Z&K will review and approve Subcontracting Request forms, coordinate and monitor all inspection activities, and maintain an open-door policy and meet with the general public as needed regarding street construction and make recommendations to address any concerns. We will receive and process all shop drawings, Project data, samples, and other submittals to the design engineer for review and establish and implement procedures for expediting the processing and approval of submittal. We will coordinate submittal review with the design engineer on an as-needed basis, coordinate with the City Engineer and other City Departments, and document all claims and maintain account records. We will provide all necessary documentation and support to the City in settling claims.

The team will administer implementation of Project's Traffic Control Plan and perform weekly reviews for conformance to approved plan. We will coordinate and schedule construction surveying, coordinate testing requirements and scheduling of material testing, and review and analyze the Contractor's schedule (weekly), including activity sequences and duration, schedule of submittal and schedule of delivery for products with long lead times. We will work with Contractor to maintain the Project schedule to show current conditions and suggest revisions as required. Z&K will recommend necessary or desirable changes in the Construction Contractor's scope of work to the City. Review and evaluate the contractor's request for changes and negotiate with the Contractor and submit recommendations to the City supported by field data related to any additional work. If change orders are accepted by the City, we will prepare change orders for signature and authorization by the city. We will maintain a log of change requests. Z&K will create and maintain "As-Built" Project schedule, review pay requests and provide recommendation for contractor payments, manage contractor DBE requirements, coordinate the Transition of the Project to City Maintenance, coordinate any training sessions required for City Staff, and conduct regular coordination meetings with property owners and business owners.

Z&K will provide the following Project closeout services: administer and coordinate final inspections, coordinate the correction and the completion of the work, assist the City in determining when the Project, or a designated portion thereof, is substantially complete, prepare for the City, a summary of the status of the work of the Contractor, listing changes in the previously issued certificates of substantial completion of the work, and recommending the times within which the Contractor shall complete uncompleted items on the certificate of substantial completion of the work, calculate the amount of final payment due to the prime Contractor, obtain evidence of certification of all lien releases, secure and transmit to the City, required guarantees, issue the notice of substantial completion, coordinate any startup requirements, deliver all equipment manuals, special equipment, spare parts, catalogs, and other materials required by specifications, collect all "As-Built" data from all contractors and consultants, and make recommendation for the release of retention. Z&K will provide construction management documents and records to the City.

**LABOR COMPLIANCE** | The Z&K Team will monitor the Contractor and sub-contractor compliance with State and Federal labor law and paperwork requirements including monitoring Contractor's certified payroll and supporting payroll records (statements of compliance, fringe benefit statements, deductions, apprentice registration, etc.), spot checking payrolls for compliance, monitoring applicable State and Federal prevailing wage requirements as well as providing State and Federal prevailing wage rates for labor compliance support, conducting employee interviews, maintaining evidence of apprentices/trainees employed on the Project, and ensuring that the contractor has posted all required posters, notices, and wage determinations at the job site. Z&K will prepare and present mandatory labor compliance checklist to be presented to and acknowledged by the contractor at the pre-Construction meeting.



**INSPECTION** | The Z&K team will review contract documents, plans and permits, attend field walks and kick off meetings, and attend the pre-construction meeting. We will monitor and enforce construction noticing requirements, including but not limited to PM10 and SWPPP requirements. We will maintain field diary (bound workbooks) during construction, including a cumulative record of quantities constructed, daily and weekly reports, working day reports, change order documentation, photographs, and other documentation. The team will maintain a separate field diary for change order work. We will monitor the contractor's fugitive dust control plan and ensure the contractor using approved haul routes and they are kept clean. The team will ensure compliance with the construction contract by continuously monitoring, evaluating, approving or rejecting the Contractor's work in accordance with the approved construction contract documents. Z&K will determine that the Contractor's work is being performed in accordance with the requirements of the contract documents.

Endeavor to guard City against defects and deficiencies in the work. As appropriate, we will require special inspection or testing, or make recommendations to City regarding special inspection or testing of work not in accordance with the provisions of the contract documents whether such work is fabricated, installed or completed.

We will track and monitor construction costs, provide and maintain a digital photographic history of the progress of the Project. Photos will also be taken of the following: Showing existing conditions prior to construction, disputed work items, work that must be duplicated, replaced or removed, completed work, and extra Work. Record the progress of the Project. Maintain a daily log containing a record of weather, Contractor and sub-contractor's work on site, Contractor and sub-contractor's equipment with hours on site and idle time, number and names of workers with hours on site, work accomplished, problems encountered, and other relevant data. Provide copies of daily logs to City as requested. Include information on Contractor and the entire Project, showing percentages of completion. Daily Reports should be detailed enough to develop Time and Material payments for the contractor's work in case of future disputes. During the course of construction, we will maintain one set of plans with markings and dimensions in red ink to denote field changes or other corrections. Z&K will ensure ADA compliance and maintain copies of all permits needed to construct the project and enforce special requirements of each.

**MATERIAL TESTING** | Materials testing services will be provided by our subconsultant, Converse Consultants, with whom we have worked on multiple projects in the past. Z&K will be responsible for supervising and coordinating the materials and geotechnical testing program to ensure all required testing is performed with the required frequencies and documented according to the City's plans, specifications, and industry standards. Sampling and testing activities will be conducted in accordance with the contract documents and approved procedures. The Inspector will work with the Contractor to correct any failed tests and achieve compliance. Our team can effectively make decisions and coordinate with other professionals on field issues related to material testing and inspection. Z&K will develop and provide a comprehensive testing program for the Project in accordance with the contract documents.

*Z&K understands that the selected firm will be responsible for providing construction engineering support to ensure delivery of the Projects remain consistent with ATP project schedules and programming guidelines, communicating with Caltrans on project deliverables and other administrative functions associated with delivering state funded Local Assistance projects.*

## **iv. Addendums**

Z&K acknowledges that there were no addendums issued.



**AGREEMENT FOR SERVICES  
BETWEEN  
THE CITY OF CATHEDRAL CITY, CALIFORNIA  
AND  
Z&K CONSULTANTS, INC.**

This Agreement for Services ("Agreement") is entered into as of this 27<sup>th</sup> day of March, 2024 by and between the City of Cathedral City, a municipal corporation ("City") and Z&K Consultants, Inc., a women-owned, certified small business located in Southern California ("Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

**RECITALS**

A. City has sought, by request for qualifications and proposals, the performance of the services defined and described particularly in Section 2 of this Agreement.

B. Contractor, 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. The Parties desire to formalize the selection of Contractor 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 20 "Termination of Agreement" of this Agreement, the Term of this Agreement is for Eighteen (18) months commencing on the date first ascribed above.

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

Contractor 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. The Services shall be completed pursuant to the schedule specified in Exhibit "A." Should the Services not be completed pursuant to that schedule, the Service Provider 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 Service Provider to continue performing the Services.

**SECTION 3. ADDITIONAL SERVICES.**

Contractor 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 26 "Administration and Implementation" or Section 28 "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. COMPENSATION AND METHOD OF PAYMENT.**

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in Exhibit "B" "Compensation" and made a part of this Agreement by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Two Hundred Nine Thousand One Hundred Twenty Four dollars (\$209,124), unless additional compensation is approved in writing in accordance with Section 26 "Administration and Implementation" or Section 28 "Amendment" of this Agreement.

(b) Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and subcontractor contracts. Subcontractor charges shall be detailed by the following categories: labor, travel, materials, equipment and supplies. If the compensation set forth in subsection (a) and Exhibit "B" include payment of labor on an hourly basis (as opposed to labor and materials being paid as a lump sum), the labor category in each invoice shall include detailed descriptions of task performed and the amount of time incurred for or allocated to that task. City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

(c) Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will use its best efforts to cause Contractor to be paid within thirty (30) days of receipt of Contractor's correct and undisputed invoice.

(d) Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

#### **SECTION 5. INSPECTION AND FINAL ACCEPTANCE.**

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Contractor'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 Contractor's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 16 "Indemnification" and Section 17 "Insurance."

## **SECTION 6. OWNERSHIP OF DOCUMENTS.**

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Contractor in the course of providing the Services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Contractor. Upon completion, expiration or termination of this Agreement, Contractor shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

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 or other documents prepared, developed or discovered by Contractor in the course of providing the Services pursuant to this Agreement, Contractor's guarantees and warranties in Section 9 "Standard of Performance" of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

All final work product developed by Contractor in the course of providing the Services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Contractor. Upon completion, expiration or termination of this Agreement, Contractor shall turn over to City all such final work product if paid for by the City. This provision specifically excludes Contractors' work notes and drafts, which are owned by Contractor, not City.

## **SECTION 7. CONTRACTOR'S BOOKS AND RECORDS.**

(a) Contractor shall maintain any and all documents and records demonstrating or relating to Contractor's performance of the Services. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to the Services, including expenditures and disbursements charged to City pursuant to this 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 Contractor pursuant to this Agreement. Any and all such documents or records shall be maintained for three (3) years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures. In accordance with California Government Code Section 8546.7, if the total compensation in Section 4 exceeds ten thousand dollars (\$10,000.00), this Agreement and the Contractor's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the

request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

(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 Contractor's address indicated for receipt of notices in this Agreement.

(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 Contractor'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 8. INDEPENDENT CONTRACTOR.**

(a) Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Contractor shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise.

(b) The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Contractor or any of Contractor's personnel. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's personnel are in any manner officials, officers, or employees of City.

(c) Neither Contractor, nor any of Contractor's personnel shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor, its officers, employees, agents or subcontractors, may have to any such rights. Contractor's indemnity obligations in Section 16 "Indemnification" of this Agreement include the obligation to indemnify the City from and against any liability that may arise related to claims that Contractor, its officers, employees, agents or subcontractors, are entitled to retirement, health care or any other benefits that accrue to City employees. This provision shall survive the expiration or earlier termination of this Agreement.

#### **SECTION 9. STANDARD OF PERFORMANCE.**

(a) Contractor 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. Contractor 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, Contractor shall employ, at a minimum,



generally accepted standards and practices utilized by persons engaged in providing services similar to the Services required of Contractor under this Agreement. In addition to the general standards of performance set forth in 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 Contractor's 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) Contractor 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 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.**

Contractor 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. Contractor 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 Contractor to comply with this section.

#### **SECTION 11. PREVAILING WAGE LAWS**

It is the understanding of City and Contractor that California prevailing wage laws do not apply to this Agreement because the Agreement does not involve any of the following services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder: Construction, alteration, demolition, installation, or repair work performed on public buildings, facilities, streets or sewers done under contract and paid for in whole or in part out of public funds. In this context, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

#### **SECTION 12. NONDISCRIMINATION.**

Contractor shall not discriminate, in any way, against any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status in connection with or related to the performance of this Agreement.

#### **SECTION 13. 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 the 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 14. CONFLICTS OF INTEREST.**

(a) Contractor 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 Contractor's performance of the Services. Contractor 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. Contractor 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 understands and acknowledges that Contractor 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. Contractor 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.

(c) City understands and acknowledges that Contractor 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.

(d) City may determine that Contractor 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, Contractor 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.

#### **SECTION 15. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.**

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor 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) Contractor, 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 Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Contractor's conduct.

Contractor shall promptly notify City should Contractor, 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 Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response. Contractor shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law or for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

## **SECTION 16. INDEMNIFICATION.**

(a) Indemnification for Professional Liability. Where the law establishes a professional standard of care for Contractor's services, to the fullest extent permitted by law, Contractor 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 liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees) arise out of, are a consequence of, or are in any way attributable to, in whole or in part, any negligent or wrongful act, error or omission of Contractor, or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or subcontractors of Contractor, in the performance of professional services under this Agreement. Notwithstanding the foregoing, to the extent that the Consultant's services are subject to California Civil Code Section 2782.8, the above indemnity, including the cost to defend, shall be limited to the extent required by Civil Code Section 2782.8.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in



whole or in part, the performance of this Agreement by Contractor, or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or subcontractors of Contractor.

(c) Indemnification from Subcontractors. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Contractor fails to obtain such indemnity obligations from others as required herein, Contractor 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 Contractor and shall survive the termination of this Agreement or this section.

(d) 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 17. INSURANCE.**

Contractor 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. Contractor agrees to provide City with copies of required policies upon request.

## **SECTION 18. ASSIGNMENT.**

The expertise and experience of Contractor 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 Contractor under this Agreement. In recognition of that interest, Contractor shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Contractor'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 20 "Termination of Agreement." City acknowledges, however, that Contractor, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

## **SECTION 19. CONTINUITY OF PERSONNEL.**

Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the Services. Contractor shall notify City of any changes in Contractor's staff and



subcontractors, if any, assigned to perform the Services prior to and during any such performance.

## **SECTION 20. 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 Contractor. In the event such notice is given, Contractor shall cease immediately all work in progress.

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

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

(d) Upon termination of this Agreement by either Contractor or City, all property belonging exclusively to City which is in Contractor's possession shall be returned to City. Contractor shall furnish to City a final invoice for work performed and expenses incurred by Contractor, prepared as set forth in Section 4 "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 4 "Compensation and Method of Payment" of this Agreement.

## **SECTION 21. DEFAULT.**

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor 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 Contractor 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 Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under Section 20 "Termination of Agreement." Any failure on the part of the City to give notice of the Contractor'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 22. EXCUSABLE DELAYS.**

Contractor 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 Contractor. 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 23. 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 Contractor in every reasonable way to facilitate, without undue delay, the Services to be performed under this Agreement.

### **SECTION 24. NOTICES.**

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

To City: City of Cathedral City  
Attn: City Clerk  
68700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

To Contractor: Z&K Consultants, Inc.  
Attn: Crystal Fraire  
17130 Van Buren Blvd, Suite 122  
Riverside, CA 92504

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

### **SECTION 25. AUTHORITY TO EXECUTE.**

Each of the signatories hereto represents and warrants that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign. Each Party hereto agrees to defend, indemnify, and hold harmless the other Parties hereto against all claims, suits, actions, and demands, including necessary expenses of investigation and reasonable attorneys' fees and costs, arising out of claims that its signatory was not competent or so authorized to execute this Agreement.

### **SECTION 26. 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 28 "Amendment" and the City Manager's contracting authority under the City of Cathedral City Municipal Code and its adopted policies and procedures.

## **SECTION 27. BINDING EFFECT.**

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

## **SECTION 28. AMENDMENT.**

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City. The City Manager shall have the authority to approve any amendment to this Agreement if it does not exceed the amount that may be approved administratively pursuant to the City Municipal Code. The Parties agree that the requirement for written modifications cannot be waived and that any attempted waiver shall be void. The City's City Manager may, but is not required to, make minor amendments not affecting substantive terms without further authorization from the City Council. The City Council hereby authorizes the City Manager to execute any such amendments as required by this Agreement or that do not otherwise reduce City's rights under this Agreement. All other amendments shall be approved by the City Council.

## **SECTION 29. 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 by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

## **SECTION 30. 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 31. 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 32. 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 Contractor 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 33. 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 34. 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 35. 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.

*[SIGNATURES ON FOLLOWING PAGE]*

**CITY OF CATHEDRAL CITY**



Charles P. McClendon  
City Manager

**ATTEST:**

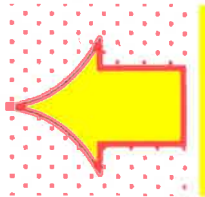


Tracey R. Hermosillo, CMC  
City Clerk

**APPROVED AS TO FORM**



Eric S. Vail  
City Attorney



**Z&K Consultants, Inc.**

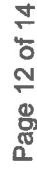


CRYSTAL FRAIRE  
PRESIDENT

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



Our in-house design team and construction management team worked together to create the schedule since both thoroughly understand the City's expectations for this Project. Our proposed schedule was developed using Primavera P6 technology. This schedule includes the stages of work, time frames, and shows the ability to perform the required services in a timely manner



### iii. PROJECT UNDERSTANDING AND APPROACH

The team proposed on this project have extensive experience in project management, construction management, construction inspection and design. We have successfully utilized CM/PM Agency delivery on a host of projects. Through this experience we have developed management procedures that promote collaboration and teamwork, improve quality and maximize the value of the above project. Z&K past performance with Cities, Counties, and other agencies shows our remarkable ability to control costs, guarantee great quality of work, and meet all project deadlines. We understand the importance of Schedule Control and are known in the industry for assisting the contractor to cut the project schedule and to yield significant savings for our clients through reduction of overhead management and construction costs.

**MANAGEMENT APPROACH** | The Z&K Team has successfully utilized CM Agency delivery on a host of projects. Through this experience we have developed project management procedures that promote collaboration and teamwork, improve quality and maximize the value of the above project. Z&K's past performance with Cities, Counties, and other agencies show our remarkable ability to control costs, guarantee great quality of work, and meet all project deadlines. We understand the importance of Schedule Control and are known in the industry for assisting the contractor to cut the project schedule and to yield significant savings for our clients through reduction of overhead construction management and construction costs. The most significant saving is less inconvenience to the traveling public and less City exposure due to shortened construction duration. This will help extend excess project funds into other important projects. Z&K Consultants, Inc. provides proven professional construction management techniques to ensure the safe construction of a quality project completed on time and within budget. Z&K accomplished this by establishing the systems, policies, and procedures necessary to ensure adequate project controls are in place. The Construction Manager must ensure all parties understand the basic responsibilities and interrelationships of all team member such as the Owner (both project management and operations), the Design Engineer, the Contractor, the construction management team, and the subconsultants. Additionally, a good Construction Manager must have the knowledge and experience to effectively understand the interrelationships between the key management components of time, information, cost, and quality. Decision making, including obtaining sufficient information to make reasoned decisions, is the key element leading to a successful project. The Z&K approach is founded on a thorough understanding of each of the management components critical to the project.

**TIME MANAGEMENT** | Time management uses scheduling to accurately manage and track the restrictive elements of time and resources throughout the project. The key to a successfully implemented and managed schedule is the development of an accurate, detailed, and realistic baseline schedule. Z&K will review the Contractor's baseline schedule to ensure it is accurate and reasonable. Activity durations and logic ties will be examined for accuracy and constructability. The schedule logic and activity durations will also be analyzed to ensure the Contractor does not use float suppression techniques. Schedule float is a valuable resource for the Owner and the Contractor. Schedule implementation and administration is the next step in proper time management. The Contractor's actual progress will be documented daily. The Z&K Team will review the progress with the Contractor at the weekly meetings. The Contractor's three-week-look-ahead schedule will be compared with the work plan on the record schedule to ensure the Contractor continues to use the record schedule as a management tool. We will check the record schedule for activities with start dates that did not begin during the review period. This proactive approach flags potential delay issues for further discussion.

**COST MANAGEMENT** | Z&K will take the lead to ensure a cost management system is properly implemented and maintained. Z&K's cost management role will be in two parts. The first is to track the value of the completed work to ensure accurate and detailed monthly progress billing by the contractor. Secondly, Z&K will proactively manage the change order process. The monthly progress billing may be tied to the construction schedule. A cost loaded critical path method (CPM) schedule is a valuable management tool. Each month, the Construction Inspector will review and approve the updated cost loaded CPM. Work activities and material deliveries will be assigned the correct completion percentage by the Contractor. This will be reviewed by the Construction Inspector and discrepancies will be addressed. If necessary, the Contractor will revise and resubmit the schedule of values. This process ensures the Owner is accurately billed for the completed work monthly. Changes in work and unforeseen conditions will be closely monitored. Any costs for changes will be managed by the Z&K construction management team. An ongoing log of potential change issues will be maintained. These issues will be discussed and updated at each weekly meeting.

**FUNDING MANAGEMENT** | Z&K will ensure that the City has all necessary information to comply with the funding requirements. Our team is experienced in complying with funding reporting and filing requirements. We pay close attention to these requirements and deadlines so that project funding remains unaffected and so that file audits are conducted quickly and efficiently. Our team is also experienced in ensuring that project documents show compliance with DBE reporting requirements, DBE goals, and/or good faith effort documented. Proper Project documentation is key in any audits. **Z&K is extremely familiar with state funded projects and has in-depth knowledge of the Caltrans Local Assistance Procedures Manual (LAPM), the Caltrans Construction Manual, and other Federal Highway Administration (FHWA) requirements.**

**QUALITY MANAGEMENT** | Quality management is an inherent CM responsibility. Z&K is knowledgeable and capable in all aspects of quality management. Quality assurance is the application of systematic methods to verify the effective implementation of quality control procedures. Z&K will manage the quality of the project by taking the quality assurance lead role and implementing the Z&K quality assurance program, which allocates quality control responsibilities to the various project participants to ensure the constructed product conforms to the contract plans and specifications. This includes a detailed inspection plan, inspection procedures, and documentation procedures for all inspection and test reports. Z&K will review the Contractor's quality control procedures to ensure adequacy. Quality control issues will be discussed at each weekly meeting. An ongoing deficiencies/corrective items list will be maintained, reviewed, and updated weekly. Quality assurance includes quality of the constructed work as well as the quality of the Contractor's document processes (such as the Contractor's submittals and RFIs).



**INFORMATION MANAGEMENT** | Proper information flow is crucial to the success of a project. A construction project generates a large amount of information, which must be distributed to all parties on a timely basis. The source of this information will cover the full spectrum including contracts, meeting minutes, drawings and specifications, submittals, RFIs, pay requests, invoices, inspection reports, and so forth. Z&K will act as the hub for the management of all information flow. Z&K has extensive experience providing document management solutions for its clients. Z&K's approach to information management also includes building a communication framework to foster partnering and teamwork relationships for all the project stakeholders. -

**CODES & PROCEDURES MANAGEMENT** | Z&K has a strong knowledge of the City, County, State, and Federal codes and procedures that are required to deliver a successful project. Z&K will ensure that all codes and procedures are properly followed for the City's Project.

Some of the requirements are as follows:

- o Project Construction Documents
- o California Building Code
- o California Plumbing Code
- o California Mechanical Code
- o California Electrical Code
- o California Building Energy Efficiency Standards
- o Title 24, Part 2, 2.5, 3, 4, 5, 6, 11
- o California Fire Code
- o California Residential Code
- o California Green Building Code
- o California Disabled Regulations
- o City Codes & Ordinances
- o City Grading Code & Manual
- o APWA "Greenbook" Standard Specifications for Public Works Construction
- o Caltrans Standards, Specifications, and Procedures
- o Caltrans Construction Manual
- o Caltrans Safety Manual
- o OSHA Construction Safety Orders
- o 10/30-hr OSHA Training Certification
- o Local Assistance Procedures Manual (LAPM)
- o City Standards and Design Manuals
- o State and Federal Building Codes (Site Accessibility)
- o County Procedures and Guidelines
- o Work Area Traffic Control Handbook (WATCH) Manual
- o Manual of Uniform Traffic Control Devices (MUTCD)
- o Project Safety Plan (PSP)
- o Site Health and Safety Plan
- o Activity Hazard Analysis (AHA)

## CONSTRUCTABILITY REVIEW COMMENTS

**Traffic Signal Turn-On** | The Engineer shall be notified at least three (3) working days prior to the intended traffic signal turn-on. The Contractor shall not proceed with the turn-on without the presence of the Engineer or his representative. The Contractor shall arrange to have a signal technician, qualified to work on the controller and employed by the traffic signal controller cabinet manufacturer or his representative, present at the time of turn-on to verify operation of the equipment.

**Material Delays** | The Contractor must consider possible material delivery delays due to specified products; Avg TS Materials could range from 20 - 40-week lead times.

**Existing Detection Maintained** | Existing detection shall be maintained at all times during construction. In the event of unexpected damage by the Contractor or any of their subcontractors as determined by the City Representative, the Contractor shall commence repairs immediately. The Contractor shall replace and restore to operation any damaged detector (inductive loop or other) within three (3) calendar days after damage occurs.

**Traffic Signals to Remain in Operation** | Contractor will be responsible for Existing Traffic Signals to REMAIN IN OPERATION until the new/modified installation has been satisfactorily tested and placed in operation and functional during the construction period. This includes Furnishing and Supplying Maintenance, providing Temporary materials and equipment needed with no additional cost compensation. There is no separate pay item for Operations or Maintenance during construction; Operations and Maintenance is considered incidental to the construction process.

**Traffic Signal Standard Pole Removals** | It is the Contractor's responsibility to field verify that all Traffic Signal Standard poles that call out for removal, as well as the exposed existing foundations not on the plans must have the Foundation excavated, removed complete, and backfilled complete with 2 Sack slurry at no extra cost to the City.

**Avenida Quintana / Vista Chino** | Pole F is not MUTCD/ ADA compliant with the top of Anchor bolts being roughly 2" below finish sidewalk Grade.

**Avenida Quintana / Vista Chino** | Pole G has existing unsafe liability dent damages beyond repair. Pole is outdated and should be replaced with a new standard.

**Gerald Ford Dr & Plumley Rd** | Pole F is not in MUTCD / ADA compliance 1. Anchor bolts and base plate is buried and covered in Rocks; Pole should be upgraded to new standard. 2. New proposed APS push button will not be in compliance mounted on this pole since there is no flat landing disability access to push button.

**E Canyon Plaza & E Palm Canyon Dr.** | 1. This intersection is within State (Caltrans) ROW Easements (CA111). The Contractor will be responsible for pulling Caltrans Permits and ROW easement boundary limits before work is performed. 2. Pole E APS push button will not be ADA compliant due to the distance of button compared to crosswalk landing. City will need to add a compliant push button post to plan detail. 3. Pole A is not to standard compliance while pole base is buried in dirt slope.

**Ramon Road & Avenida Del Yermo** | 1. Pole A proposed push button will not be in compliance due to not having a flat concrete sidewalk area for disability access. also distance from crossing stop bar exceeds 5ft from push button. 2. Pole C is located in the middle of Ramp. The Ramp should be shifted to accommodate a flat surface at APS PB or Relocate and upgrade pole to newest standards out of ramp.

## RISK MANAGEMENT LOG

Based on a comprehensive review of the project documents, Z&K has identified the following potential risks and response strategies.

ID	Risk Impact	Occurrence Probability	Risk Description	Project Impact	Response Strategy
1	High	High	Traffic Control/Street Closure Restriction	Safety & Public Inconvenience	Ensure that project phasing is followed for <b>lowest</b> impact to businesses and public. Our team will review the traffic control plans to ensure they comply with the WATCH manual and MUTCD requirements. We will review it for minimum lane widths and as well as continuous and safe access for pedestrians. We will ensure temporary pavement markings are implemented. Our team will work closely with the Contractor to provide advanced notice to first responders and essential services.
2	High	High	Long Lead Items	Schedule	Ensure the contractor begins process to order/procure possible long lead items or items that require coordination.
3	High	High	Agency Coordination	Schedule & Budget	Our Team will ensure that all agencies affected by this Project are invited to the pre-construction conference and informed of the Project schedule and progress. Z&K will ensure that the Project complies with all permit requirements and environmental mitigation measures.
4	High	High	Potential Hazardous Services & Utility Coordination	Schedule, Budget & Safety	Ensure that Dig Alert tickets are current and up to date prior to excavation. We will keep track of hazardous and non-hazardous and conflicting utilities during our regular progress meetings. We will ensure that the Contractor coordinates with Underground Service Alert and all utilities are marked prior to the start of construction. We will track existing utilities marked by Underground Service Alert to ensure that mark outs are recorded and documented. After mark outs, contractor will be required to pothole. Additionally, contractor shall notify all utility agencies to performing any work.
5	High	High	Extensive Change Order Claims	Schedule & Budget	Closely monitor the work and the change order process. Identify potential change orders early and proactively develop solutions.
6	High	High	Pedestrian Access During Construction	Safety & Schedule	The contractor is responsible to maintain pedestrian access around the project at all times.
7	High	High	Public/Community Outreach	Safety & Schedule	It is imperative that our community outreach does not only include property owners, business owners and residents, but also elected officials, management from the City, and all affected agencies. We will coordinate a Press Conference with the City, community, and elected officials. Prepare announcements and communicate to public early. Letters to residents will be critical as well as early placement of no parking signs.
8	High	Medium	Delays Due to Other Projects	Schedule & Budget	Z&K will work closely with the City to ensure that other scheduled projects do not interfere with our project. We will also work closely with local agencies to ensure project schedule overlap and conflicts do not occur.
9	High	Medium	Weekend Work/Overtime	Budget	All overtime shall be approved by the City prior to the commencement of work and all associated costs for inspection/construction management shall be at the expense of the contractor.
10	High	Medium	Public Safety	Safety	Z&K will work closely with the contractor to ensure that the Fire Department will be involved in the scheduling and planning stages for the streets. The Sheriff's Department will also be notified of all scheduled construction activity as this work will impact major traffic routes.
11	Medium	Medium	Damage to Private Properties	Public Inconvenience	Damage to private property and vehicles occasionally occurs during construction activities. Community outreach shall include a procedure to notify Z&K immediately if any damage occurs.
12	Medium	Medium	Job Site Housekeeping	Safety & Public Inconvenience	We will have the contractor commit to street sweeping during all construction activity. This item should not be left to the discretion of the Contractor but rather a specific directive from the City to the Contractor.



#### iv. SCOPE OF WORK

Our Team's relevant experience allows them to provide overall administration of the construction process based on their unique ability to fully understand the construction process, work proactively to identify problems early, and to mitigate each risk before it affects the project performance goals. Z&K proactively serves as the project's administrator and provides consistent coordination between all project stakeholders including the City, Design Engineer, and selected construction contractor and subcontractors. Z&K has thoroughly reviewed the Request for Proposal (RFP); we confirmed our team will provide all scope of work tasks as outlined in the RFP scope of services. The Z&K Team, at a minimum, will perform the following:

**CONSTRUCTION MANAGEMENT** | Z&K will perform a "third" party constructability review of the Project plans and specifications prior to the preconstruction conference and identify potential problems that may need attention before construction starts. We will review Project permit requirements and schedule and attend a field walk with inspector(s), design engineer, and City representatives. The team will schedule and chair a kick-off meeting with the City to discuss the proposed work plan and special concerns to be presented at the preconstruction meeting, and attend the Pre-Construction meeting. We will provide a preconstruction agenda to the City for concurrence, schedule a preconstruction meeting and notify attendees. It is envisioned that the preconstruction meeting will include all interested parties, including utilities, subcontractors, etc. The team will provide coordination of Project activities and prepare reports and documents, as necessary, for City review and action. We will maintain at the Project site, on a current basis: a record copy of all contracts, drawings, specifications, addenda, change orders, and other modifications, in good order and marked to record all changes made during construction; shop drawings, product data; samples; submittal; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions; other related documents and revisions which are relevant to the contract work.



Z&K will provide weekly status reports to the City as required. We will contact the Tribal Historic Preservation Office to arrange cultural monitoring. The team will review laboratory, shop, and mill test reports of materials and equipment, and coordinate as required with the design engineer(s), as well as prepare and send a Weekly Statement of Working Days, noting the controlling operations, to the contractor. We will monitor contractor and sub-contractor compliance with State and Federal labor laws and paperwork requirements including: monitor Contractor's certified payroll; spot check payrolls for prevailing wage compliance; conduct employee interviews; maintain evidence of apprentices employed on the Project; and ensure that the contractor has posted all required posters, notices, and wage determinations at the job site. Z&K will prepare daily/weekly Resident Engineer reports listing the type of work done, controlling operation, weather conditions, important discussions/agreements with the Contractor, and any other important facts pertaining to the Project that are not specifically covered elsewhere in the contract records. We will monitor and document domestic water or sanitary sewer improvements for compliance with the Project plans and specifications and for any requirements from Coachella Valley Water District or Desert Water Agency.

The team will administer the construction contract in conformance with the requirements set forth in the Project plans and specifications including applicable requirements from Caltrans' Standard Plans and Specifications, Local Assistance Procedures, Standard Specifications for Public Works Construction and the City of Cathedral City. We will receive, log, and respond to contractor Request for Information (RFI) and conduct weekly construction progress meetings with the Contractor, Sub-contractors, City Staff, Design Engineer, Sub-consultants, affected outside agencies, general public, business owners, other consultants, etc. to discuss matters such as procedures, progress, problems, and scheduling; we will then prepare and distribute meeting minutes. Z&K will review and approve Subcontracting Request forms, coordinate and monitor all inspection activities, and maintain an open-door policy and meet with the general public as needed regarding street construction and make recommendations to address any concerns. We will receive and process all shop drawings, Project data, samples, and other submittals to the design engineer for review and establish and implement procedures for expediting the processing and approval of submittal. We will coordinate submittal review with the design engineer on an as-needed basis, coordinate with the City Engineer and other City Departments, and document all claims and maintain account records. We will provide all necessary documentation and support to the City in settling claims.

The team will administer implementation of Project's Traffic Control Plan and perform weekly reviews for conformance to approved plan. We will coordinate and schedule construction surveying, coordinate testing requirements and scheduling of material testing, and review and analyze the Contractor's schedule (weekly), including activity sequences and duration, schedule of submittal and schedule of delivery for products with long lead times. We will work with Contractor to maintain the Project schedule to show current conditions and suggest revisions as required. Z&K will recommend necessary or desirable changes in the Construction Contractor's scope of work to the City. Review and evaluate the contractor's request for changes and negotiate with the Contractor and submit recommendations to the City supported by field data related to any additional work. If change orders are accepted by the City, we will prepare change orders for signature and authorization by the city. We will maintain a log of change requests. Z&K will create and maintain "As-Built" Project schedule, review pay requests and provide recommendation for contractor payments, manage contractor DBE requirements, coordinate the Transition of the Project to City Maintenance, coordinate any training sessions required for City Staff, and conduct regular coordination meetings with property owners and business owners.

Z&K will provide the following Project closeout services: administer and coordinate final inspections, coordinate the correction and the completion of the work, assist the City in determining when the Project, or a designated portion thereof, is substantially complete, prepare for the City, a summary of the status of the work of the Contractor, listing changes in the previously issued certificates of substantial completion of the work, and recommending the times within which the Contractor shall complete uncompleted items on the certificate of substantial completion of the work, calculate the amount of final payment due to the prime Contractor, obtain evidence of certification of all lien releases, secure and transmit to the City, required guarantees, issue the notice of substantial completion, coordinate any startup requirements, deliver all equipment manuals, special equipment, spare parts, catalogs, and other materials required by specifications, collect all "As-Built" data from all contractors and consultants, and make recommendation for the release of retention. Z&K will provide construction management documents and records to the City.

**LABOR COMPLIANCE** | The Z&K Team will monitor the Contractor and sub-contractor compliance with State and Federal labor law and paperwork requirements including monitoring Contractor's certified payroll and supporting payroll records (statements of compliance, fringe benefit statements, deductions, apprentice registration, etc.), spot checking payrolls for compliance, monitoring applicable State and Federal prevailing wage requirements as well as providing State and Federal prevailing wage rates for labor compliance support, conducting employee interviews, maintaining evidence of apprentices/trainees employed on the Project, and ensuring that the contractor has posted all required posters, notices, and wage determinations at the job site. Z&K will prepare and present mandatory labor compliance checklist to be presented to and acknowledged by the contractor at the pre-Construction meeting.



**INSPECTION** | The Z&K team will review contract documents, plans and permits, attend field walks and kick off meetings, and attend the pre-construction meeting. We will monitor and enforce construction noticing requirements, including but not limited to PM10 and SWPPP requirements. We will maintain field diary (bound workbooks) during construction, including a cumulative record of quantities constructed, daily and weekly reports, working day reports, change order documentation, photographs, and other documentation. The team will maintain a separate field diary for change order work. We will monitor the contractor's fugitive dust control plan and ensure the contractor using approved haul routes and they are kept clean. The team will ensure compliance with the construction contract by continuously monitoring, evaluating, approving or rejecting the Contractor's work in accordance with the approved construction contract documents. Z&K will determine that the Contractor's work is being performed in accordance with the requirements of the contract documents.

Endeavor to guard City against defects and deficiencies in the work. As appropriate, we will require special inspection or testing, or make recommendations to City regarding special inspection or testing of work not in accordance with the provisions of the contract documents whether such work is fabricated, installed or completed.

We will track and monitor construction costs, provide and maintain a digital photographic history of the progress of the Project. Photos will also be taken of the following: Showing existing conditions prior to construction, disputed work items, work that must be duplicated, replaced or removed, completed work, and extra Work. Record the progress of the Project. Maintain a daily log containing a record of weather, Contractor and sub-contractor's work on site, Contractor and sub-contractor's equipment with hours on site and idle time, number and names of workers with hours on site, work accomplished, problems encountered, and other relevant data. Provide copies of daily logs to City as requested. Include information on Contractor and the entire Project, showing percentages of completion. Daily Reports should be detailed enough to develop Time and Material payments for the contractor's work in case of future disputes. During the course of construction, we will maintain one set of plans with markings and dimensions in red ink to denote field changes or other corrections. Z&K will ensure ADA compliance and maintain copies of all permits needed to construct the project and enforce special requirements of each.

**MATERIAL TESTING** | Materials testing services will be provided by our subconsultant, Converse Consultants, with whom we have worked on multiple projects in the past. Z&K will be responsible for supervising and coordinating the materials and geotechnical testing program to ensure all required testing is performed with the required frequencies and documented according to the City's plans, specifications, and industry standards. Sampling and testing activities will be conducted in accordance with the contract documents and approved procedures. The Inspector will work with the Contractor to correct any failed tests and achieve compliance. Our team can effectively make decisions and coordinate with other professionals on field issues related to material testing and inspection. Z&K will develop and provide a comprehensive testing program for the Project in accordance with the contract documents.

*Z&K understands that the selected firm will be responsible for providing construction engineering support to ensure delivery of the Projects remain consistent with ATP project schedules and programming guidelines, communicating with Caltrans on project deliverables and other administrative functions associated with delivering state funded Local Assistance projects.*

## iv. Addendums

Z&K acknowledges that there were no addendums issued.

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



## B. COST PROPOSAL

Engineering Department, City of Cathedral City  
68700 Avenida Lalo Guerrero, Cathedral City, CA 92234

March 7, 2024

**Subject: Cost Proposal for Request for Qualifications/Proposals to provide Professional Construction Engineering Support Services for Highway Safety Improvement Program (HSIP) Traffic Signal Improvements at 12 Intersections Project (Federal Project No. HSIP-5430(034) – City Project No. C08752)**

To Whom it May Concern,

Z&K Consultants, Inc. (Z&K) proudly presents our cost proposal for Request for Qualifications/Proposals to provide Professional Construction Engineering Support Services for Highway Safety Improvement Program (HSIP) Traffic Signal Improvements at 12 Intersections Project (Federal Project No. HSIP-5430(034) – City Project No. C08752). Our not-to-exceed total lump sum fee for Professional Construction Engineering Support Services is **\$209,124.00**.

Z&K Consultants based our cost proposal on the scope of work provided in the Request for Proposals. All prevailing wage requirements will be followed by the team. All team members are in conformance with the State of California Labor compliance requirements. Rates included in our Cost Proposal are fully billable rates. All overhead costs are included. All insurance will be in force at the time of contract execution.

Z&K has carefully selected this **"A-Team"** and committed our most qualified staff for the duration of the contract to deliver a successful project. We understand the importance of meeting budgets and schedules; we have a strategic plan in place to deliver projects with such benchmarks in mind. Our proposed team members are recognized as **experts** in Construction Management and Inspection services and will provide **"turn-key"** services for the City's Project.

Below is a table with the hourly rate schedule:

### Z&K Consultants, Inc Hourly Rates:

Senior Construction Manager//Resident Engineer .....	\$212.00
Senior Construction/Traffic Signal Inspector .....	\$188.00
Project Manager/Office Engineer .....	\$135.00
Constructability Reviewer .....	\$166.00
Labor Compliance .....	\$128.00

*Z&K Consultants commits that all assigned personnel will not be removed or replaced without prior written City approval. Key personnel will be available to the extent proposed for the duration of the contract. Our proposed and fully committed team is fully capable and exceptionally qualified. They have held many leadership roles and supervisory management positions in many local agencies including the private and public sectors. All can multi-task, are multi-disciplined, and have a full understanding of all aspects of the proposed project requirements.*

I will serve as the contact person for the full duration on the contract and I am authorized to bind the firm to the terms of the proposal. By signing below, I attest that all information submitted is true and accurate. This proposal shall remain valid for a period of not less than 90 days from the date of submittal. The payment terms shall be net thirty (30) days. **We are excited about this opportunity to serve the City and are committed to the successful completion the City's important project.**

Sincerely,



**Crystal Fraire, PE | President**

Z&K Consultants Inc.

17130 Van Buren Blvd. | Suite 122 | Riverside, CA 92504

951.310.7470 | cfraire@zandkconsultants.com

## NOT-TO-EXCEED FEE SCHEDULE

The fee proposal shall be based on a not-to-exceed fee for a construction period of 72 working days. This assumes 40 hours for constructability review, 2 hours a day for the Senior Construction Manager/ Resident Engineer, full-time for the Senior Construction/Traffic Signal Inspector, 4 hours a week for the Labor Compliance Officer, and 2 hours a day for the Project Manager/Office Engineer.

COST PROPOSAL FOR REQUEST FOR QUALIFICATIONS/PROPOSALS TO PROVIDE PROFESSIONAL CONSTRUCTION ENGINEERING SUPPORT SERVICES FOR HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP) TRAFFIC SIGNAL IMPROVEMENTS AT 12 INTERSECTIONS PROJECT (FEDERAL PROJECT NO. HSIP-5430(034) – CITY PROJECT NO. C08752)								
Task/ Classification	Senior Construction Manager/ Resident Engineer (Hrs)	Senior Construction/ Traffic Signal Inspector (Hrs)	Labor Compliance Officer (Hrs)	Project Manager/ Office Engineer (Hrs)	Constructability Reviewer (Hrs)	Material Testing Services	Total Cost	
Hourly Rate	\$ 212.00	\$ 188.00	\$ 128.00	\$ 135.00	\$ 166.00	-		
Pre-Construction Services	8	16	8	16	24	-	\$11,872.00	
Construction Management	144	-	-	-	-	-	\$30,528.00	
Construction Inspection	-	576	-	-	-	-	\$108,288.00	
Office Engineering	-	-	-	144	-	-	\$19,440.00	
Labor Compliance	-	-	60	-	-	-	\$7,680.00	
Project Closeout	40	24	8	40	-	-	\$19,416.00	
Material Testing Services	-	-	-	-	-	\$11,900.00	\$11,900.00	
<b>TOTAL</b>	<b>\$40,704.00</b>	<b>\$115,808.00</b>	<b>\$9,728.00</b>	<b>\$27,000.00</b>	<b>\$3,984.00</b>	<b>\$11,900.00</b>	<b>\$209,124.00</b>	

Z&K Consultants commits that all assigned personnel will not be removed or replaced without prior written City approval. Key personnel will be available to the extent proposed for the duration of the contract. Our proposed and fully committed team is fully capable and exceptionally qualified. They have held many leadership roles and supervisory management positions in many local agencies including the private and public sectors. All can multi-task, are multi-disciplined, and have a full understanding of all aspects of the proposed project requirements.

## **EXHIBIT "C"**

### **INSURANCE**

A. **Insurance Requirements.** Contractor 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 Contractor, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Contractor shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Commercial General Liability. Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Automobile. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.

(3) Workers' Compensation. Workers' Compensation insurance as required by the Labor Code of State of California covering all persons providing Services on behalf of the Contractor and all risks to such persons under this Agreement.

(4) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. 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 Contractor's services or the termination of this Agreement. During this additional three (3) year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.

2. Minimum Limits of Insurance. Contractor shall maintain limits of insurance no less than:

(1) Commercial General Liability. \$1,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile. \$1,000,000 per accident for bodily injury and property damage. 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 set forth above.

(3) Workers' Compensation. Workers' Compensation as required by the Labor Code of the State of California of not less than \$1,000,000 per occurrence.

(4) Professional Liability. \$1,000,000 per occurrence.

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

1. All Policies. 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.

2. Commercial General Liability and Automobile Liability Coverages.

(1) 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 Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. 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.

(2) Contractor'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, Contractor's insurance.

(3) Contractor'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.

(4) 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.

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 Contractor.

C. Other Requirements. Contractor 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 Contractor 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. Contractor shall furnish certificates and endorsements from each subcontractor identical to those Contractor 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 Contractor 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

**AMENDMENT NO. 1  
TO THE  
AGREEMENT FOR SERVICES  
BETWEEN  
THE CITY OF CATHEDRAL CITY, CALIFORNIA  
AND  
WILLDAN ENGINEERING**

In accordance with the "Agreement for Services" dated April 24, 2024, (referred to as the "Agreement"), by and between the City of Cathedral City, a municipal corporation ("City") and Willdan Engineering, a California corporation ("Consultant"), and in accordance with Section 28 of the Agreement, entitled, "Amendments", this Amendment Number One (1) to the Agreement is made and entered into this 14<sup>th</sup> day of August 2024, ("Effective Date").

**RECITALS**

A. City and Consultant entered into an Agreement for Services to provide on-call engineering support and grant administration services for state and federal funded transportation projects, initially approved by the City Council on April 24, 2024.

B. The Agreement is subject to certain contract requirements identified in the Caltrans Local Assistance Procedure Manual (LAPM). Amendment No. 1 includes all the latest Caltrans LAPM provisions.

C. The parties wish to amend the Agreement for the first time to: (1) incorporate current Caltrans LAPM requirements for professional design services agreements.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

**Section 1.** The foregoing Recitals are true, correct, and incorporated by this reference herein as material terms relied upon by the Parties in agreeing to and executing this Amendment No. 1.

**Section 2.** The following Articles from Caltrans LAPM provisions will be amended into the agreement:

"As used throughout the Addendum 1, LOCAL AGENCY shall mean City.

**ARTICLE II CONSULTANT'S REPORTS OR MEETINGS**

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

- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

#### **ARTICLE IV PERFORMANCE PERIOD**

- A. This AGREEMENT shall go into effect on April 24, 2024, contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on May 24, 2025, unless extended by AGREEMENT amendment.
- B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

#### **ARTICLE V ALLOWABLE COSTS AND PAYMENTS**

- 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 described in Exhibit A Scope of Services. 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 LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by LOCAL AGENCY.
- 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 set forth in Exhibit A Scope of Services, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval 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 LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI 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 LOCAL AGENCY. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following email addresses:

[ALee@cathedralcity.gov](mailto:ALee@cathedralcity.gov); [accountspayable@cathedralcity.gov](mailto:accountspayable@cathedralcity.gov).

- E. The total amount payable by LOCAL AGENCY shall not exceed One Hundred Four Thousand Fourteen Dollars \$(104,014).

#### **ARTICLE VI TERMINATION**

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

#### **ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. The CONSULTANT agrees that 48 CFR 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 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 31 or 2 CFR 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.



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

#### **ARTICLE VIII RETENTION OF RECORD/AUDITS**

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

#### **ARTICLE IX AUDIT REVIEW PROCEDURES**

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

AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR (e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines) is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
  - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above,

IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.

3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

#### **ARTICLE X SUBCONTRACTING**

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

from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.

- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.
- F. Prompt Progress Payment

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

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

- G. Prompt Payment of Withheld Funds to Subconsultants

The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

**Method 1:** No retainage will be held by the LOCAL AGENCY 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 LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

## **ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES**

- A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
  - 1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
  - 2. Regulation 2 CFR 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

## **ARTICLE XII STATE PREVAILING WAGE RATES**

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT



are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

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

D. Payroll Records

1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
  - a. The information contained in the payroll record is true and correct.
  - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
  - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
  - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards

Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.

- c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
  - 3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
  - 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
  - 5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
  - 6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
- 1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and

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

2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the CONSULTANT of the project is not liable for the penalties described above unless the CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the CONSULTANT fails to comply with all of the following requirements:
  - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
  - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
  - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the

CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.

- d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

#### G. Hours of Labor

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

#### H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to

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

#### **ARTICLE XIII CONFLICT OF INTEREST**

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

#### **ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

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

#### **ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING**



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

#### **ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

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

evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT,

subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

## **ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION**

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  3. Does not have a proposed debarment pending; and
  4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government excluded parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

## **ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

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

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate Good Faith Efforts (GFE) to meet this goal. It is CONSULTANT's responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible to document the verification record

by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

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

- ☐ 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- ☐ 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- ☐ Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

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

B. The goal for DBE participation for this AGREEMENT is 10%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit 10- O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: Proposer/Contractor Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. Contract Assurance

Under 49 CFR 26.13(b):

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

Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

#### E. Termination and Replacement of DBE Subconsultants

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

##### Termination of DBE Subconsultants

After execution of the AGREEMENT, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the LOCAL AGENCY:

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



9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The LOCAL AGENCY determines other documented good cause.

CONSULTANT must use the following procedures to request the termination of a DBE or portion of a DBE's work:

1. Send a written notice to the DBE of the CONSULTANT's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the LOCAL AGENCY. The written notice to the DBE must request they provide any response within five (5) business days to both the CONSULTANT and the LOCAL AGENCY by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.
2. If the DBE does not respond within five (5) business days, CONSULTANT may move forward with the request as if the DBE had agreed to CONSULTANT's written notice.
3. Submit CONSULTANT's DBE termination request by written letter to the LOCAL AGENCY and include:
  - One or more above listed justifiable reasons along with supporting documentation.
  - CONSULTANT's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of CONSULTANT's written notice
  - The DBE's response to CONSULTANT's written notice, if received. If a written response was not provided, provide a statement to that effect.

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE termination request within five (5) business days.

#### Replacement of DBE Subconsultants

After receiving the LOCAL AGENCY's written authorization of DBE termination request, CONSULTANT must obtain the LOCAL AGENCY's written agreement for DBE replacement. CONSULTANT must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures shall be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the LOCAL AGENCY which must include:
  - a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.

- b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
    - Description of scope of work and cost proposal
    - Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
    - Revised Exhibit 10-O2: Consultant Contract DBE Commitment
2. If CONSULTANT has not identified a DBE replacement firm, submits documentation of CONSULTANT's GFes to use DBE replacement firms within seven (7) days of LOCAL AGENCY's authorization to terminate the DBE. CONSULTANT may request the LOCAL AGENCY's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:
  - Search results of certified DBEs available to perform the original DBE work identified and or other work CONSULTANT had intended to self-perform, to the extent needed to meet DBE commitment
  - Solicitations of DBEs for performance of work identified
  - Correspondence with interested DBEs that may have included contract details and requirements
  - Negotiation efforts with DBEs that reflect why an agreement was not reached
  - If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
  - Copies of each DBE's and non-DBE's price quotes for work identified, as the LOCAL AGENCY may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
  - Additional documentation that supports CONSULTANT's GFE

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE replacement request within five (5) business days.

#### F. Commitment and Utilization

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

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work

3. Maintain records including:

- Name and business address of each 1 -tier subconsultant
- Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
- Date of payment and total amount paid to each business (see Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

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

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

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

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

G. Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

CONSULTANT must perform CUF evaluation for each DBE working on a federal-aid contract, with or without a DBE goal. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the project.

CONSULTANT must provide written notification to the LOCAL AGENCY at least 15 days in advance of each DBE's initial performance of work or supplying materials for the Contract. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 days of a DBE initially performing work or supplying materials on the Contract, CONSULTANT shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business

Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

CONSULTANT must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation. CONSULTANT must submit to the LOCAL AGENCY these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

CONSULTANT must notify the LOCAL AGENCY immediately if they believe the DBE may not be performing a CUF.

The LOCAL AGENCY will verify DBEs performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional LOCAL AGENCY evaluations. The LOCAL AGENCY must evaluate DBEs and their CUF performance throughout the duration of a Contract. The LOCAL AGENCY will provide written notice to the CONSULTANT and the DBE at least two (2) business days prior to any evaluation. The CONSULTANT and the DBE must participate in the evaluation. Upon completing the evaluation, the LOCAL AGENCY must share the evaluation results with the CONSULTANT and the DBE. An evaluation could include items that must be remedied upon receipt. If the LOCAL AGENCY determines the DBE is not performing a CUF, the CONSULTANT must suspend performance of the noncompliant work.

CONSULTANT and DBEs must submit any additional CUF related records and documents within five (5) business days of LOCAL AGENCY's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE Commercially Useful Function Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If CONSULTANT and/or the LOCAL AGENCY determine that a listed DBE is not performing a CUF in performance of their DBE committed work, CONSULTANT must immediately suspend performance of the noncompliant portion of the work. LOCAL AGENCY may deny payment for the noncompliant portion of the work. LOCAL AGENCY will ask the CONSULTANT to submit a corrective action plan (CAP) to the LOCAL AGENCY within five (5) days of the

noncompliant CUF determination. The CAP must identify how the CONSULTANT will correct the noncompliance findings for the remaining portion of the DBE's work. LOCAL AGENCY has five (5) days to review the CAP in conjunction with the CONSULTANT's review. The CONSULTANT must implement the CAP within five (5) days of the LOCAL AGENCY's approval. The LOCAL AGENCY will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a commercially useful function on the Contract, CONSULTANT may have good cause to request termination of the DBE.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- L. For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY

administering the contract. If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

## **ARTICLE XX FUNDING REQUIREMENTS**

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

## **ARTICLE XXI CHANGE IN TERMS**

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

## **ARTICLE XXII CONTINGENT FEE**

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing



business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE XXIII DISPUTES**

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

- 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 thirty (30) calendar days after completion of all work under the AGREEMENT, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

#### **ARTICLE XXIV INSPECTION OF WORK**

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

#### **ARTICLE XXV SAFETY**

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

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

#### **ARTICLE XXVI OWNERSHIP OF DATA**

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal- aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

#### **ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR**

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against

such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

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

#### **ARTICLE XXVIII CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

#### **ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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

comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

#### **ARTICLE XXX EVALUATION OF CONSULTANT**

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

#### **ARTICLE XXXI PROMPT PAYMENT**

##### **A. PROMPT PAYMENT FROM LOCAL AGENCY TO CONSULTANT**

The LOCAL AGENCY 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 contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY 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 LOCAL AGENCY shall act in accordance with both of the following:

- (1) The LOCAL AGENCY shall review each payment request as soon as feasible after receipt to verify it is a proper payment request.
- (2) The LOCAL AGENCY must return any payment request deemed improper by the LOCAL AGENCY 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.

##### **B. PROMPT PAYMENT CERTIFICATION**

For projects awarded on or after September 1, 2023: the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY administering the contract by the 15th of the month following the month of any payment(s). If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

The LOCAL AGENCY must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE commitment and prompt payment issues until the end of the project. The LOCAL AGENCY must email a copy of Exhibit 9-P to [DBE.Forms@dot.ca.gov](mailto:DBE.Forms@dot.ca.gov) before the end of the month after receiving the Exhibit 9-P from the CONSULTANT.

#### **ARTICLE XXXII TITLE VI ASSURANCES**

##### **APPENDIX A**

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations

relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by

the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

## **APPENDIX E**

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following non- discrimination statutes and authorities, including, but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);



- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**Section 3.** Except as specifically amended by this Amendment No.1, the remaining terms of the Agreement shall remain in full force and effect. In the event of a conflict between the provisions of this Amendment No. 1 and the provisions of the Agreement, the provisions of this Amendment No. 1 shall control.

#### **SUMMARY:**

Amendment No. 1 added latest Caltrans provisions identified in the LAPM for professional design services.

**IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. 1 to be executed as of the date first written above.**

**CITY OF CATHEDRAL CITY**

**Willdan Engineering**

.....  
**By:** Charles P. McClendon  
City Manager

.....  
**By:** Chris Baca  
Director

**ATTEST:**

.....  
**By:** Tracey R. Hermosillo, CMC  
City Clerk

.....  
**By:**

.....  
**By:** Eric S. Vail  
City Attorney

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



with regulatory agency permitting requirements and environmental, design, and construction procedures and requirements for capital improvement and private land development projects. Although each project may encompass different components and requirements, the general process remains the same – following the Greenbook and Caltrans Local Assistance Procedures Manual (LAPM). We are experts in meeting and guiding projects to pass Caltrans requirements.

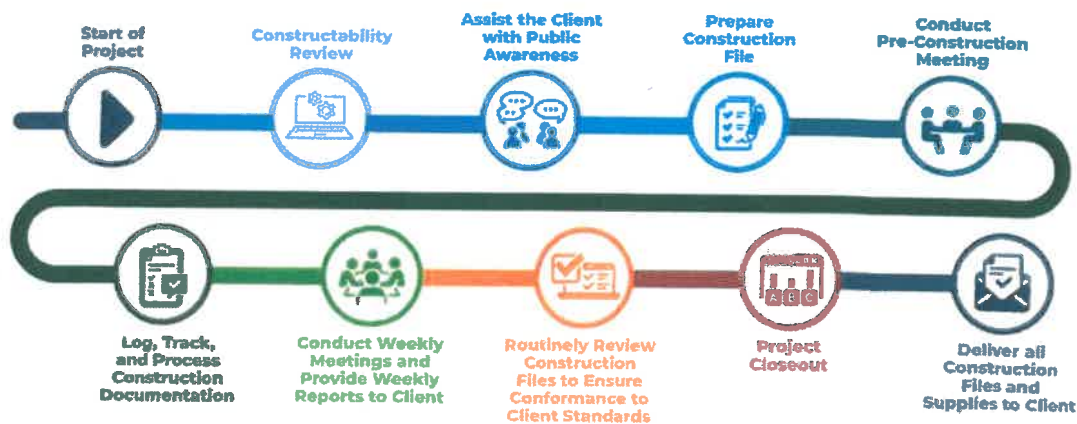
## Scope of Work

### Construction Management Approach

Willdan provides expertise in all areas of construction management, inspection, labor compliance, material testing, and community relations with residents and businesses affected by construction. Our experienced team members serve as construction managers, resident engineers, and inspectors and provide significant insight for identifying and correcting discrepancies, ambiguities, omissions, or conflicts in contract documents that could generate misinterpretation and/or disagreements between the City and the contractor.

Willdan has experience in managing projects that span ADA improvements, street improvements, traffic marking, pavement rehabilitation, water, wastewater, stormwater, landscaping, irrigation, parks, traffic signal, and lighting improvements, and has experience in best practices to avoid potential conflicts and avoid or mitigate any hazards during construction. Our goal is to anticipate or diminish potential problems before they arise through continual review of project plans, specifications, contractor's schedule, and other contract documents. Below is a basic overview of the Construction Management process for a typical construction project.

### Construction Management Process



#### Our team is adept at:

- Anticipating job site problems
- Calling job site problems to the project manager's and/or contractor's attention
- Offering constructive recommendations and achieving cooperation from the contractor
- Dealing with issues in a professional, straightforward fashion
- Managing Caltrans administered projects

#### Our approach to issue resolution is to:

- Obtain and document the facts surrounding the issue
- Develop reasonable solutions in conjunction with the contractor and City project manager
- Respond quickly and effectively so that job progress and quality do not suffer

Through close communication with the City's project staff, timely corrective action is taken to alleviate potential adverse impacts of work progress, costly change orders, and construction claims.





## Project Administration

Our construction management services focus on coordination, review, tracking, reporting, and field inspections to ensure the work quality is in compliance with LAPM requirements, City standards and the contract documents. Chris Baca will serve as Willdan's project manager. Chris will work with our proposed construction manager and public works to work proactively in assisting the general contractor's construction efforts and maintain fluid channels of communication with Willdan's construction services team. Our team's goal is to technically support the construction effort and the efforts of the City in achieving a successful completion with minimum complications. Initial project administration protocols include:

- Construction document review for constructability
- Preconstruction meeting with the contractor, City representatives, designer, and others deemed necessary by the City or Willdan

Once construction has begun, Willdan will:

- Review and monitor the work as it is constructed, along with supporting documentation which establishes the technical adequacy of the construction, the timely schedule of implementation, and the budget.
- Track the progress and quality of construction.
- Log and process submittals, RFIs, RFCs, and CCOs.
- Track labor and equipment.
- Review and assist with resolution of all technical data and issues.
- Provide daily and weekly reports to the City on construction progress and technical and economic parameters.
- Monitor construction file for conformance with applicable LAPM requirements.

Willdan's team is unique in that it is structured as an integrated unit with close communication between team members and interlocking responsibilities that provide good coverage of all elements of construction engineering, while at the same time having minimal overlap of duties to avoid misunderstandings of assigned responsibilities and reduce costs. This structure provides a natural quality assurance/control system for the team. Chris is the base for any decisions and provides assignment of specific duties daily, while monitoring the success of their fulfillment. He has specific administrative duties, which include review of field activities. He will institute a system of periodic reviews of the field file for conformance with Willdan's in-house filing system.

## Detailed Breakdown

Below is Willdan's comprehensive approach to providing the City's requested services.

### Construction Management

- |   |  |
|---|--|
| <ol style="list-style-type: none"><li>1. Review plans, specifications, and all other contract- and construction-related documents, including grant requirements.</li><li>2. Assist City with public awareness and information program to keep residents and local stakeholders advised of project status along with impacts to traffic flow circulation, including answering public's questions about project.</li><li>3. Prepare construction file, including establishment of document control systems. A copy of Willdan's construction file checklist can be provided upon request.</li><li>4. Ensure contractor distributes public construction notices and places construction and information signs.</li></ol> | <ol style="list-style-type: none"><li>5. Prepare special concerns to be presented at preconstruction conference.</li><li>6. Conduct preconstruction meeting, prepare meeting minutes, and distribute to attendees.</li><li>7. Review contractor's safety program in consultation with City staff.</li><li>8. Through Willdan's system of project control, monitor activities related to project such that project is constructed in timely fashion pursuant to contract documents.</li><li>9. Log, track, and process submittals, RFIs, releases for construction (RFCs), contract change orders (CCOs), field directives, notices of proposed change (NOPCs), non-conformance reports (NCRs), construction schedule, and detailed traffic control plan.</li></ol> |
|---|--|





10. Closely review schedule and advise contractor to take action on schedule slippage.
11. Document contractor's 20-day notices, mechanic's liens, and stop notices.
12. Assume responsibility for coordination with inspection staff and City staff.
13. Monitor and coordinate activities of design engineering support, surveying, testing, and work by utilities or other agencies.
14. Coordinate contractor's field work with utility companies and other agencies.
15. Prepare weekly statement of working days and submit to contractor and City.
16. Establish and conduct weekly construction progress meetings to:
  - a. Resolve all old business issues to maximum extent possible
  - b. Address all items of new business as presented by any party
  - c. Review project schedule and address any deviations
  - d. Review submittal log in terms of items needed and resubmittals required and review RFI, RFC, CCO, NCR, and NOPC logs
  - e. List status of construction items recently undertaken or ongoing
  - f. List planned construction items for next two weeks (two-week look ahead schedule)
  - g. Review SWPPP issues
  - h. Review contractor's safety program
17. Prepare minutes for weekly construction progress meeting.
18. Coordinate with the City's labor compliance consultant to ensure compliance with state code on labor compliance.
19. Provide claims mitigation monitoring, including proactively applying foresight to discover unforeseen conflicts prior to contractor encounter.
20. Evaluate and respond to contractor's requests for clarification of plans and specifications.
21. Ensure that all questions, conflicts, and issues are immediately brought to City's attention and addressed with appropriate directives to contractor.
22. Conduct special site meetings, when necessary, with contractor and City staff to

review job progress, scheduling, and coordination.

23. Perform quantity, time, and cost analyses required for negotiation of contract changes.
24. Negotiate and prepare change orders, including memorandum of explanation and cost estimates, to substantiate change order and send to City for review.
25. Monitor and perform immediate and thorough analysis of validity of all potential claims that arise.
26. Maintain all data for change orders and record information about time of dispute, time of notification by contractor, and action taken by inspector.
27. Monitor materials documentation and testing results and enforce corrections.
28. Review for approval contractor's progress payment requests, including verifying LAMP compliance status and impact on payment; negotiate differences over amount with contractor; and process payments through City's Project Manager.
29. Monitor preparation of punch list at substantial completion and follow up.
30. Routinely review construction files to ensure conformance to City standards and good construction management practices.
31. Ensure City receives as-built set of drawings at completion.
32. Assist City with stop notices and release of retention.
33. Provide memorandum of clearance to issue notice of completion.
34. Finalize and deliver all construction files and supplies to City for their records.

## Labor Compliance

1. Verify applicable wage determination ten (10) days prior to bid opening; document verification as required. If wage determination has changed from what appears in project specifications, provide addendum and proof of receipt by plan holders.
2. Verify eligibility of selected contractor and its subcontractors to receive contract awards by confirming current, active license status with Contractors State License Board; current registration with California Department of Industrial Relations; current, valid contractor's bond and workers' compensation coverage; non-appearance on Federal List of Parties Excluded and







State Division of Labor Standards Enforcement debarment lists.

3. Attend preconstruction conference to present federal labor compliance requirements to contractor and subcontractors; prepare minutes and attendance record thereof.
4. Verify and document job-site posting of wage rate information and labor compliance posters.
5. Receive and review labor compliance documentation from public works observers or inspectors and compare with contractor-submitted documents. Monitor contractor-submitted payroll documentation on a continuous basis, including weekly certified payroll reports, fringe benefit statements, apprenticeship documentation, and payroll deduction authorizations.
6. Follow up with contractor by telephone, email, and/or certified mail regarding required document submittals and payroll discrepancies and deficiencies. Provide detailed description of alleged deficiencies; outline corrective action to be taken; and enforce regulatory deadlines for compliance.
7. Receive, pursue, and document labor complaints; prepare violation reports to oversight agencies as required; recommend special action to be taken if contractor continuously fails to comply with requests and requirements.
8. Coordinate with City staff the withholding of progress and/or retention payments if contractor fails to abide by labor compliance requirements.
9. Maintain content and format of federal labor compliance file in conformance with applicable government requirements.
10. Coordinate project file reviews by authorized county, state, and federal agencies.
11. Submit complete federal labor compliance file to City for retention.

## Construction Inspection

1. Review plans, specifications, and all other contract- and construction-related documents.
2. Conduct a field investigation of the project area to become familiar with the existing facilities and the project environment.
3. Become familiar with traffic control plans, construction schedule, construction

sequence, and permit requirements from other agencies.

4. Verify that the contractor conforms to the design survey line and grades.
5. Attend weekly progress meetings with the construction manager, contractor, and subcontractors.
6. Inspector will provide full-time and as-needed construction inspection, including night inspection, of the work to monitor materials and methods for compliance with plans, specifications, and contract documents; and address and document non-conforming items as they are discovered.
7. Monitor compliance with Cal OSHA requirements and compliance with all local, state, and federal regulations. Although Willdan will monitor the activities, it is the contractor's sole responsibility to provide workers with a safe working environment.
8. Monitor compliance with the Clean Air Act and the Clean Water Act (National Pollutant Discharge Elimination System – NPDES best management practices). Also, monitor the contractor's compliance with approved SWPPP.
9. Provide Willdan's labor compliance manager with federally compliant labor and equipment reports, labor classification interviews. Willdan's inspector will work with our Labor Compliance Manager to monitor and verify specified DBE's.
10. Meet with the contractor at the beginning of each day and review the proposed work plan, including specific details that may affect progress.
11. Conduct daily measurements of quantities of work with the contractor.
12. Review actual contractor performance throughout the day and discuss discrepancies with the contractor as they occur.
13. Assist in coordination of engineering support, surveying, specialty inspections, and fieldwork by utility companies.
14. Coordinate with Contractor and utility companies to assist in the identification of unknown utilities and possible relocation of interfering structures or lines.
15. Ensure contractor restores centerline ties and provides updated centerline tie-out notes, if any are disturbed.





16. Ensure compliance of Underground Service Alert notification/delineation.
17. Evaluate the contractor's operation and production with respect to quality and progress and report to the construction manager.
18. Photograph continuous property frontages along the street alignment once prior to construction and once immediately following construction. Maintain a photographic record of key elements of each major operation of work each day, with increased detail in situations of potential changes or claims.
19. Coordinate testing and closely monitor testing results and require the contractor to provide corrective measures to achieve compliance.
20. Maintain copies of all permits needed to construct the projects and enforce special requirements of each.
21. Prepare and maintain detailed daily diary inspector reports on construction progress.
22. Prepare clear and concise letters and memoranda, as needed. Establish a solid paper trail.
23. Assist with the review and evaluation of change order work.
24. Provide complete measurements and calculations documentation to administer progress payments.
25. Maintain and submit a clean set of plans marked in red for as-built corrections on record drawings to be filed with the City.
26. Prepare a punch list at substantial completion and follow up with the contractor regarding progress of corrections.

## Material Testing

1. Attend meetings, as needed, with project team.
2. Review existing geotechnical reports and project plans and specifications.
3. Perform laboratory testing.
4. Verify compliance with approved project plans, specifications, and applicable code requirements.
5. Provide as-needed testing for proposed removal and replacement of damaged street sections.
6. Provide compaction testing for leveling course and final paving.
7. Provide as-needed asphalt plant inspection and monitoring.

8. Provide engineering support, inspector/technician coordination, dispatch, material engineering review, test reporting, QA/QC, and administrative support services.
9. Submit reports/updates of ongoing tests, i.e., seven-day and off-schedule breaks.
10. Submit final report of completed laboratory tests, i.e., 28-day results for concrete.
11. Submit – for City review – daily field-testing and inspection reports indicating information pertinent to inspections performed and compliance/non-compliance with project documents and applicable codes.

## Federal Funding Administration

### Award Package

1. Prepare the award package following the award of the construction contract and receiving the following items from the City: the engineer's final opinion of probable construction cost, contractor's bid, bid analysis, proof of advertisement, Caltrans Finance Letter, and executed Program Supplement Agreement.
2. Prepare LAPM Exhibits 15-C Local Agency Project Advertising Checklist and 15-I Local Agency Bid Opening Checklist for the project file, 15-L Local Agency Contract Award Checklist, 15-M Detail Estimate and Summary, 15-B Resident Engineer's Construction Contract Administration Checklist based on the awarded bid, and 3-A Project Authorization/Adjustment Request if making an adjustment to the Finance Letter.
3. Submit package to the Caltrans DLAE within 60 days of award along with the following items provided by the City: as-advertised plans and specifications, LAPM Exhibits 15-G Local Agency Bidder DBE Commitment (Construction Contracts), 15-H Good Faith Effort, and 9-E Evaluation of Good Faith Effort Memo.

### Progress Invoicing

1. Prepare progress invoices at least every 6 months.
2. Monitor the Inactive Obligations List on the Caltrans Local Assistance website and notify City staff of any pending deadlines to submit invoices.
3. Prepare LAPM Exhibit 5-A Local Agency Invoice based on the following items provided by the City: contractor progress





payments, cancelled checks, and a copy of 15-L Local Agency Contract Award Checklist (first construction invoice only).

4. Submit package to the Caltrans DLAE.

## **Final Invoice & Final Report of Expenditures**

1. Prepare a request for post-award finance letter adjustment, if needed, based on the final construction costs prior to submitting the Final Invoice package to close out the project and submit to the Caltrans DLAE LAPM Exhibits 3-A Project Authorization/Adjustment Request, 15-M Detail Estimate and Summary, and 17-E Change Order Summary.

2. Prepare LAPM Exhibits 17-A Federal Report of Expenditures Letter and the Report of Expenditures Checklist, 17-C Local Agency Final Inspection Form, 17-G Materials Certificate, 5-A Local Agency Invoice, 15-M Final Detail Estimate and Summary, and 17-E Change Order Summary along with the following items to be provided by the City: LAPM Exhibits 17-F Final Report - Utilization of DBE, First Tier Subcontractors and 17-O DBE Certification Status Change, contractor progress payments, final retention payment, and copies of cancelled checks.
3. Submit package to the Caltrans DLAE.



**AGREEMENT FOR SERVICES  
BETWEEN  
THE CITY OF CATHEDRAL CITY, CALIFORNIA  
AND  
WILLDAN ENGINEERING**

This Agreement for Services ("Agreement") is entered into as of this 24<sup>th</sup> day of April, 2024 by and between the City of Cathedral City, a municipal corporation ("City") and Willdan Engineering, a California Corporation ("Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

**RECITALS**

A. City has sought, by request for qualifications and proposals, the performance of the services defined and described particularly in Section 2 of this Agreement.

B. Contractor, 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. The Parties desire to formalize the selection of Contractor 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 20 "Termination of Agreement" of this Agreement, the Term of this Agreement is for Thirteen (13) months commencing on the date first ascribed above.

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

Contractor 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. The Services shall be completed pursuant to the schedule specified in Exhibit "A." Should the Services not be completed pursuant to that schedule, the Service Provider 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 Service Provider to continue performing the Services.

**SECTION 3. ADDITIONAL SERVICES.**



Contractor 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 26 "Administration and Implementation" or Section 28 "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. COMPENSATION AND METHOD OF PAYMENT.**

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in Exhibit "B" "Compensation" and made a part of this Agreement by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed One Hundred Four Thousand Fourteen dollars (\$104,014), unless additional compensation is approved in writing in accordance with Section 26 "Administration and Implementation" or Section 28 "Amendment" of this Agreement.

(b) Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and subcontractor contracts. Subcontractor charges shall be detailed by the following categories: labor, travel, materials, equipment and supplies. If the compensation set forth in subsection (a) and Exhibit "B" include payment of labor on an hourly basis (as opposed to labor and materials being paid as a lump sum), the labor category in each invoice shall include detailed descriptions of task performed and the amount of time incurred for or allocated to that task. City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

(c) Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will use its best efforts to cause Contractor to be paid within thirty (30) days of receipt of Contractor's correct and undisputed invoice.

(d) Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

#### **SECTION 5. INSPECTION AND FINAL ACCEPTANCE.**

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Contractor'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 Contractor's work by City shall not constitute a waiver of any of the provisions of this

Agreement including, but not limited to, Section 16 "Indemnification" and Section 17 "Insurance."

## **SECTION 6. OWNERSHIP OF DOCUMENTS.**

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Contractor in the course of providing the Services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Contractor. Upon completion, expiration or termination of this Agreement, Contractor shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

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 or other documents prepared, developed or discovered by Contractor in the course of providing the Services pursuant to this Agreement, Contractor's guarantees and warranties in Section 9 "Standard of Performance" of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

All final work product developed by Contractor in the course of providing the Services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Contractor. Upon completion, expiration or termination of this Agreement, Contractor shall turn over to City all such final work product if paid for by the City. This provision specifically excludes Contractors' work notes and drafts, which are owned by Contractor, not City.

## **SECTION 7. CONTRACTOR'S BOOKS AND RECORDS.**

(a) Contractor shall maintain any and all documents and records demonstrating or relating to Contractor's performance of the Services. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to the Services, including expenditures and disbursements charged to City pursuant to this 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 Contractor pursuant to this Agreement. Any and all such documents or records shall be maintained for three (3) years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures. In accordance with California Government Code Section 8546.7, if the total compensation in Section 4 exceeds ten thousand dollars (\$10,000.00), this Agreement and the Contractor's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the



request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

(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 Contractor's address indicated for receipt of notices in this Agreement.

(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 Contractor'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 8. INDEPENDENT CONTRACTOR.**

(a) Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Contractor shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise.

(b) The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Contractor or any of Contractor's personnel. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's personnel are in any manner officials, officers, or employees of City.

(c) Neither Contractor, nor any of Contractor's personnel shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor, its officers, employees, agents or subcontractors, may have to any such rights. Contractor's indemnity obligations in Section 16 "Indemnification" of this Agreement include the obligation to indemnify the City from and against any liability that may arise related to claims that Contractor, its officers, employees, agents or subcontractors, are entitled to retirement, health care or any other benefits that accrue to City employees. This provision shall survive the expiration or earlier termination of this Agreement.

## **SECTION 9. STANDARD OF PERFORMANCE.**

(a) Contractor 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. Contractor 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, Contractor shall employ, at a minimum,

generally accepted standards and practices utilized by persons engaged in providing services similar to the Services required of Contractor under this Agreement. 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 Contractor's 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) Contractor 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 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.**

Contractor 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. Contractor 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 Contractor to comply with this section.

#### **SECTION 11. PREVAILING WAGE LAWS**

It is the understanding of City and Contractor that California prevailing wage laws do not apply to this Agreement because the Agreement does not involve any of the following services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder: Construction, alteration, demolition, installation, or repair work performed on public buildings, facilities, streets or sewers done under contract and paid for in whole or in part out of public funds. In this context, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

#### **SECTION 12. NONDISCRIMINATION.**

Contractor shall not discriminate, in any way, against any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status in connection with or related to the performance of this Agreement.

#### **SECTION 13. 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 the 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 14. CONFLICTS OF INTEREST.**

(a) Contractor 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 Contractor's performance of the Services. Contractor 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. Contractor 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 understands and acknowledges that Contractor 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. Contractor 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.

(c) City understands and acknowledges that Contractor 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.

(d) City may determine that Contractor 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, Contractor 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.

#### **SECTION 15. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.**

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor 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) Contractor, 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 Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Contractor's conduct.

Contractor shall promptly notify City should Contractor, 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 Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response. Contractor shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law or for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

## **SECTION 16. INDEMNIFICATION.**

(a) Indemnification for Professional Liability. Where the law establishes a professional standard of care for Contractor's services, to the fullest extent permitted by law, Contractor 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 liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees) arise out of, are a consequence of, or are in any way attributable to, in whole or in part, any negligent or wrongful act, error or omission of Contractor, or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or subcontractors of Contractor, in the performance of professional services under this Agreement. Notwithstanding the foregoing, to the extent that the Consultant's services are subject to California Civil Code Section 2782.8, the above indemnity, including the cost to defend, shall be limited to the extent required by Civil Code Section 2782.8.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in

whole or in part, the performance of this Agreement by Contractor, or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or subcontractors of Contractor.

(c) Indemnification from Subcontractors. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Contractor fails to obtain such indemnity obligations from others as required herein, Contractor 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 Contractor and shall survive the termination of this Agreement or this section.

(d) 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 17. INSURANCE.**

Contractor 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. Contractor agrees to provide City with copies of required policies upon request.

## **SECTION 18. ASSIGNMENT.**

The expertise and experience of Contractor 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 Contractor under this Agreement. In recognition of that interest, Contractor shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Contractor'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 20 "Termination of Agreement." City acknowledges, however, that Contractor, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

## **SECTION 19. CONTINUITY OF PERSONNEL.**

Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the Services. Contractor shall notify City of any changes in Contractor's staff and



subcontractors, if any, assigned to perform the Services prior to and during any such performance.

## **SECTION 20. 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 Contractor. In the event such notice is given, Contractor shall cease immediately all work in progress.

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

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

(d) Upon termination of this Agreement by either Contractor or City, all property belonging exclusively to City which is in Contractor's possession shall be returned to City. Contractor shall furnish to City a final invoice for work performed and expenses incurred by Contractor, prepared as set forth in Section 4 "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 4 "Compensation and Method of Payment" of this Agreement.

## **SECTION 21. DEFAULT.**

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor 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 Contractor 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 Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under Section 20 "Termination of Agreement." Any failure on the part of the City to give notice of the Contractor'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 22. EXCUSABLE DELAYS.**

Contractor 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 Contractor. 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 23. 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 Contractor in every reasonable way to facilitate, without undue delay, the Services to be performed under this Agreement.

### **SECTION 24. NOTICES.**

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

To City:	City of Cathedral City Attn: Engineering Department 68700 Avenida Lalo Guerrero Cathedral City, CA 92234
To Contractor:	Willdan Engineering Attn: Chris Baca 650 E. Hospitality Lane, Suite 400 San Bernardino, CA 92408

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

### **SECTION 25. AUTHORITY TO EXECUTE.**

Each of the signatories hereto represents and warrants that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign. Each Party hereto agrees to defend, indemnify, and hold harmless the other Parties hereto against all claims, suits, actions, and demands, including necessary expenses of investigation and reasonable attorneys' fees and costs, arising out of claims that its signatory was not competent or so authorized to execute this Agreement.

### **SECTION 26. 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 28 "Amendment" and the City Manager's contracting authority under the City of Cathedral City Municipal Code and its adopted policies and procedures.

## **SECTION 27. BINDING EFFECT.**

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

## **SECTION 28. AMENDMENT.**

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City. The City Manager shall have the authority to approve any amendment to this Agreement if it does not exceed the amount that may be approved administratively pursuant to the City Municipal Code. The Parties agree that the requirement for written modifications cannot be waived and that any attempted waiver shall be void. The City's City Manager may, but is not required to, make minor amendments not affecting substantive terms without further authorization from the City Council. The City Council hereby authorizes the City Manager to execute any such amendments as required by this Agreement or that do not otherwise reduce City's rights under this Agreement. All other amendments shall be approved by the City Council.

## **SECTION 29. 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 by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

## **SECTION 30. 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 31. 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 32. 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 Contractor 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 33. 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 34. 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.

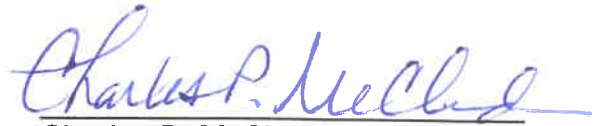
**SECTION 35. CONFLICTING TERMS.**

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.

*[SIGNATURES ON FOLLOWING PAGE]*

**CITY OF CATHEDRAL CITY**



Charles P. McClendon  
City Manager

**ATTEST:**




Tracey R. Hermosillo, CMC  
City Clerk

**APPROVED AS TO FORM**



Eric S. Vail  
City Attorney

**Willdan Engineering**

  
DIRECTOR  
5-1-2024

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



with regulatory agency permitting requirements and environmental, design, and construction procedures and requirements for capital improvement and private land development projects. Although each project may encompass different components and requirements, the general process remains the same – following the Greenbook and Caltrans Local Assistance Procedures Manual (LAPM). We are experts in meeting and guiding projects to pass Caltrans requirements.

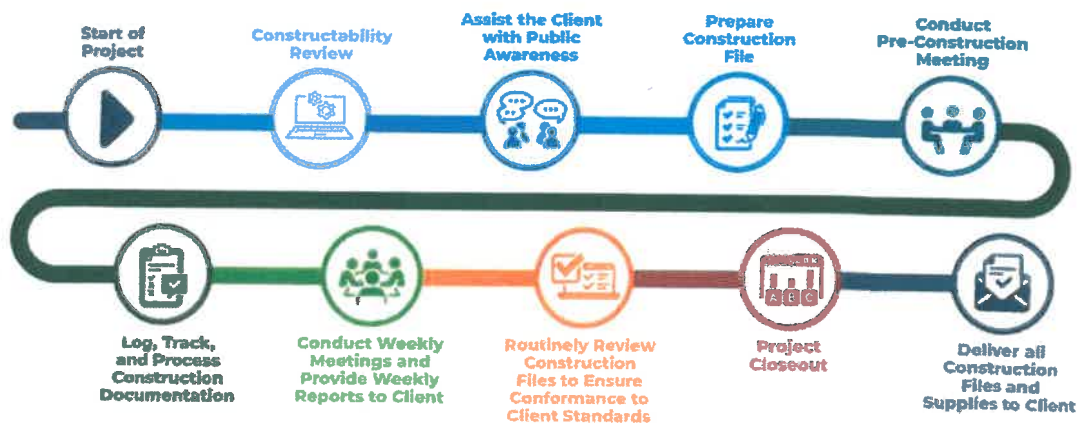
## Scope of Work

### Construction Management Approach

Willdan provides expertise in all areas of construction management, inspection, labor compliance, material testing, and community relations with residents and businesses affected by construction. Our experienced team members serve as construction managers, resident engineers, and inspectors and provide significant insight for identifying and correcting discrepancies, ambiguities, omissions, or conflicts in contract documents that could generate misinterpretation and/or disagreements between the City and the contractor.

Willdan has experience in managing projects that span ADA improvements, street improvements, traffic marking, pavement rehabilitation, water, wastewater, stormwater, landscaping, irrigation, parks, traffic signal, and lighting improvements, and has experience in best practices to avoid potential conflicts and avoid or mitigate any hazards during construction. Our goal is to anticipate or diminish potential problems before they arise through continual review of project plans, specifications, contractor's schedule, and other contract documents. Below is a basic overview of the Construction Management process for a typical construction project.

### Construction Management Process



#### Our team is adept at:

- Anticipating job site problems
- Calling job site problems to the project manager's and/or contractor's attention
- Offering constructive recommendations and achieving cooperation from the contractor
- Dealing with issues in a professional, straightforward fashion
- Managing Caltrans administered projects

#### Our approach to issue resolution is to:

- Obtain and document the facts surrounding the issue
- Develop reasonable solutions in conjunction with the contractor and City project manager
- Respond quickly and effectively so that job progress and quality do not suffer

Through close communication with the City's project staff, timely corrective action is taken to alleviate potential adverse impacts of work progress, costly change orders, and construction claims.







## Project Administration

Our construction management services focus on coordination, review, tracking, reporting, and field inspections to ensure the work quality is in compliance with LAPM requirements, City standards and the contract documents. Chris Baca will serve as Willdan's project manager. Chris will work with our proposed construction manager and public works to work proactively in assisting the general contractor's construction efforts and maintain fluid channels of communication with Willdan's construction services team. Our team's goal is to technically support the construction effort and the efforts of the City in achieving a successful completion with minimum complications. Initial project administration protocols include:

- Construction document review for constructability
- Preconstruction meeting with the contractor, City representatives, designer, and others deemed necessary by the City or Willdan

Once construction has begun, Willdan will:

- Review and monitor the work as it is constructed, along with supporting documentation which establishes the technical adequacy of the construction, the timely schedule of implementation, and the budget.
- Track the progress and quality of construction.
- Log and process submittals, RFIs, RFCs, and CCOs.
- Track labor and equipment.
- Review and assist with resolution of all technical data and issues.
- Provide daily and weekly reports to the City on construction progress and technical and economic parameters.
- Monitor construction file for conformance with applicable LAPM requirements.

Willdan's team is unique in that it is structured as an integrated unit with close communication between team members and interlocking responsibilities that provide good coverage of all elements of construction engineering, while at the same time having minimal overlap of duties to avoid misunderstandings of assigned responsibilities and reduce costs. This structure provides a natural quality assurance/control system for the team. Chris is the base for any decisions and provides assignment of specific duties daily, while monitoring the success of their fulfillment. He has specific administrative duties, which include review of field activities. He will institute a system of periodic reviews of the field file for conformance with Willdan's in-house filing system.

## Detailed Breakdown

Below is Willdan's comprehensive approach to providing the City's requested services.

### Construction Management

- |   |  |
|---|--|
| <ol style="list-style-type: none"><li>1. Review plans, specifications, and all other contract- and construction-related documents, including grant requirements.</li><li>2. Assist City with public awareness and information program to keep residents and local stakeholders advised of project status along with impacts to traffic flow circulation, including answering public's questions about project.</li><li>3. Prepare construction file, including establishment of document control systems. A copy of Willdan's construction file checklist can be provided upon request.</li><li>4. Ensure contractor distributes public construction notices and places construction and information signs.</li></ol> | <ol style="list-style-type: none"><li>5. Prepare special concerns to be presented at preconstruction conference.</li><li>6. Conduct preconstruction meeting, prepare meeting minutes, and distribute to attendees.</li><li>7. Review contractor's safety program in consultation with City staff.</li><li>8. Through Willdan's system of project control, monitor activities related to project such that project is constructed in timely fashion pursuant to contract documents.</li><li>9. Log, track, and process submittals, RFIs, releases for construction (RFCs), contract change orders (CCOs), field directives, notices of proposed change (NOPCs), non-conformance reports (NCRs), construction schedule, and detailed traffic control plan.</li></ol> |
|---|--|





10. Closely review schedule and advise contractor to take action on schedule slippage.
11. Document contractor's 20-day notices, mechanic's liens, and stop notices.
12. Assume responsibility for coordination with inspection staff and City staff.
13. Monitor and coordinate activities of design engineering support, surveying, testing, and work by utilities or other agencies.
14. Coordinate contractor's field work with utility companies and other agencies.
15. Prepare weekly statement of working days and submit to contractor and City.
16. Establish and conduct weekly construction progress meetings to:
  - a. Resolve all old business issues to maximum extent possible
  - b. Address all items of new business as presented by any party
  - c. Review project schedule and address any deviations
  - d. Review submittal log in terms of items needed and resubmittals required and review RFI, RFC, CCO, NCR, and NOPC logs
  - e. List status of construction items recently undertaken or ongoing
  - f. List planned construction items for next two weeks (two-week look ahead schedule)
  - g. Review SWPPP issues
  - h. Review contractor's safety program
17. Prepare minutes for weekly construction progress meeting.
18. Coordinate with the City's labor compliance consultant to ensure compliance with state code on labor compliance.
19. Provide claims mitigation monitoring, including proactively applying foresight to discover unforeseen conflicts prior to contractor encounter.
20. Evaluate and respond to contractor's requests for clarification of plans and specifications.
21. Ensure that all questions, conflicts, and issues are immediately brought to City's attention and addressed with appropriate directives to contractor.
22. Conduct special site meetings, when necessary, with contractor and City staff to

review job progress, scheduling, and coordination.

23. Perform quantity, time, and cost analyses required for negotiation of contract changes.
24. Negotiate and prepare change orders, including memorandum of explanation and cost estimates, to substantiate change order and send to City for review.
25. Monitor and perform immediate and thorough analysis of validity of all potential claims that arise.
26. Maintain all data for change orders and record information about time of dispute, time of notification by contractor, and action taken by inspector.
27. Monitor materials documentation and testing results and enforce corrections.
28. Review for approval contractor's progress payment requests, including verifying LAMP compliance status and impact on payment; negotiate differences over amount with contractor; and process payments through City's Project Manager.
29. Monitor preparation of punch list at substantial completion and follow up.
30. Routinely review construction files to ensure conformance to City standards and good construction management practices.
31. Ensure City receives as-built set of drawings at completion.
32. Assist City with stop notices and release of retention.
33. Provide memorandum of clearance to issue notice of completion.
34. Finalize and deliver all construction files and supplies to City for their records.

## Labor Compliance

1. Verify applicable wage determination ten (10) days prior to bid opening; document verification as required. If wage determination has changed from what appears in project specifications, provide addendum and proof of receipt by plan holders.
2. Verify eligibility of selected contractor and its subcontractors to receive contract awards by confirming current, active license status with Contractors State License Board; current registration with California Department of Industrial Relations; current, valid contractor's bond and workers' compensation coverage; non-appearance on Federal List of Parties Excluded and





State Division of Labor Standards Enforcement debarment lists.

3. Attend preconstruction conference to present federal labor compliance requirements to contractor and subcontractors; prepare minutes and attendance record thereof.
4. Verify and document job-site posting of wage rate information and labor compliance posters.
5. Receive and review labor compliance documentation from public works observers or inspectors and compare with contractor-submitted documents. Monitor contractor-submitted payroll documentation on a continuous basis, including weekly certified payroll reports, fringe benefit statements, apprenticeship documentation, and payroll deduction authorizations.
6. Follow up with contractor by telephone, email, and/or certified mail regarding required document submittals and payroll discrepancies and deficiencies. Provide detailed description of alleged deficiencies; outline corrective action to be taken; and enforce regulatory deadlines for compliance.
7. Receive, pursue, and document labor complaints; prepare violation reports to oversight agencies as required; recommend special action to be taken if contractor continuously fails to comply with requests and requirements.
8. Coordinate with City staff the withholding of progress and/or retention payments if contractor fails to abide by labor compliance requirements.
9. Maintain content and format of federal labor compliance file in conformance with applicable government requirements.
10. Coordinate project file reviews by authorized county, state, and federal agencies.
11. Submit complete federal labor compliance file to City for retention.

## Construction Inspection

1. Review plans, specifications, and all other contract- and construction-related documents.
2. Conduct a field investigation of the project area to become familiar with the existing facilities and the project environment.
3. Become familiar with traffic control plans, construction schedule, construction

sequence, and permit requirements from other agencies.

4. Verify that the contractor conforms to the design survey line and grades.
5. Attend weekly progress meetings with the construction manager, contractor, and subcontractors.
6. Inspector will provide full-time and as-needed construction inspection, including night inspection, of the work to monitor materials and methods for compliance with plans, specifications, and contract documents; and address and document non-conforming items as they are discovered.
7. Monitor compliance with Cal OSHA requirements and compliance with all local, state, and federal regulations. Although Willdan will monitor the activities, it is the contractor's sole responsibility to provide workers with a safe working environment.
8. Monitor compliance with the Clean Air Act and the Clean Water Act (National Pollutant Discharge Elimination System – NPDES best management practices). Also, monitor the contractor's compliance with approved SWPPP.
9. Provide Willdan's labor compliance manager with federally compliant labor and equipment reports, labor classification interviews. Willdan's inspector will work with our Labor Compliance Manager to monitor and verify specified DBE's.
10. Meet with the contractor at the beginning of each day and review the proposed work plan, including specific details that may affect progress.
11. Conduct daily measurements of quantities of work with the contractor.
12. Review actual contractor performance throughout the day and discuss discrepancies with the contractor as they occur.
13. Assist in coordination of engineering support, surveying, specialty inspections, and fieldwork by utility companies.
14. Coordinate with Contractor and utility companies to assist in the identification of unknown utilities and possible relocation of interfering structures or lines.
15. Ensure contractor restores centerline ties and provides updated centerline tie-out notes, if any are disturbed.







16. Ensure compliance of Underground Service Alert notification/delineation.
17. Evaluate the contractor's operation and production with respect to quality and progress and report to the construction manager.
18. Photograph continuous property frontages along the street alignment once prior to construction and once immediately following construction. Maintain a photographic record of key elements of each major operation of work each day, with increased detail in situations of potential changes or claims.
19. Coordinate testing and closely monitor testing results and require the contractor to provide corrective measures to achieve compliance.
20. Maintain copies of all permits needed to construct the projects and enforce special requirements of each.
21. Prepare and maintain detailed daily diary inspector reports on construction progress.
22. Prepare clear and concise letters and memoranda, as needed. Establish a solid paper trail.
23. Assist with the review and evaluation of change order work.
24. Provide complete measurements and calculations documentation to administer progress payments.
25. Maintain and submit a clean set of plans marked in red for as-built corrections on record drawings to be filed with the City.
26. Prepare a punch list at substantial completion and follow up with the contractor regarding progress of corrections.

## Material Testing

1. Attend meetings, as needed, with project team.
2. Review existing geotechnical reports and project plans and specifications.
3. Perform laboratory testing.
4. Verify compliance with approved project plans, specifications, and applicable code requirements.
5. Provide as-needed testing for proposed removal and replacement of damaged street sections.
6. Provide compaction testing for leveling course and final paving.
7. Provide as-needed asphalt plant inspection and monitoring.

8. Provide engineering support, inspector/technician coordination, dispatch, material engineering review, test reporting, QA/QC, and administrative support services.
9. Submit reports/updates of ongoing tests, i.e., seven-day and off-schedule breaks.
10. Submit final report of completed laboratory tests, i.e., 28-day results for concrete.
11. Submit – for City review – daily field-testing and inspection reports indicating information pertinent to inspections performed and compliance/non-compliance with project documents and applicable codes.

## Federal Funding Administration

### Award Package

1. Prepare the award package following the award of the construction contract and receiving the following items from the City: the engineer's final opinion of probable construction cost, contractor's bid, bid analysis, proof of advertisement, Caltrans Finance Letter, and executed Program Supplement Agreement.
2. Prepare LAPM Exhibits 15-C Local Agency Project Advertising Checklist and 15-I Local Agency Bid Opening Checklist for the project file, 15-L Local Agency Contract Award Checklist, 15-M Detail Estimate and Summary, 15-B Resident Engineer's Construction Contract Administration Checklist based on the awarded bid, and 3-A Project Authorization/Adjustment Request if making an adjustment to the Finance Letter.
3. Submit package to the Caltrans DLAE within 60 days of award along with the following items provided by the City: as-advertised plans and specifications, LAPM Exhibits 15-G Local Agency Bidder DBE Commitment (Construction Contracts), 15-H Good Faith Effort, and 9-E Evaluation of Good Faith Effort Memo.

### Progress Invoicing

1. Prepare progress invoices at least every 6 months.
2. Monitor the Inactive Obligations List on the Caltrans Local Assistance website and notify City staff of any pending deadlines to submit invoices.
3. Prepare LAPM Exhibit 5-A Local Agency Invoice based on the following items provided by the City: contractor progress





payments, cancelled checks, and a copy of 15-L Local Agency Contract Award Checklist (first construction invoice only).

4. Submit package to the Caltrans DLAE.

## **Final Invoice & Final Report of Expenditures**

1. Prepare a request for post-award finance letter adjustment, if needed, based on the final construction costs prior to submitting the Final Invoice package to close out the project and submit to the Caltrans DLAE LAPM Exhibits 3-A Project Authorization/Adjustment Request, 15-M Detail Estimate and Summary, and 17-E Change Order Summary.

2. Prepare LAPM Exhibits 17-A Federal Report of Expenditures Letter and the Report of Expenditures Checklist, 17-C Local Agency Final Inspection Form, 17-G Materials Certificate, 5-A Local Agency Invoice, 15-M Final Detail Estimate and Summary, and 17-E Change Order Summary along with the following items to be provided by the City: LAPM Exhibits 17-F Final Report - Utilization of DBE, First Tier Subcontractors and 17-O DBE Certification Status Change, contractor progress payments, final retention payment, and copies of cancelled checks.
3. Submit package to the Caltrans DLAE.



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



## **EXHIBIT "C"**

### **INSURANCE**

A. Insurance Requirements. Contractor 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 Contractor, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Contractor shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Commercial General Liability. Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Automobile. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.

(3) Workers' Compensation. Workers' Compensation insurance as required by the Labor Code of State of California covering all persons providing Services on behalf of the Contractor and all risks to such persons under this Agreement.

(4) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. 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 Contractor's services or the termination of this Agreement. During this additional three (3) year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.

2. Minimum Limits of Insurance. Contractor shall maintain limits of insurance no less than:

(1) Commercial General Liability. \$1,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile. \$1,000,000 per accident for bodily injury and property damage. 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 set forth above.

(3) Workers' Compensation. Workers' Compensation as required by the Labor Code of the State of California of not less than \$1,000,000 per occurrence.

(4) Professional Liability. \$1,000,000 per occurrence.

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

1. All Policies. 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.

2. Commercial General Liability and Automobile Liability Coverages.

(1) 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 Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. 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.

(2) Contractor'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, Contractor's insurance.

(3) Contractor'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.

(4) 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.

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 Contractor.

C. Other Requirements. Contractor 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 Contractor 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. Contractor shall furnish certificates and endorsements from each subcontractor identical to those Contractor 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 Contractor 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 Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.



# CERTIFICATE OF LIABILITY INSURANCE

11/9/2024

DATE (MM/DD/YYYY)

5/1/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Lockton Companies, LLC (dba Lockton Insurance Brokers, LLC) 777 S. Figueroa Street, 52nd Fl CA License #0B99399 Los Angeles CA 90017 (213) 689-0065	<b>CONTACT NAME:</b> <b>PHONE</b> (A/C, No, Ext): <b>E-MAIL</b> <b>ADDRESS:</b>	<b>FAX</b> (A/C, No):																					
<b>INSURED</b> 1506306 Willdan Engineering 13191 Crossroads Parkway North, Suite 405 City of Industry, CA 91746	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A :</td><td>Transportation Insurance Company</td><td>20494</td></tr><tr><td>INSURER B :</td><td>National Fire Insurance Co of Hartford</td><td>20478</td></tr><tr><td>INSURER C :</td><td>Allied World Surplus Lines Insurance Company</td><td>24319</td></tr><tr><td>INSURER D :</td><td>The Continental Insurance Company</td><td>35289</td></tr><tr><td>INSURER E :</td><td>American Casualty Company of Reading, PA</td><td>20427</td></tr><tr><td>INSURER F :</td><td></td><td></td></tr></table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A :	Transportation Insurance Company	20494	INSURER B :	National Fire Insurance Co of Hartford	20478	INSURER C :	Allied World Surplus Lines Insurance Company	24319	INSURER D :	The Continental Insurance Company	35289	INSURER E :	American Casualty Company of Reading, PA	20427	INSURER F :		
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COVERAGES WILLD01

CERTIFICATE NUMBER: 20544211

REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Emp. Benefits Liab. <input checked="" type="checkbox"/> Contr. Liab. Incl. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	N	7063481190	11/9/2023	11/9/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	N	7063481156	11/9/2023	11/9/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
D E	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	7063481173 (AOS) 7063481187 (CA)	11/9/2023 11/9/2023	11/9/2024 11/9/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Arch&Eng Prof	N	N	0313-5950	11/9/2023	11/9/2024	Per Claim:\$1,000,000 Aggregate:\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: 2024 - HSIP Cycle 98: Varner Road Safety Improvements Project (CIP no. 8751). Cathedral City, it's respective elected and appointed officers, officials, employees and volunteers are included as Additional Insured(s) in accordance with the provisions of the General Liability and Automobile Liability policies. The General Liability and Automobile Liability policies evidenced herein are Primary and Non-Contributory to other insurance available to an Additional Insured, but only in accordance with the provisions of the policies. See the next page...

## CERTIFICATE HOLDER

## CANCELLATION See Attachments

20544211  
Cathedral City  
Attention: Armando J. Garcia Baldizzone  
68700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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A Waiver of Subrogation is granted in favor of Cathedral City, its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Contractor in accordance with the policy provisions of the Workers' Compensation policy. Policies include 30-days' notice of cancellation (except 10 days for non-payment of premium) and the provisions of each policy govern how notice of cancellation may be delivered to Certificate Holder. Separation of Insureds - except with respect to the Limits of Liability in the General Liability policy and any rights or duties specifically assigned to the first Named Insured, this insurance applies as if each Named Insured were the only Named Insured and Separately to each insured against whom the claim or suit is brought. General Liability deductible - \$0; Automobile Liability deductible - \$0 (\$1,000 for Comprehensive/Collision); Professional Liability SIR - \$0.

**CNA PARAMOUNT**

## Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:
  - A. in the performance of your ongoing operations subject to such **written contract**; or
  - B. in the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury or property damage** included in the **products-completed operations hazard**, and only if:
    1. the **written contract** requires you to provide the additional insured such coverage; and
    2. this **coverage part** provides such coverage.
- II. But if the **written contract** requires:
  - A. additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or
  - B. additional insured coverage with "arising out of" language; or
  - C. additional insured coverage to the greatest extent permissible by law;
 then paragraph I. above is deleted in its entirety and replaced by the following:  
**WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of **your work** that is subject to such **written contract**.
- III. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:
  - A. coverage broader than required by the **written contract**; or
  - B. a higher limit of insurance than required by the **written contract**.
- IV. The insurance granted by this endorsement to the additional insured does not apply to **bodily injury, property damage, or personal and advertising injury** arising out of:
  - A. the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
    1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
    2. supervisory, inspection, architectural or engineering activities; or
  - B. any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.
- V. Under **COMMERCIAL GENERAL LIABILITY CONDITIONS**, the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this **coverage part**:

### Primary and Noncontributory Insurance

CNA75079XX (10-16)

Page 1 of 2

National Fire Insurance Of Hartford

Insured Name: Willdan Engineering

Policy No: 7063481190

Endorsement No:

Effective Date: 11/9/2023





**CNA PARAMOUNT**

**Blanket Additional Insured - Owners, Lessees or  
Contractors - with Products-Completed  
Operations Coverage Endorsement**

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

1. primary and non-contributing with other insurance available to the additional insured; or
2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

**VI. Solely with respect to the insurance granted by this endorsement, the section entitled COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:**

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;
2. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and
3. make available any other insurance, and tender the defense and indemnity of any **claim** to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph 3. does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

**VII. Solely with respect to the insurance granted by this endorsement, the section entitled DEFINITIONS is amended to add the following definition:**

**Written contract** means a written contract or written agreement that requires you to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

- A. is currently in effect or becomes effective during the term of this policy; and
- B. was executed prior to:

1. the **bodily injury or property damage**; or
  2. the offense that caused the **personal and advertising injury**;
- for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.



**CNA PARAMOUNT**

**Changes - Notice of Cancellation or Material  
Restriction Endorsement**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
EMPLOYEE BENEFITS LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
STOP GAP LIABILITY COVERAGE PART  
TECHNOLOGY ERRORS AND OMISSIONS LIABILITY COVERAGE PART  
SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY- NEW YORK DEPARTMENT OF TRANSPORTATION

**SCHEDULE**

**Number of days notice (other than for nonpayment of premium):** 30

**Number of days notice for nonpayment of premium:** 10

**Name of person or organization to whom notice will be sent:** ANY PERSON OR ORGANIZATION TO WHOM YOU  
HAVE AGREED IN A WRITTEN CONTRACT THAT  
NOTICE OF CANCELLATION OF THIS POLICY WILL  
BE  
GIVEN, BUT ONLY IF:  
1. YOU SEND US A WRITTEN REQUEST TO PROVIDE  
SUCH NOTICE, INCLUDING THE NAME AND ADDRESS  
OF SUCH PERSON OR ORGANIZATION, AFTER THE  
FIRST NAMED INSURED SHOWN IN THE  
DECLARATIONS RECEIVES NOTICE FROM US OF THE  
CANCELLATION OF THIS POLICY; AND  
DAYS BEFORE THE BEGINNING OF THE APPLICABLE  
NUMBER OF DAYS SHOWN IN THIS SCHEDULE..

**Address:**

If no entry appears above, the number of days notice for nonpayment of premium will be 10 days.

It is understood and agreed that in the event of cancellation or any material restrictions in coverage during the **policy period**, the Insurer also agrees to mail prior written notice of cancellation or material restriction to the person or organization listed in the above Schedule. Such notice will be sent prior to such cancellation in the manner prescribed in the above Schedule.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

**CNA74702X (1-15)**

Page 1 of 1

Nat'l Fire Ins Co of Hartford

Insured Name: Willdan Engineering

Policy No: 7063481190

Endorsement No: 37

Effective Date: 11/9/2023

**ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY**

It is understood and agreed that this endorsement amends the **BUSINESS AUTO COVERAGE FORM** as follows:

**SCHEDULE****Name of Additional Insured Persons Or Organizations**

Any person or organization that you are obligated to provide Insurance where required by a written contract or agreement is an insured, but only with respect to legal responsibility for acts or omissions of a person for whom Liability Coverage is afforded under this policy.

1. In conformance with paragraph **A.1.c.** of **Who Is An Insured** of Section **II - LIABILITY COVERAGE**, the person or organization scheduled above is an insured under this policy.
2. The insurance afforded to the additional insured under this policy will apply on a primary and non-contributory basis if you have committed it to be so in a written contract or written agreement executed prior to the date of the "**accident**" for which the additional insured seeks coverage under this policy.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.

**NOTICE OF CANCELLATION OR MATERIAL CHANGE – DESIGNATED PERSON OR ORGANIZATION**

It is understood and agreed that this endorsement amends the following:

AUTO DEALERS COVERAGE FORM

BUSINESS AUTO COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

In the event of cancellation or material change that reduces or restricts the insurance provided by this Coverage

Form, we agree to send prior notice of cancellation or material change to the person or organization scheduled below at the address scheduled below. This endorsement does not amend our obligation to notify the Named Insured of cancellation as described in the Common Policy Conditions or in another endorsement attached to this policy.

<b>SCHEDULE</b>	
<b>1. Number of days advance notice:</b>	
30 Days if we cancel for non-payment of premium.	
10 Other than Non-Pay Cancel Days Days if the policy is cancelled for any other reason, or if coverage is restricted or reduced by endorsement.	
<b>Name:</b>	ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF: 1.YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED SHOWN IN THE DECLARATIONS RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND 2.WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE , NUMBER OF DAYS
<b>Attention:</b>	
<b>Street Address:</b>	
<b>City, State, ZIP:</b>	
<b>e-mail address:</b>	

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another



Workers Compensation

**BLANKET WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS**

This endorsement changes the policy to which it is attached.

It is agreed that **Part One - Workers' Compensation Insurance G. Recovery From Others** and **Part Two - Employers' Liability Insurance H. Recovery From Others** are amended by adding the following:

We will not enforce our right to recover against persons or organizations. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

**PREMIUM CHARGE** - Refer to the Schedule of Operations

The charge will be an amount to which you and we agree that is a percentage of the total standard premium for California exposure. The amount is Blanket Waiver of Subrogation Percentage Charge 2.00%.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.

Form No: G-19160-B (11-1997)  
Endorsement Effective Date: 11/9/2023  
Endorsement Expiration Date: 11/9/2024  
Endorsement No:      Page: 1 of 1  
Underwriting Company: American Casualty Company Of Reading, PA

Policy No: 7063481187  
Policy Effective Date: 11/9/2023  
Policy Page:



## NOTICE OF CANCELLATION OR MATERIAL CHANGE ENDORSEMENT

This endorsement modifies insurance provided under the **WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**:

In the event of cancellation or material change that reduces or restricts coverage during the policy period, we agree to send prior written notice in the manner prescribed, to the person or organization listed in the Schedule.

### SCHEDULE

1. **Number of days advance notice:**

For nonpayment of premium:

10

2. **For any other reason:**

30

3. **Name and Address of Person or Organization:**

ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF: 1.YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND 2.WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS ENDORSEMENT. ADDRESS: THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRIT TEN REQUEST FROM YOU TO US.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.





## NOTICE OF CANCELLATION OR MATERIAL CHANGE ENDORSEMENT

This endorsement modifies insurance provided under the **WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**:

In the event of cancellation or material change that reduces or restricts coverage during the policy period, we agree to send prior written notice in the manner prescribed, to the person or organization listed in the Schedule.

### SCHEDULE

1. **Number of days advance notice:**

For nonpayment of premium:

10

2. **For any other reason:**

30

3. **Name and Address of Person or Organization:**

ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF: 1.YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND 2.WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS ENDORSEMENT. ADDRESS: THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRIT TEN REQUEST FROM YOU TO US.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.

ENDORSEMENT NO. 5

ADVICE OF CANCELLATION TO ENTITIES OTHER THAN  
THE NAMED INSURED LIMITED TO E-MAIL NOTIFICATION

This Endorsement, effective at 12:01 a.m. on November 9, 2023, forms part of

Policy No.	0313-5950
Issued to	Willdan Engineering
Issued by	Allied World Surplus Lines Insurance Company

In consideration of the premium charged, it is hereby agreed that:

In the event that the Company cancels this Policy for any reason other than nonpayment of premium, and

1. the cancellation effective date is prior to this Policy's expiration date;
2. the First Named Insured is under an existing contractual obligation to notify a certificate holder when this Policy is canceled (hereinafter, the "Certificate Holder(s)"); and has provided to the Company, either directly or through its broker of record, the email address of the contact at such entity; and
3. the Company receives this information after the First Named Insured receives notice of cancellation of this Policy and prior to this Policy's cancellation effective date, via an electronic spreadsheet that is acceptable to the Company;

the Company will provide advice of cancellation (the "Advice") via e-mail to such Certificate Holders not later than thirty (30) days before the effective date of cancellation.

Proof of the Company emailing the Advice, using the information provided by the First Named Insured, will serve as proof that the Company has fully satisfied its obligations under this Endorsement.

This Endorsement does not affect, in any way, coverage provided under this Policy or the cancellation of this Policy or the effective date thereof, nor shall this Endorsement invest any rights in any entity not insured under this Policy.

Any failure on the Insurer's part to deliver the Advice will not impose liability of any kind upon the Insurer or invalidate the cancellation.

Any Certificate Holder is not an Insured or a Loss Payee under this Policy. No coverage will be available under this Policy for any Claim brought by or against any Certificate Holder.

All other terms, conditions and limitations of this Policy shall remain unchanged.

\_\_\_\_\_  
  
\_\_\_\_\_  
Authorized Representative