



FILED
OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT

2019 SEP 12 AM 3:20

TO: Sabrina B. Landreth
City Administrator

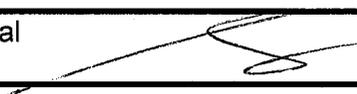
FROM: Ryan Russo
Director, OakDOT

SUBJECT: Amendment to Resolution No. 86991
C.M.S.

DATE: September 11, 2019

City Administrator Approval

Date:



9/11/19

RECOMMENDATION

Staff Recommends That City Council Amend Resolution No. 86991 C.M.S. Which Authorized The City Administrator To Enter Into A Contract With Harrison Engineering Inc. For \$220,000 To Perform Design Services And Waive The Competitive Request For Proposal (RFP) Requirements For An Amendment To The Professional Services Contract For An Increase In The Contract Amount Not-To-Exceed Sixty Thousand Dollars (\$60,000), For Additional Design And Construction Support Services For Project No. 1003204, Market Street And San Pablo Avenue Project Funded By Highway Safety Improvement Program (HSIP) Cycle 7 Grant, Measure B And Measure KK, And In Accordance With Federal Consultant Selection Process.

EXECUTIVE SUMMARY

Approval of this resolution will amend Resolution No. 86991 C.M.S. to: 1) waive the competitive Request for Proposal (RFP) requirements for an amendment to the professional services contract with Harrison Engineering Inc. for an increase in the contract by an amount not-to-exceed sixty thousand dollars (\$60,000), and 2) authorizes the City Administrator or Designee to negotiate and execute an amendment to the professional services contract between the City of Oakland and Harrison Engineering Inc. in an amount not-to-exceed Sixty Thousand Dollar (\$60,000) for additional design and construction support services for safety and operational improvements for all modes of transportation for Project No. 1003204, Market Street and San Pablo Avenue Project which is funded by Highway Safety Improvement Program (HSIP) Cycle 7 grant, Measure B and Measure KK, and in accordance with Federal consultant selection process. The project is in Council District 3 as shown in **Attachment A**.

Item: _____
Public Works Committee
September 24, 2019

BACKGROUND/LEGISLATIVE HISTORY

In November 2015 the City was awarded a Highway Safety Improvement Program (HSIP) Cycle 7 grant for the Market Street and San Pablo Avenue Project. On March 1, 2016, the City Council passed Resolution No. 86027 C.M.S. which accepted the awarded HSIP grant as shown in **Attachment B**. HSIP is a competitive federal grant program that provides funds for safety and operational improvements on roadways for all modes of transportation including pedestrians, bicycles and vehicular traffic.

In May 2017 the City issued a formal Request for Proposal (RFP) for design and construction support services in compliance with Federal consultant selection process. On December 18, 2017, the City Council passed Resolution No. 86991 C.M.S. which authorized the City to enter into a contract with Harrison Engineering Inc. for \$220,000 to perform design services on Project No. 1003204, Market Street and San Pablo Avenue Project under Highway Safety Improvement Program (HSIP) Cycle 7 as shown in **Attachment C**.

On April 18, 2018, the City executed a design services contract with Harrison Engineering Inc. as shown in **Attachment D**.

The project site limits are Market Street from 4th to 21st Streets, and San Pablo Avenue from 32nd to 34th Streets. The proposed bicycle safety improvements include installation of striping and signage, bicycles lanes gap closure, right-turn lane separation striping, green skip-striping, safe transitioning of bicycle lanes and refreshing of faded bicycle lane. The pedestrian safety improvements include rectangular rapid flashing beacons, corner bulb-outs, sidewalks widening, refuge median island, traffic signals modification to eliminate vehicle and pedestrian conflicts.

During project implementation, it was determined that additional design and construction support services are needed to address safety and Americans for Disabilities Act compliance issues not identified in the grant proposal. This includes additional curb ramps, high visibility crosswalks, bicycle lane pavement markings, and striping. The total cost of the additional services to be performed is anticipated to not exceed sixty thousand dollars (\$60,000).

ANALYSIS & POLICY ALTERNATIVES

The project is partially funded by a federal grant. Staff selection of Harrison Engineering Inc. for design and construction support services was competitive and qualifications based, and was in compliance with federal consultant selection process. On April 18, 2018, Resolution No. 86991 C.M.S. awarded a professional services contracts to Harrison Engineering Inc. This being a federally funded project, and given the familiarity of Harrison Engineering Inc. with the project thus far, it is most cost effective and expeditious to hire Harrison Engineering Inc. for the additional design and construction support services. This option has the least impact to project budget and delivery schedule.

Waive the Request For Proposal Requirements

As stated above, it is most cost effective and expeditious to hire Harrison Engineering Inc. Also, hiring Harrison Engineering Inc. has the least impact to project budget and delivery schedule. Hence, staff finds that it is in the best interest of the City to hire Harrison Engineering Inc, and recommends that the City Council waive the Request for Proposal (RFP) requirements. Waiving RFP requirements for professional services contract greater than fifty thousand dollars (\$50,000) would require City Council approval.

Oakland Municipal Code, Section 2.04.051 (B) reads: *Upon a finding by the City Administrator that it is in the best interests of the City, the City Administrator may waive said RFP/Q requirements for professional services contracts up to fifty thousand dollars (\$50,000). Upon a finding by the City Council or its designee that it is in the best interests of the City, the City Council may waive said RFP/Q requirements for contracts in any amount.* OMC Section 2.04.051 is in **Attachment E**.

The alternative is to issue a formal Request for Proposal (RFP) and enter into a new contract with another firm. This will result in higher consultant fees, increased staff time, and substantial delays. Under this alternative, the project will be unable to meet Caltrans project delivery schedule and HSIP funding requirements.

PUBLIC OUTREACH/INTEREST

During the HSIP grant application phase, staff reached out and coordinated with stakeholders including Bay Area Rapid Transit (BART), AC Transit, Bike East Bay (a bicycle advocacy organization), and the Bicyclist and Pedestrian Advisory Commission (BPAC). The City received letters of support from some of these stakeholders. The letters were submitted to Caltrans as a part of the grant proposals.

COORDINATION

The Office of the City Attorney and the Budget Office have reviewed this report and resolution. The project deliverables will be reviewed and coordinated with:

- California Department of Transportation (Caltrans)
- OPW Project Delivery
- OPW Infrastructure Maintenance Division
- DOT Electrical Services Division
- Bicyclist and Pedestrian Advisory Commission (BPAC)

FISCAL IMPACT

The total project cost is \$1,584,300. Federal grant is \$1,425,870, and the local match is \$158,430. For the design phase, federal grant is \$150,000 and local match is \$70,000. The required additional design and construction support services of \$60,000 will be funded by Measure KK.

SOURCE OF FUNDING:

| FUNDING SOURCES FOR DESIGN SERVICES CONTRACT (Resolution No. 86991 C.M.S. dated December 18, 2017) | AMOUNT |
|-----------------------------------------------------------------------------------------------------------------------------|------------------|
| Federal Grant (HSIP Cycle 7) Project No. 1003204, Organization 92246, Expense 54411, Task 5.0, Award 23000, Fund 2116 | \$150,000 |
| City Local Match (Measure B) Project No. 1003204, Organization 92246, Expense 54411, Task 5.0, Award 23026, Fund 2211 | \$70,000 |
| TOTAL FUNDS | \$220,000 |

| FUNDING SOURCE FOR AMENDED PROFESSIONAL SERVICES CONTRACT FOR ADDITIONAL DESIGN AND CONSTRUCTION SUPPORT SERVICES (Resolution to Amend Resolution No. 86991 C.M.S. Council Approval is Pending) | AMOUNT |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| City Local Match (Measure KK: Complete Street Capital Program) Project No. 1003348, Organization 92246, Expense 57411, Task 1.0, Award 23248, Fund 5330, Program IN05 | \$60,000 |
| TOTAL FUNDS | \$60,000 |

Approval of the resolution will amend Resolution No. 86991 C.M.S. to waive RFP requirements, and authorizes the City Administrator or designee to negotiate and execute an amendment to the professional service contract with Harrison Engineering Inc. in an amount not-to-exceed sixty thousand dollars (\$60,000) for additional design and construction services.

PAST PERFORMANCE, EVALUATION AND FOLLOW-UP

Harrison Engineering Inc. does not have past projects with the City. On this project, the performance of Harrison Engineering Inc. has so far been satisfactory.

SUSTAINABLE OPPORTUNITIES

Economic: This project will improve transportation conditions and make the Market Street and San Pablo Avenue corridors safer, easier to navigate, and more attractive. The project improvements will enhance the efficiency and affordability of the transportation network and increase the potential for economic and housing development in the neighborhood. Furthermore, future construction contract will create job opportunities for residents through the City's LBE/SLBE contracting requirements.

Environmental: The project will provide a safer route for pedestrians and bicyclists in the Market Street and San Pablo Avenue corridors thereby providing a more attractive alternative to automobile travel. During construction, the project will implement the Best Management Practices for the protection of storm water runoff during construction to prevent pollutants from entering the storm drain systems.

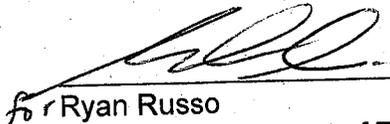
Social Equity: The project will result in greater mobility, accessibility and safety for pedestrians, bicycles, transit, and vehicular traffic. Improving pedestrian facilities is the key in promoting walking as a viable mode of transportation. The project site is in areas of the City with high equity scores which range from 0.60 to 0.80. Typically, an equity score of 0.50 or higher is considered to be a disadvantaged community. The equity index score is based on a number of socio-economic factors including income, education, housing and ethnicity. Overall equity index scores range between 0 and 1.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That City Council to Amend Resolution No. 86991 C.M.S. Which Authorized The City Administrator To Enter Into A Contract With Harrison Engineering Inc. For \$220,000 To Perform Design Services And Waive The Competitive Request For Proposal (RFP) Requirements For An Amendment To The Professional Services Contract For An Increase In The Contract Amount Not-To-Exceed Sixty Thousand Dollars (\$60,000), For Additional Design And Construction Support Services For Project No. 1003204, Market Street And San Pablo Avenue Project Funded By Highway Safety Improvement Program (HSIP) Cycle 7 Grant, Measure B And Measure KK, And In Accordance With Federal Consultant Selection Process.

For questions regarding this report, please contact Philip Ho at DOT, Great Streets at (510) 238-6256.

Respectfully submitted,


for Ryan Russo
Director, Department of Transportation

Reviewed by:
Wladimir Wlassowsky, P.E.,
Assistant Director
Department of Transportation

Reviewed by:
Mohamed Alaoui, P.E., T.E.
Manager
Department of Transportation

Reviewed by:
Ade Oluwasogo, P.E., T.E.
Supervising Transportation Engineer
Department of Transportation

Prepared by:
Philip Ho, P.E., T.E.
Transportation Engineer
Department of Transportation

Attachments (5):

- A: Project Location Map
- B: Resolution No. 86027 C.M.S.
- C: Resolution No. 86991 C.M.S.
- D: Design Services Contract with Harrison Engineering Inc.
- E: Oakland Municipal Code

ATTACHMENT A

Highway Safety Improvement Program Cycle 7 (HSIP7) - Market St and San Pablo Av

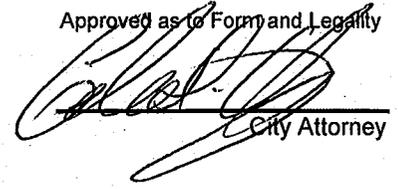


ATTACHMENT B

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 FEB 10 PM 12:17

Approved as to Form and Legality



City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 86027 C.M.S.

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ACCEPT AND APPROPRIATE FOUR HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP) CYCLE 7 GRANTS TOTALING \$4,683,510 TO IMPLEMENT SAFETY AND OPERATIONAL IMPROVEMENTS FOR PEDESTRIANS AND BICYCLISTS AT VARIOUS STREETS AND INTERSECTIONS IN THE CITY OF OAKLAND, ALLOCATE \$520,390 IN MEASURE B MATCHING FUNDS AS THE REQUIRED CITY LOCAL MATCH, AND ALLOCATE ADDITIONAL FUNDS OF \$348,000 IN MEASURE B MATCHING FUNDS REQUIRED FOR A PORTION OF CITY'S OVERHEAD RECOVERIES AND INCREMENT OF OVERHEAD RATES

WHEREAS, on July 31, 2015, the City of Oakland submitted four grant proposals under Highway Safety Improvement Program (HSIP) Cycle 7; and

WHEREAS, on December 11, 2015, the City of Oakland received an approval on all four projects for a total project cost of Five Million Two Hundred Three Thousand and Nine Hundred Dollars (\$5,203,900) which includes a federal grant portion of \$4,683,510 and a required City local match portion of \$520,390 which represents 10 percent of the total project cost as a condition of the HSIP grant; and

WHEREAS, additional funds totaling \$348,000 or 30 percent of the Federal grant funds on soft costs totaling \$1,158,030, required for a portion of City's overhead recoveries and increment of overhead rates which are disallowed charges and are not reimbursed by the HSIP grantor, and such additional funds will be provided by Measure B, Fund 2211, Project C370010; and

WHEREAS, under the Telegraph Avenue Improvements Project, a federal grant portion of \$1,344,510, a City local match portion of \$149,390, and additional funds of \$105,000 for a portion of City's overhead recoveries and increment of overhead rates will be used to install Class II bicycle lanes and crosswalk enhancements, and to modify traffic signals; and

WHEREAS, under the Market Street and San Pablo Avenue Improvements Project, a federal grant portion of \$1,425,870, a City local match portion of \$158,430, and additional funds of \$104,000 for a portion of City's overhead recoveries and increment of overhead rates will be used to install bicycle striping enhancements and crosswalk enhancements, and to modify a traffic signal; and

WHEREAS, under the Shattuck Avenue and Claremont Avenue Improvements Project, a **federal grant portion of \$1,404,090, a City local match portion of \$156,010, and additional funds** of \$102,000 for a portion of City's overhead recoveries and increment of overhead rates will be used to install Class II bicycle lanes and crosswalk enhancements, and to modify a traffic signal; and

WHEREAS, under the Downtown Oakland Improvements Project, a federal grant portion of \$509,040, a City local match portion of \$56,560, and additional funds of \$37,000 for a portion of City's overhead recoveries and increment of overhead rates will be used to install accessible pedestrian signals and countdown timers; and

WHEREAS, the City has prepared an preliminary traffic and safety assessment at all project sites to address safety, access and mobility, and to identify countermeasures to address deficiencies; and

WHEREAS, the Public Works Department has requested a waiver of the 1.5% public art fee for this project because HSIP guidelines only allows funding uses to traffic safety improvements and prohibit the use of grant funds for public art; now therefore, be it

RESOLVED: That the City Council authorizes to accept and appropriate federal grants totaling \$4,683,510, allocate a City local match of \$520,390, and allocate additional funds of \$348,000 for a portion of City's overhead recoveries and increment of overhead rates; and

FURTHER RESOLVED: That said federal grant funds will be deposited and appropriated in the Federal Highway Funds (2116), Transportation Services Division Organization (30264 and 92246), and in a project number to be established for each project; and be it

FURTHER RESOLVED: That said City local match funds is available in Measure B Fund (2211), Matching Funds for Grant Project (C370010), Transportation Services Division Organization (30264 and 92246); and be it

FURTHER RESOLVED: That said additional funds for a portion of City's overhead recoveries and increment of overhead rates is available in Measure B Fund (2211), Matching Funds for Grant Project (C370010), Transportation Services Division Organization (30264 and 92246); and be it

FURTHER RESOLVED: That the City Council authorizes the implementation of all four projects, namely Telegraph Avenue Improvements Project, Market Street and San Pablo Avenue Improvements Project, Shattuck Avenue and Claremont Avenue Improvements Project, and Downtown Oakland Improvements Project; and be it

FURTHER RESOLVED: That the City Administrator or designee shall file a Notice of ~~Determination~~ **Notice of Exemption** with the clerk of the County of Alameda and the Office of Planning and Research.

IN COUNCIL, OAKLAND, CALIFORNIA, MAR 01 2016

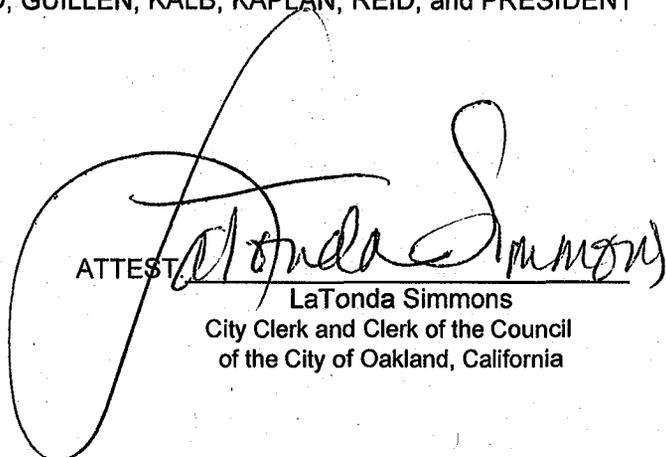
PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, and PRESIDENT GIBSON MCELHANEY - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

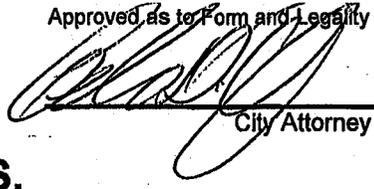
FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

RESOLUTION NO. 86991 C.M.S.

2017 NOV 21 PM 3:55

Introduced by Councilmember _____


City Attorney

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR, OR DESIGNEE, TO AWARD A PROFESSIONAL SERVICES CONTRACT TO HARRISON ENGINEERING INC., IN THE AMOUNT OF TWO HUNDRED TWENTY THOUSAND DOLLARS (\$220,000), FOR THE PREPARATION OF CONSTRUCTION DOCUMENTS FOR THE HIGHWAY SAFETY IMPROVEMENT PROGRAM, CYCLE 7 (HSIP7), MARKET STREET AND SAN PABLO AVENUE PROJECT, IN ACCORDANCE WITH THE FEDERAL GRANT CONSULTANT SELECTION PROCESS.

WHEREAS, on July 31, 2015, the City of Oakland submitted grant proposal under Highway Safety Improvement Program (HSIP) Cycle 7 for the Market Street and San Pablo Avenue Project; and

WHEREAS, on November 3, 2015, the City of Oakland received an approval for One Million Five Hundred Eighty-Four Thousand and Three Hundred Dollars (\$1,584,300) which includes a federal grant of \$1,425,870 and City local match of \$158,430 which represents 10 percent of the total project cost as a condition of the HSIP grant; and

WHEREAS, Resolution No. 86027 C.M.S., accepting the grant, was passed March 1, 2016; and

WHEREAS, preliminary assessments were conducted on all project sites to address safety, access and mobility, and to identify countermeasures to address deficiencies; and

WHEREAS, Harrison Engineering Inc. has been selected for design services per the federal guidelines for professional services in the amount of \$220,000; now therefore, be it

RESOLVED: That the City Council authorizes the city administrator, or designee, to award a professional services contract to Harrison Engineering Inc., in the amount of two hundred and twenty thousand dollars (\$220,000), for the preparation of construction documents for the Highway Safety Improvement Project, Cycle 7 (HSIP7), Project No. 1003204, Market Street and San Pablo Avenue Project; and be it

FURTHER RESOLVED: That said federal grant funds in the amount of \$150,000 is available in Project No. 1003204, Organization 92246, Expense 54411, Task 5.0, Award 23000, Grant Fund 2116; and be it

FURTHER RESOLVED: That said City local match in the amount of \$70,000 is available in Project No. 1003204, Organization 92246, Expense 54411, Task 5.0, Award 23026, Measure B Fund 2211.

DEC 18 .

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2017

PASSED BY THE FOLLOWING VOTE:

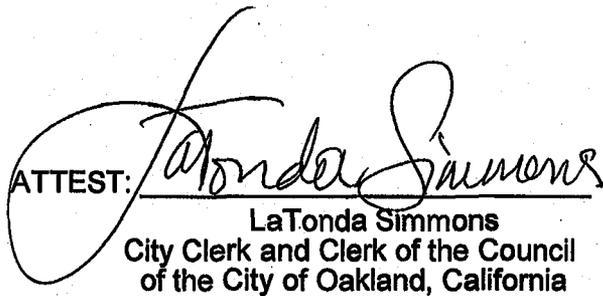
AYES - ~~Brooks~~, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, and PRESIDENT REID, - 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Brooks - 1

ATTEST: 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

ATTACHMENT D

WHEREAS, the City Council has authorized the City Administrator to enter into agreements for professional or specialized services if the mandates of Oakland City Charter Section 902(e) have been met.

NOW THEREFORE the parties to this Agreement covenant as follows:

I. PARTIES AND EFFECTIVE DATE

This agreement is made and entered into as of **February 1, 2018** by and between the **CITY OF OAKLAND**, a municipal corporation, (hereinafter referred to as "City") and **Harrison Engineering Inc.** (hereinafter referred to as "Consultant") for **Project #1003204 Highway Safety Improvement Program Cycle 7 On Market Street and San Pablo Avenue.**

II. SCOPE OF SERVICES

Consultant agrees to perform the services specified in **Exhibit A - Scope of Services**, attached to this agreement and incorporated herein by reference. Consultant shall designate an individual who shall be **responsible** for communications with the City for the duration of this Agreement.

III. FUNDING REQUIREMENTS

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

IV. PERFORMANCE PERIOD

- A. This agreement shall go into effect on **April 2, 2018**, contingent upon approval by City, and Consultant shall commence work after authorization to proceed by City's Project Manager. The agreement shall end on **December 30, 2019**, unless extended by an amendment.

- B. This agreement shall not be binding or of any force or effect until it is: i) approved by resolution of the City Council as required by the Oakland City Charter, Oakland Municipal Code Title 2.04 and Oakland City Council Rules of Procedure, ii) approved for form and legality by the Office of the City Attorney, and iii) signed by the City Administrator or his or her designee.

V. ALLOWABLE COSTS AND PAYMENT

- A. The method of payment for this agreement will be based on actual cost plus a fixed fee. City will reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the work. Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant's Cost Proposal, unless additional reimbursement is provided for by an amendment. In no event will Consultant be reimbursed for overhead costs at a rate that exceeds City's approved overhead rate set forth in the Cost Proposal. In the event that City determines that a change to the work from that specified in the Cost Proposal and agreement is required, the agreement time or actual costs reimbursable by City shall be adjusted by an amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by an amendment to the agreement.
- B. In addition to the allowable incurred costs, City will pay Consultant a fixed fee of **\$20,609.00**. The fixed fee is nonadjustable for the term of the agreement, except in the event of a significant change in the scope of work and such adjustment is made by an amendment.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- D. When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Project Manager before exceeding such cost estimate.
- E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of Consultant's fixed fee will be included in the monthly progress payments. If Consultant fails to submit the required deliverable items according to the schedule set forth in the Scope of Services, City shall have the right to delay payment or terminate this agreement in accordance with the provisions of Article VI Termination.
- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this agreement.
- G. Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by City's Project Manager of itemized invoices. Invoices shall be submitted no

later than 45 calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this agreement number and project title. Final invoice must contain the final cost and all credits due City including any equipment purchased under the provisions of Article XII Equipment Purchase of this agreement. The final invoice should be submitted within 60 calendar days after completion of Consultant's work. Invoices shall be mailed to City's Project Manager.

- H. The total amount payable by City including the fixed fee shall not exceed **\$220,000.00.**
- I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by City's Project Manager.

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

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

VI. TERMINATION

- A. City reserves the right to terminate this agreement upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.
- B. City may terminate this agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, City may proceed with the work in any manner deemed proper by City. If City terminates this agreement with Consultant, City shall pay Consultant the sum due to Consultant under this agreement prior to termination, unless the cost of completion to City exceeds the funds remaining in the agreement. In which case the overage shall be deducted from any sum due Consultant under this agreement and the balance, if any, shall be paid to Consultant upon demand.
- C. The maximum amount for which the Government shall be liable if this agreement is terminated is **\$220,000.00.**

VII. ABANDONMENT OF PROJECT

The City may abandon or indefinitely postpone the project or the services for any or all or the project at any time. In such event, the City shall give thirty (30) days written notice of such abandonment. In the event of abandonment prior to completion of the final drawings, if applicable, and cost estimates, Consultant shall have the right to expend a reasonable amount of additional time to assemble work in progress for the purpose of proper filing and closing the job. Prior to expending said time, Consultant shall present to the City a complete report of said proposed job closure and its costs, and the City may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus

incurred and approved by the City, together with any other charges outstanding at the time of termination, shall be payable by the City within thirty (30) days following submission of a final statement by Consultant.

Should the project or any portion thereof be abandoned, the City shall pay the Consultant for all services performed thereto in accordance with the terms of this agreement.

VIII. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to City.
- D. All subagreements in excess of \$25,000 shall contain the above provisions.

IX. RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and City shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the agreement, including but not limited to, the costs of administering the agreement. All parties shall make such materials available at their respective offices at all reasonable times during the agreement period and for three years from the date of final payment under the agreement. The state, State Auditor, City, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants (CPA) work papers that are pertinent to the agreement and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subagreements in excess of \$25,000 shall contain this provision.

X. AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this agreement that is not disposed of by agreement, shall be reviewed by City's Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, Consultant may request a review by City's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

- C. Neither the pendency of a dispute nor its consideration by City will excuse Consultant from full and timely performance, in accordance with the terms of this agreement.
- D. Consultant and subconsultant agreements, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a agreement audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The agreement, cost proposal, and ICR shall be adjusted by Consultant and approved by City agreement manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the agreement by this reference if directed by City at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of agreement terms and cause for termination of the agreement and disallowance of prior reimbursed costs.

XI. SUBCONTRACTING

- A. Nothing contained in this agreement or otherwise, shall create any agreemental relation between City and any subconsultant(s), and no subagreement shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to City for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from City's obligation to make payments to the Consultant.
- B. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this agreement shall be subagreeded without written authorization by City's Project Manager, except that, which is expressly identified in the approved Cost Proposal.
- C. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by City.
- D. Any subagreement in excess of \$25,000 entered into as a result of this agreement shall contain all the provisions stipulated in this agreement to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by City's Project Manager prior to the start of work by the subconsultant(s).

XII. EQUIPMENT PURCHASE

- A. Prior authorization in writing by City's Project Manager shall be required before Consultant enters into any unbudgeted purchase order, or subagreement exceeding

\$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

- B. For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by City's Project Manager; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this agreement is subject to the following:
"Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, City shall receive a proper refund or credit at the conclusion of the agreement, or if the agreement is terminated, Consultant may either keep the equipment and credit City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit City in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by City and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by City." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.
- D. All subagreements in excess \$25,000 shall contain the above provisions.

XIII. STATE PREVAILING WAGE RATES

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

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction agreements.

XIV. CONFLICT OF INTEREST (FEDERAL CLAUSES)

- A. Consultant shall disclose any financial, business, or other relationship with City that

- may have an impact upon the outcome of this agreement, or any ensuing City construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this agreement, or any ensuing City construction project, which will follow.
- B. Consultant 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.
 - C. Any subagreement in excess of \$25,000 entered into as a result of this agreement, shall contain all of the provisions of this Article.
 - D. Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
 - E. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this agreement shall be eligible to bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this agreement.

XV. CONFLICT OF INTEREST (CITY OF OAKLAND CLAUSES)

- A. The following protections against conflict of interest will be upheld:
 - 1. Consultant certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this agreement or in any benefit arising therefrom.
 - 2. Consultant certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this agreement, shall have any interest, direct or indirect in this agreement, or in its proceeds during his/her tenure or for one year thereafter.
 - 3. Consultant shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Consultant.
 - 4. Consultant warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this agreement, or who is a member of a City board or commission which has been involved in the making of this agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public agreements.

Consultant shall exercise due diligence to ensure that no such official will receive such an interest.

5. Consultant further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Consultant to City, that (1) no public official of City who has participated in decision-making concerning this agreement or has used his or her official position to influence decisions regarding this agreement, has an economic interest in Consultant or this agreement, and (2) this agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year. Consultant agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).
 6. Consultant understands that in some cases Consultant or persons associated with Consultant may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Consultant further understands that, as a public officer or official, Consultant or persons associated with Consultant may be disqualified from future City agreements to the extent that Consultant is involved in any aspect of the making of that future agreement (including preparing plans and specifications or performing design work or feasibility studies for that agreement) through its work under this agreement.
 7. Consultant shall incorporate or cause to be incorporated into all subagreements for work to be performed under this agreement a provision governing conflict of interest in substantially the same form set forth herein.
- B. Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation.
- C. In addition to the rights and remedies otherwise available to the City under this agreement and under federal, state and local law, Consultant understands and agrees that, if the City reasonably determines that Consultant has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this agreement, (2)

terminate this agreement, (3) require reimbursement by Consultant to the City of any amounts disbursed under this agreement. In addition, the City may suspend payments or terminate this agreement whether or not Consultant is responsible for the conflict of interest situation.

XVI. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

XVII. PROHIBITION OF EXPENDING CITY, STATE OR FEDERAL FUNDS FOR LOBBYING

A. Consultant certifies to the best of his or her knowledge and belief that:

1. No state, federal or City-appropriated funds have been paid, or will be paid by- or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal agreement; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal agreement, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal agreement, grant, loan, or cooperative agreement; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subagreements, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

XVIII. STATEMENT OF COMPLIANCE

- A. Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this agreement, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this agreement by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- C. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- D. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

XIX. DEBARMENT AND SUSPENSION CERTIFICATION

- A. Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with

Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to City.

- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

XX. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. This agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this agreement will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this agreement is 6.00%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-01), or in the Consultant Contract DBE Information (Exhibit 10-02) 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. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as City deems appropriate.
- D. Any subagreement entered into as a result of this agreement shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from City and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting City consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subagreeded, industry practices, whether the amount the firm is to be paid under the agreement is commensurate with the work it is actually performing, and other relevant factors.
- G. 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.
- H. 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 subagreements 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.
- I. Consultant shall maintain records of materials purchased or supplied from all subagreements entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- J. Upon completion of the agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant's authorized representative and shall be furnished to the Project Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Project Manager.
- 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 City's Project Manager within 30 days.

XXI. AGENTS / BROKERS

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

XXII. INDEPENDENT CONTRACTOR

A. Rights and Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Consultant shall be, and is, an independent agreementor, and is not an employee of the City. Consultant has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Consultant in the performance of Consultant's services hereunder. Consultant shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Consultant's own acts and those of Consultant's subordinates and employees. Consultant will determine the method, details and means of performing the services described in its Scope of Services.

B. Consultant's Qualifications

Consultant represents that Consultant has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of The City. Consultant's services will be performed in accordance with the generally accepted principles and practices applicable to Consultant's trade or profession. The Consultant warrants that the Consultant, and the Consultant's employees and sub-consultants are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to Consultant's performance of the Services. All Services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Consultant will promptly advise City of any change in the applicable laws, regulations, or other conditions that may affect City's program. This means Consultant is able to fulfill the requirements of this Agreement. Failure to perform all of the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Consultant has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Consultant shall complete **Schedule M, Part A, Independent Contractor Questionnaire, Part A**, attached hereto.

C. Payment of Income Taxes

Consultant is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by the City to Consultant for services under this Agreement. On request, Consultant will provide the City with proof of timely payment. Consultant agrees to indemnify the City for any claims, costs, losses, fees, penalties, interest or damages suffered by the City resulting from Consultant's failure to comply with this provision.

D. Non-Exclusive Relationship

Consultant may perform services for, and agreement with, as many additional clients, persons or companies as Consultant, in his or her sole discretion, sees fit.

E. Tools, Materials and Equipment

Consultant will supply all tools, materials and equipment required to perform the services under this Agreement.

F. Cooperation of the City

The City agrees to comply with all reasonable requests of Consultant necessary to the performance of Consultant's duties under this Agreement.

G. Extra Work

Consultant will do no extra work under this Agreement without first receiving prior written authorization from the City.

XXIII. PROPRIETARY OR CONFIDENTIAL INFORMATION OF THE CITY

Consultant understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Consultant agrees that all information disclosed by the City to Consultant shall be held in confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information, as a reasonably prudent consultant would use to protect its own proprietary data.

XXIV. OWNERSHIP OF RESULTS

Any interest of Consultant or its Subconsultants, in specifications, studies, reports, memoranda, computation documents prepared by Consultant or its Subconsultants in drawings, plans, sheets or other connection with services to be performed under this Agreement shall be assigned and transmitted to the City. However, Consultant may retain and use copies for reference and as documentation of its experience and capabilities.

XXV. COPYRIGHT

Consultant shall execute appropriate documents to assign to the City the copyright to works created pursuant to this Agreement.

XXVI. ASSIGNMENT

Consultant shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer. Subagreements exceeding \$25,000 in cost shall contain all the required provision of the prime agreement.

XXVII. PUBLICITY

Any publicity generated by Consultant for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of the City of Oakland in making the project possible. The words "City of Oakland" will be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.

City staff will be available whenever possible at the request of Consultant to assist Consultant in generating publicity for the project funded pursuant to this Agreement. Consultant further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this project.

XXVIII. TITLE OF PROPERTY

Title to all property, real and personal, acquired by the Consultant from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal set of property records. Consultant acknowledges it is responsible for the protection, maintenance and preservation of all such property held in custody for the City during the term of the Agreement. The Consultant shall, upon expiration or termination of this Agreement, deliver to the City all of said property and documents evidencing title to same. In the case of lost or stolen items or equipment, the Consultant shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with "Notice" section of this Agreement.

Consultant shall provide to the City Auditor all property-related audit and other reports required in Schedule S and under this Agreement. In the case of lost or stolen items or equipment, the Consultant shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the "Notice" section of this Agreement.

Prior to the disposition or sale of any real or personal property acquired with City funds, Consultant shall obtain approval by the City Council and City Administrator in accord with the requirements for disposal or sale of real or personal surplus property set forth in the Oakland City Charter and/or Oakland Municipal Code Title 2.04, Chapter 2.04.120, Surplus supplies and equipment – Disposal or Destruction.

XXIX. INSPECTION OF WORK

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

XXX. SAFETY

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

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

Any subagreement entered into as a result of this agreement, shall contain all of the provisions of this Article.

XXXI. INSURANCE

Unless a written waiver is obtained from the City's Risk Manager, prior to commencement of the work described herein, Consultant shall furnish City evidence of insurance coverage in accordance with **Schedule Q, Insurance Requirements**. Schedule Q is attached and incorporated herein by reference.

XXXII. INDEMNIFICATION

- A. Notwithstanding any other provision of this Agreement, Consultant will indemnify and hold harmless (and at City's request, defend) City, and each of their respective Councilmember's, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitees") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant.
- B. City will give Consultant prompt written notice of any such claim of loss or damage and will cooperate with Consultant, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.

- C. Notwithstanding the foregoing, City shall have the right if Consultant fails or refuses to defend City with Counsel acceptable to City to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due Consultant in the amount of anticipated defense costs plus additional reasonable amounts as security for Consultant's obligations under this Section 15. In no event shall Consultant agree to the settlement of any claim described herein without the prior written consent of City.
- D. Consultant acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any actions or claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, which obligation shall arise at the time any action or claim is tendered to Consultant by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitees.
- E. All of Consultant's obligations under this Section 15 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8) and shall survive the expiration or sooner termination of this Agreement.
- F. The indemnity set forth in this Section 15 shall not be limited by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Consultant in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

XXXIII. RETENTION OF FUNDS

- A. Any subagreement entered into as a result of this agreement shall contain all of the provisions of this section.
- B. No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any agreemental, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

XXXIV. RIGHT TO OFFSET CLAIMS FOR MONEY

All claims for money due or to become due from City shall be subject to deduction or offset by City from any monies due Consultant by reason of any claim or counterclaim

arising out of: i) this Agreement, or ii) any purchase order, or iii) any other transaction with Consultant.

XXXV. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

XXXVI. TERMINATION ON NOTICE

The City may terminate this Agreement immediately for cause or without cause upon giving (30) calendar days' written notice to Consultant.

XXXVII. ARIZONA AND ARIZONA-BASED BUSINESSES

As referenced in **Schedule B-1**, in accordance with Resolution No. 82727 C.M.S. neither this business entity nor any of its subsidiaries, affiliates or agents are headquarters in the State of Arizona or anticipates relocating to the State of Arizona duration for the life of its agreement(s) with the City of Oakland or until Arizona rescinds SB 1070.

Consultant acknowledges its duty to notify the Office of the City Administrator, Contracts and Compliance Unit if it's Business Entity or any of its subsidiaries, affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this agreement.

XXXVIII. DISPUTE DISCLOSURE

As referenced in **Schedule K**, consultants are required to disclose pending disputes with the City of Oakland when they submit bids, proposals or applications for a City or Agency agreement or transaction involving professional services. This includes agreement amendments. Consultant agrees to disclose, and has disclosed, any and all pending disputes to the City prior to execution of this agreement. The City will provide a form for such disclosure upon Consultant's request. Failure to disclose pending disputes prior to execution of this amendment shall be a basis for termination of this agreement.

XXXIX. DISPUTE RESOLUTION

- A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of City's Contract Administrator and Public Works Assistant Director, who may consider written or verbal information submitted by Consultant.
- B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, Consultant may request review by City of unresolved claims or disputes, other than audit. The request for review will be

submitted in writing. Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this contract.

- C. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, Consultant may request review by City of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

XL. NON-DISCRIMINATION / EQUAL EMPLOYMENT PRACTICES

Consultant shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Consultant agrees as follows:

- a. Consultant and Consultant's subconsultants, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Consultant and Consultant's Subconsultants shall state in all solicitations or advertisements for employees placed by or on behalf of Consultant that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- c. Consultant shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing **Schedule C-1, Declaration of Compliance with the Americans with Disabilities Act**, attached hereto and incorporated herein.
- d. If applicable, Consultant will send to each labor union or representative of workers with whom Consultant has a collective bargaining agreement or agreement or understanding, a notice advising the labor union or workers' representative of Consultant's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

XLI. MINIMUM WAGE ORDINANCE

Oakland employers are subject to Oakland's Minimum Wage Law whereby Oakland employees must be paid the current minimum wage. Employers must notify employees of the annually adjusted rates by each December 15th and prominently display notices at the

job site. The law requires paid sick leave for employees and payment of service charges collected for their services. For further information, please refer to:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK051451>

XLII. LIVING WAGE ORDINANCE (LWO)

The City's LWO applies to contracts equal to or greater than \$25,000 annually and requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service consultants (Consultants) of the City and employees of City Financial Assistance Recipients (Ord. 12050 § 1, 1998). The Ordinance requires submission of the attached **Schedule N, Living Wage - Declaration of Compliance**, incorporated herein as part of this Agreement, and unless specific exemptions apply or a waiver is granted, the Consultant must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation - Effective July 1, 2017 to June 30, 2018, employees shall be paid a minimum initial **hourly wage rate of \$13.32 with health benefits or \$15.31 without health benefits**. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. **Effective July 1st of each year, Consultant shall pay adjusted wage rates.**
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least **\$1.99 per hour**. Consultant shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the agreement or receipt of City financial assistance.
- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit (EIC) – To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and

other sources available to assist you, including but not limited to:
<http://www.irs.gov>.

- e. Consultant shall provide to all employees and to the Division of Contracts and Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Consultant shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Consultant shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Consultant shall provide a copy of said list to Contracts and Compliance Unit, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Consultant shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Consultant shall require subconsultants that provide services under or related to this Agreement to comply with the above Living Wage provisions. Consultant shall include the above-referenced sections in its subagreements. Copies of said subagreements shall be submitted to Contracts and Compliance.

XLIII. EQUAL BENEFITS ORDINANCE

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City consultants (Consultants) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001).

The following consultants are subject to the Equal Benefits Ordinance: Entities which enter into a "agreement" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and Entities which enter into a "property agreement" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or

controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a consultant's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the agreement's presence at that location is connected to a agreement with the city; and (3) elsewhere in the United States where work related to a city agreement is being performed. The requirements of this chapter shall not apply to subagreements or subconsultants of any agreement or consultant

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as **Schedule N-1, Equal Benefits-Declaration of Nondiscrimination.**

XLIV. CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits consultants that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, agreement negotiations.

If this Agreement requires Council approval, Consultant must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as **Schedule O, Campaign Contributions.**

XLV. NUCLEAR FREE ZONE DISCLOSURE

Consultant represents that Consultant is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Consultant shall complete **Schedule P, Nuclear Free Zone Disclosure Form,** attached hereto.

XLVI. POLITICAL PROHIBITION

Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

XLVII. RELIGIOUS PROHIBITION

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.

XLVIII. BUSINESS TAX CERTIFICATE

Consultant shall obtain and provide proof of a valid City business tax certificate. Said certificate must remain valid during the duration of this Agreement.

XLIX. GOVERNING LAW

This agreement shall be governed by the laws of the State of California.

L. ENTIRE AGREEMENT OF THE PARTIES

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by Consultant for the City and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

LI. INCONSISTENCY

If there is any inconsistency between the main agreement and the exhibits, the text of the main agreement shall prevail.

LII. SEVERABILITY / PARTIAL INVALIDITY

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

LIII. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

LIV. COMMENCEMENT, COMPLETION AND CLOSE OUT

It shall be the responsibility of the Consultant to coordinate and schedule the work to be performed so that commencement and completion take place in accordance with the provisions of this Agreement.

Any time extension granted to Consultant to enable Consultant to complete the work must be in writing and shall not constitute a waiver of rights the City may have under this Agreement.

Should the Consultant not complete the work by the scheduled date or by an extended date, the City shall be released from all of its obligations under this Agreement.

Within thirty (30) days of completion of the performance under this Agreement, the Consultant shall make a determination of any and all final costs due under this Agreement and shall submit a requisition for such final and complete payment (including without limitations any and all claims relating to or arising from this Agreement) to the City. Failure of the Consultant to timely submit a complete and accurate requisition for final payment shall relieve the City of any further obligations under this Agreement, including without limitation any obligation for payment of work performed or payment of claims by Consultant.

Consultant's performance will be evaluated by City. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the agreement record.

LV. CHANGE IN TERMS

- A. Any modification of this Agreement will be effective only if it is in a writing signed by all parties to this Agreement.
- B. Consultant shall only commence work covered by an amendment after the amendment is executed and authorization to proceed has been provided by City's Project Manager.
- 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 City's Project Manager.

LVI. NOTICE

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via facsimile or email, and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

City of Oakland:
OPW-Contract Services
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612
Fax (510) 238-2436 or chao@oaklandnet.com

Consultant:

**Harrison Engineering Inc.
Randell T. Harrison**

**1987 Bonifacio Street
Concord, CA 94520
randell@harrison-engineering.com**

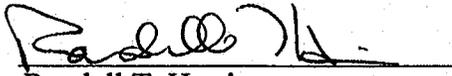
Any party to this Agreement wishing to make changes to this Notice section shall do so in writing ten (10) business days before the change is effective.

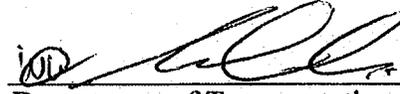
LVII. APPROVAL

If the terms of this Agreement are acceptable to Consultant and the City, sign and date below.

HARRISON ENGINEERING INC.

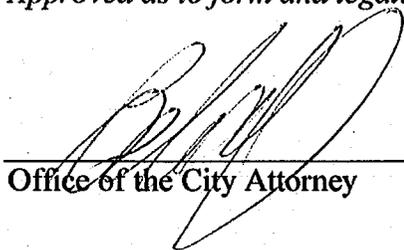
Acting
DEPARTMENT DIRECTOR

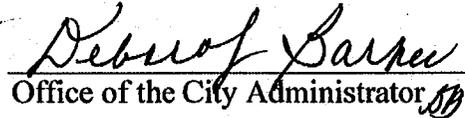

Randell T. Harrison
President
3/19/18
Date


Department of Transportation
4/13/18
Date

Approved as to form and legality:

CITY OF OAKLAND
(a municipal corporation)


Office of the City Attorney
3/29/18
Date


Office of the City Administrator
4/13/18
Date

City Council Resolution No. 86991
Oakland Business Tax Certificate No. 00 202516
Contract Purchase Order No. _____
DIR Project ID No. N/A

ATTACHMENT E

OAKLAND MUNICIPAL CODE

Chapter 2.04 – PURCHASING SYSTEM

Article 1 – Bidding Contracting and Purchasing

2.04.030 - City Council approval requirements.

- A. Council Award of Purchases or Contracts in Excess of City Administrator's Authority. The Council shall award any purchase orders or contracts in excess of the City Administrator's authority as follows:
1. City Council Authority. The Council shall award all contracts in the following amounts:
 - a. Supplies, Services or Combination. Purchases in excess of two hundred fifty thousand dollars (\$250,000.00) in any single transaction or term agreement; and
 - b. Professional Services. Purchases in excess of two hundred fifty thousand dollars (\$250,000.00) in any single transaction or term agreement.
- B. Validity of Contracts. Legislative actions of the Council awarding any contract shall not constitute a contract. No contract shall be binding or of any force or effect until signed by the City Administrator. The City Administrator's signature shall constitute certification that there remains an unexpended and unapplied balance of the appropriations or funds sufficient to pay the estimated expense of executing the contract.
- C. Contract Extensions, Renewals, Amendments. The requirements for City Council approval specified in Section 2.04.030 shall apply to all expenditures, extensions, amendments or renewals of an existing or expired contract or term agreement whenever aggregated expenditures under the original contract or term agreement, or extensions, renewals or amendments that exceed: (1) the City Administrator's contract approval limit, or (2) the total contract amount approved by Council in a City resolution.

(Ord. No. 13380, § 1, 7-19-2016; Ord. No. 12976, § 1, 11-3-2009; Ord. 12634 § 1 (part), 2004; Ord. 11724 § 2, 1994; Ord. 10066 § 2 (part), 1981; Ord. 9739 § 3 (part), 1979; Ord. 7937 § 3, 1969)

2.04.051 - Competitive process and qualification-based awards for professional services contracts.

- A. Request for Qualifications or Proposal for Professional Services Contracts in Excess of Fifty Thousand Dollars (\$50,000.00). The City Administrator, or the City Administrator's designee, shall conduct a request for proposal ("RFP") or request for qualifications ("RFQ") process for the award of contracts that exceed fifty thousand dollars (\$50,000.00) and are exempt from bidding under Subsection 2.04.050.1.1. The City's RFP and RFQ processes shall be set forth in a City Administrator's administrative instruction. The RFP or RFQ requirement applies, but is not limited to, contracts for professional, technical or specialized services. The selection and award of contracts for professional services shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City.

- B. Waiver—City Administrator Authority, City Council Authority. Upon a finding by the City Administrator that it is in the best interests of the City, the City Administrator may waive said RFP/Q requirements for professional services contracts up to fifty thousand dollars (\$50,000.00). Upon a finding by the City Council or its designee that it is in the best interests of the City, the City Council may waive said RFP/Q requirements for contracts in any amount.

(Ord. No. 13380, § 1, 7-19-2016; Ord. No. 13102, § 1, 12-20-2011; Ord. 12634 § 1 (part), 2004)

OAKLAND CITY COUNCIL**DRAFT**
City AttorneyFILED
OFFICE OF THE CITY CLERK
OAKLAND**RESOLUTION NO. _____ C.M.S.**

2018 SEP 12 AM 3:20

Introduced by Councilmember _____

RESOLUTION AMENDING RESOLUTION NO. 86991 C.M.S. WHICH AUTHORIZED THE CITY TO ENTER INTO A CONTRACT WITH HARRISON ENGINEERING INC. FOR \$220,000 TO PERFORM DESIGN SERVICES AND WAIVE THE COMPETITIVE REQUEST FOR PROPOSAL (RFP) REQUIREMENTS FOR AN AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT FOR AN INCREASE IN THE CONTRACT AMOUNT NOT-TO-EXCEED SIXTY THOUSAND DOLLARS (\$60,000), FOR ADDITIONAL DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR PROJECT NO. 1003204, MARKET STREET AND SAN PABLO AVENUE PROJECT FUNDED BY HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP) CYCLE 7 GRANT, MEASURE B AND MEASURE KK, AND IN ACCORDANCE WITH FEDERAL CONSULTANT SELECTION PROCESS

WHEREAS, in November 2015 the City was awarded a Highway Safety Improvement Program (HSIP) Cycle 7 grant for the Market Street and San Pablo Avenue Project; and

WHEREAS, on March 1, 2016, the City Council passed a Resolution No. 86027 C.M.S. accepting the HSIP Cycle 7 grant; and

WHEREAS, on May 2017, the City issued a formal Request for Proposal (RFP) for design services in compliance with Federal consultant selection process; and

WHEREAS, on December 18, 2017, the City Council passed Resolution No. 86991 C.M.S. which authorized the City to enter into a contract with Harrison Engineering Inc. for \$220,000 to perform design services on Project No. 1003204, Market Street and San Pablo Avenue Project under HSIP; and

WHEREAS, on April 18, 2018, the City executed a design services contract with Harrison Engineering Inc.; and

WHEREAS, during project implementation, it was determined that additional design and construction support services are needed to address safety and Americans with Disabilities Act compliance issues not identified in the grant proposal; and the total cost of the additional services to be performed is anticipated to not exceed sixty thousand dollars (\$60,000); and

WHEREAS, given the familiarity of Harrison Engineering Inc. with the project thus far, it is most cost effective and expeditious to hire Harrison Engineering Inc. for additional design services, and this option has the least impact to project budget and delivery schedule; and

WHEREAS, the alternative of issuing a formal Request for Proposal (RFP) and entering into a new contract with another firm will result in higher consultant fees, increased staff time, and substantial delays, and the project will be unable to meet Caltrans project delivery schedule and HSIP funding requirements; now therefore, be it

WHEREAS, waiving the Request for Proposal requirements for professional services contract greater than fifty thousand dollars (\$50,000) would require City Council approval pursuant to Oakland Municipal Code, Section 2.04.051 (B); and

WHEREAS, staff finds that it is in the best interest of the City to hire Harrison Engineering Inc. for the additional design and construction support services; now therefore, be it

RESOLVED: That the City Council authorizes the amendment of Resolution No. 86991 to: 1) waive the competitive request for proposal (RFP) requirements for an amendment to professional services agreement with Harrison Engineering Inc., and 2) authorizes the City Administrator or Designee to negotiate and execute an amendment to professional services agreement between the City Of Oakland and Harrison Engineering Inc. in an amount not-to-exceed Sixty Thousand Dollars (\$60,000) for additional design and construction support services for Project No. 1003204, Market Street and San Pablo Avenue Project funded by Highway Safety Improvement Program (HSIP) Cycle 7 grant, Measure B and Measure KK, and in accordance with the Federal consultant selection process; and be it

FURTHER RESOLVED: That said City local match from Measure KK funds in the amount of sixty thousand dollars (\$60,000) is available in Project No. 1003348, Organization 92246, Expense 57411, Task 1.0, Award 23248, Fund 5330, Program IN05

IN COUNCIL, OAKLAND, CALIFORNIA _____, 2019

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California