Contractor: _____ Project Name: : Fourth Street Bridge Widening Project – Environmental – Floodplain Report

City of Saratoga
Standard Services Contract

This agreement is made at Saratoga, California by and between the City of Saratoga, a municipal corporation ("City"), and _____ ("Contractor"), who agree that:

1. Purpose of Contract.

This is a contract for: Fourth Street Bridge Widening Project - Environmental - Floodplain Report

The purpose of the contract is more specifically described in Exhibit A of this agreement ("Scope of Work and Payment Terms"). In the event of a conflict between the terms of this agreement and the Scope of Work or any of the exhibits referenced in this Exhibit A the terms of the agreement shall govern.

2. Term.

Start Date: _____ (If Start Date is left blank, start date will be date last signed below.)

End Date: _____ Or upon project completion, whichever occurs first.

3. Payment. City shall pay Contractor for work product produced and any authorized reimbursable costs pursuant to this agreement an amount not to exceed the total sum of:

$_____.

This contract is a (check one):

☐ Fixed Amount Contract – Monthly Invoices

☐ Fixed Amount Contract – Deliverable/Task Based Invoices

☐ Not to Exceed Amount Contract – Hourly Services

☐ Not to Exceed amount Contract – Task Based Invoices

☐ See Exhibit A-_____ incorporated by this reference for additional payment term information.

Contractor is *not authorized* to undertake any efforts or incur any costs whatsoever under the terms of this agreement until receipt of a fully executed Purchase Order from the Finance Department of the City of Saratoga.

4. Contract Administration. The authorized representatives of City and Contractor for Contract administration are listed below. The City's contact person is the Administrator.

Contractor:

Contractor Name: _____

Contact Person: _____

Street Address: _____

City, State, Zip: _____

Telephone(s): _____

Fax: _____

Email Address: _____

Saratoga Business Lic. #: _____

City of Saratoga

Department: _____

Contact Person: _____

Street Address: _____

City, State, Zip: _____

Telephone: _____

Fax: _____

Email Address: _____

5. Insurance. Contractor agrees to procure and maintain insurance as required by the provisions set forth in Exhibit B. Certificates of such insurance and copies of the insurance policies and endorsements shall be delivered to City within ten (10) days after being notified of the award of the contract, and before execution of this agreement by the City.

6. General Provisions. City and Contractor agree to and shall abide by the general provisions set forth in Exhibit C.

7. Supplemental Provisions. If one or both boxes are checked below this agreement includes supplemental provisions described in connection with the checked box(es):

☐ This agreement is funded in whole or in part by an entity other than City. Contractor shall comply with all rules and regulations required by such funding entity. Applicable funding entity requirements are set forth in Exhibit D. Nothing in this paragraph or in the funding entity requirements shall be construed to relieve Contractor of its duty to ensure that it is in compliance with all applicable laws and regulations.

☐ Exhibit E sets forth provisions regarding:

_____

8. Exhibits. All exhibits referred to in this agreement are attached hereto and are by this reference incorporated herein and made a part of this agreement.

9. Entire agreement. This agreement supersedes any and all agreements, either oral or written, between the parties with respect to Contractor's completion of the Scope of Work on behalf of City and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. No amendment, alteration, or variation of the terms of this agreement shall be valid unless made in writing and signed by the parties hereto.

10. Authority to Execute agreement. Each individual executing this agreement represents that he or she is duly authorized to sign and deliver the agreement on behalf of the party indicated and that this agreement is binding on such party in accordance with its terms. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

Contractor

_____
Signature

_____
Signer Name

_____
Signer Title

Date: _____

Contract Description:

Fourth Street Bridge Widening Project - Environmental - Floodplain Report

City of Saratoga

_____
James Lindsay, City Manager

Date: _____

ATTEST:

_____
Britt Avrit, City Clerk

Date: _____

APPROVED AS TO FORM:

_____
Richard Taylor, City Attorney

Date: _____

Contractor: _____ Project Name: : Fourth Street Bridge Widening Project – Environmental – Floodplain Report

City of Saratoga Services Contract

Exhibit A – Scope of Work and Payment Terms

Contractor shall complete the scope of work and invoice the City in accordance with the payment terms shown below:

AND/OR ☐ See Exhibit(s) A- _____ incorporated by this reference.

-End of Exhibit A -

Contractor: _____ Project Name: : Fourth Street Bridge Widening Project – Environmental – Floodplain Report

City of Saratoga Services Contract

Exhibit B – Insurance

The insurance requirements listed below that have an "✓" indicated in the space before the requirement apply to this agreement together with the general requirements.

☐ Modifications or waivers to the below requirements are shown in Exhibit E.

Contractor shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide certificates of insurance complete with copies of all required endorsements to: Risk Manager, City of Saratoga, 13777 Fruitvale Avenue, Saratoga, CA 95070 or by email at bavrit@saratoga.ca.us with a copy to the Primary Representative listed in section 4 on page 1. During the term of this agreement Contractor shall ensure that its broker(s)/agent(s) provide the Risk Manager and Primary Representative with updated certificates of insurance reflecting continued satisfaction of the requirements of this agreement together with updated endorsements in the event of a change in the underlying insurance policy(ies).

All endorsements shall be signed by a person authorized by that insurer to bind coverage on its behalf. City has the right to require Contractor's insurer to provide complete, certified copies of all required insurance policies. As described in more detail below, the City, its officers, officials, employees, agents, and volunteers are to be covered as insureds.

All certificates and endorsements must be received and approved by City before work commences.

Insurance Requirements

Commercial General/Business Liability Insurance with coverage at least as broad as indicated:

- ☑ $2,000,000 per occurrence/$2,000,000 aggregate limits for bodily injury and property damage
- ☐ Coverage for X, C, U hazards MUST be evidenced on the Certificate of Insurance

Auto Liability Insurance with coverage as indicated:

- ☑ $1,000,000 combined single limit for bodily injury and property damage
- ☐ $500,000 combined single limit for bodily injury and property damage
- ☐ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor, regardless of where the vehicles are kept or driven.

Professional/Errors and Omissions Liability ("E&O") with coverage as indicated:

- ☑ $2,000,000 per loss/ $2,000,000 aggregate
- ☐ $5,000,000 per loss/ $5,000,000 aggregate

☑ Workers' Compensation as required by the State of California, with statutory limits, and Employer's Liability Insurance with a limit of no less than $1,000,000 per accident for bodily injury or disease.

The Employer's Liability policy shall be endorsed to waive any right of subrogation against the City, its employees or agents.

All subcontractors used must comply with the above requirements except as noted below:

General Requirements
As to all of the checked insurance requirements above, the following shall apply:

1. Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

- The City, its officers, officials, employees, agents and volunteers (each an "additional insured") are to be covered as insureds with the same coverage and limits available to the named insured regarding: liability arising out of activities performed by or on behalf of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of the protection afforded to the City, its officers, officials, employees, agents or volunteers. Any available insurance proceeds broader than or in excess of the minimum insurance coverage requirements and/or limits specified in this agreement shall be available to the additional insured. The requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. The additional insured coverage under Consultant's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13. This requirement does not apply to errors and omissions insurance.

- Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

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

2. Deductibles and Self Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials and employees; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. The limits of insurance required in this agreement may be satisfied by a combination of primary and

umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

3. Waiver of Subrogation. Consultant hereby grants to City a waiver of any right to subrogation which any insurer of Consultant may acquire against City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether City has received a waiver of subrogation endorsement from the insurer.

4. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this Exhibit. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require at any time complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications and failure to exercise this right shall not constitute a waiver of any of City's rights pursuant to this agreement.

5. Maintenance of Coverage. Consultant shall not cancel, assign, or change any policy of insurance required by this agreement or engage in any act or omission that will cause its insurer to cancel any insurance policy required by this agreement except after providing 30 days prior notice to the City. If an insurance policy required by this agreement is unilaterally cancelled or changed by the insurer, Consultant shall immediately provide written notice to the City and obtain substitute insurance meeting the requirements of this agreement. Nothing in this paragraph relieves Consultant of its obligation to maintain all insurance required by this agreement at all times during the term of the agreement.

6. Claims Made Policies. If any of the required policies provide claims-made coverage, the coverage shall be maintained for a period of five years after completion of the contract. Consultant may satisfy this requirement by renewal of existing coverage or purchase of either prior acts or tail coverage applicable to said five-year period.

7. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A: VII.

8. Subcontractors. Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Consultant shall agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to the City under this agreement. Subcontractors shall further agree to include these same provisions with any sub-subcontractor. Consultant shall provide subcontractor with a copy of the indemnity and insurance provisions of this agreement as a part of Consultant's subcontract with subcontractor. Consultant shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and will provide proof of compliance to the City.

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

-End of Exhibit B-

City of Saratoga Services Contract
Exhibit C – General Provisions

1. INDEPENDENT CONTRACTOR. City requires the services of a qualified consultant to provide the work product described in Exhibit A because it lacks the qualified personnel to provide the specified work product. Consultant is qualified to provide the required work product and is agreeable to providing such work product on the terms and conditions in this agreement.

1.1 In General. At all times during the term of this agreement, Consultant shall be an independent contractor and shall not be an employee of City. Consultant shall complete the Scope of Work hereunder in accordance with currently approved methods and practices in Consultant's field. No relationship of employer and employee is created by this agreement between the City and Consultant or any subcontractor or employee of Consultant. City shall have the right to control Consultant only with respect to specifying the results to be obtained from Consultant pursuant to this agreement. City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this agreement. Any terms in this agreement referring to direction from City shall be construed as providing for direction as to policy and the result of the Consultant's work only, and not as to the means by which such a result is obtained.

1.2 Non-Exclusive Contract. Nothing contained in this agreement shall be construed as limiting the right of Consultant to engage in Consultant's profession separate and apart from this agreement so long as such activities do not interfere or conflict with the performance by Consultant of the obligations set forth in this agreement. Interference or conflict will be determined at the sole discretion of the City.

1.3 Standard of Care. Consultant shall complete the Scope of Work required pursuant to this agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. All work product of whatsoever nature which Consultant delivers to City pursuant to this agreement shall be prepared in a substantial, first class and workmanlike manner and conform to the standards of quality normally observed by a person practicing in Consultant's profession.

1.4 Qualifications. Consultant represents and warrants to City that the Consultant is qualified to perform the services as contemplated by this agreement and that all work performed under this agreement shall be performed only by personnel under the supervision of the Consultant as an employee or, if authorized by the Scope of Work, a subcontractor. All personnel engaged in the work shall be fully qualified and shall be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required. The Consultant shall commit adequate resources and time to complete the project within the project schedule specified in this agreement.

1.5 Use of City Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by City.

1.6 Payment of Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority, including, but not limited to the Internal Revenue Service or the State Employment Development Division, determine that the Consultant is an employee for purposes of collection of any employment taxes, the amounts payable under this agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by the Consultant which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by the Consultant for City, upon notification of such fact by the City, the Consultant shall promptly remit such amount due or arrange with the City to have the amount due withheld from future payments to the Consultant under this agreement (again, offsetting any amounts already paid by the Consultant which can be applied as a credit against such liability). Any determination of employment status above shall be solely for the purposes of the particular tax in question, and for all other purposes of this agreement, The Consultant shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that the Consultant is an employee for any other purpose, then the Consultant agrees to a reduction in the City's financial liability so that the City's total expenses under this agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that the Consultant was not an employee.

2. COMMUNICATION AND NOTICES. The Administrator designated in section 4 on page 1 of this agreement is authorized to receive information, interpret and define City's policies consistent with this agreement, and communicate with Consultant concerning this agreement. All correspondence and other communications shall be directed to or through the Administrator or the Administrator's designee.

2.1 In General. All notices or communication concerning a party's compliance with the terms of this agreement shall be in writing and may be given either personally, by certified mail, return receipt requested, or by overnight express carrier. The notice shall be deemed to have been given and received on the date delivered in person or the date upon which the postal authority or overnight express carrier indicates that the mailing was delivered to the address of the receiving party. The parties shall make good faith efforts to provide advance courtesy notice of any notices or communications hereunder via e-mail. However, under no circumstances shall such courtesy notice satisfy the notice requirements set forth above; nor shall lack of such courtesy notice affect the validity of service pursuant to the notice requirement set forth above.

2.2 Addresses for Notice. Notices or communications shall be given to the parties at the addresses set forth in section 4 ("Contract Administration") unless otherwise

designated in a written notice to the other party. In addition, notices to City shall be copied to:

James Lindsay City Manager City of Saratoga 13777 Fruitvale Avenue Saratoga, CA 95070	Britt Avrit City Clerk City of Saratoga 13777 Fruitvale Avenue Saratoga, CA 95070

These copies shall not constitute notice.

2.3 Change of Address. Any party hereto, by giving ten (10) days written notice to the other, may designate any other address as substitution of the address to which the notice or communication shall be given.

3. PAYMENT. The payments specified in this paragraph shall be the only payments to be made to Consultant in connection with Consultant's completion of the Scope of Work pursuant to this agreement. Reimbursable expenses shall be billed only at their actual cost. Consultant shall submit all billings to City and City shall pay such billings in the manner specified in this paragraph. Payment shall be made payable to Consultant and delivered to the address specified in section 4 on page 1 of this agreement. The making of any payment by City, or the receipt thereof by the Consultant, shall in no way lessen the liability of the Consultant to correct or revise unsatisfactory work, even though the unsatisfactory character of such work may not have been apparent or detected at the time such payment was made. City may withhold payment to Consultant in any instance in which the Consultant has failed or refused to satisfy any material obligation provided for in this agreement. In no event shall City be liable for interest or late charges for any late payments.

3.1 Time and Materials. If this contract is designated as a Time and Materials contract, invoicing and payment shall be as follows:

(a) Consultant shall submit invoices, not more often than once a month during the term of this agreement, based on the cost for work performed in accordance with the Rate Schedule in the Scope of Work and authorized reimbursable expenses incurred prior to the invoice date. Invoices shall contain the following information:

(i) Serial identifications of bills, i.e., Bill No. 1;

(ii) The beginning and ending dates of the billing period;

(iii) A summary containing the total contract amount, the amount of prior billings, the total due this period, percentage of work completed, the remaining balance available for all remaining billing periods, and a brief description of work completed during the billing period.

(b) City shall make monthly payments, based on such invoices, for satisfactory progress in completion of the Scope of Work, and for authorized reimbursable expenses incurred.

3.2 Lump Sum. If this contract is designated as a Lump Sum contract on page 1 following completion of the work Consultant shall submit a single invoice containing the beginning and ending dates of the billing period and the total contract amount. City shall make a single payment, based on such invoice, for satisfactory completion of the Scope of Work.

4. CONTRACTOR NOT AGENT. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this agreement to bind City to any obligation whatsoever.

5. BENEFITS AND TAXES. Consultant shall not have any claim under this agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, federal and state income taxes, and in connection therewith Consultant shall indemnify and hold City harmless from any and all liability that City may incur because of Consultant's failure to pay such taxes. City shall have no obligation whatsoever to pay or withhold any taxes on behalf of Consultant.

6. ASSIGNMENT PROHIBITED. The services to be performed by the Consultant are personal in character and no party to this agreement may assign any right or obligation under this agreement. Any attempted or purported assignment of any right or obligation under this agreement shall be void and of no effect. However, with the consent of the City given in writing, Consultant is entitled to subcontract such portions of the work to be performed under this agreement as may be specified by City.

7. PERSONNEL. Consultant shall assign only competent personnel to complete the Scope of Work pursuant to this agreement. In the event that City, in its sole discretion, at any time during the term of this agreement, desires the removal of any such persons, Consultant shall, immediately upon receiving notice from city of such desire of City, cause the removal of such person or persons from work in connection with the Scope of Work.

8. CONFLICT OF INTEREST.

8.1 In General. Consultant understands that its professional responsibility is solely to City. Consultant represents and warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this agreement. Consultant shall not employ or subcontract with a person having such an interest in the performance of this agreement.

8.2 Subsequent Conflict of Interest. Consultant agrees that if an actual or potential conflict of interest on the part of Consultant is discovered after award, the

Consultant will make a full disclosure in writing to the City. This disclosure shall include a description of actions, which the Consultant has taken or proposes to take, after consultation with the City to avoid, mitigate, or neutralize the actual or potential conflict. Within 45 days, the Consultant shall have taken all necessary steps to avoid, mitigate, or neutralize the conflict of interest to the satisfaction of the City.

8.3 Interests of City Officers and Staff. No officer, member or employee of City and no member of the City Council shall have any pecuniary interest, direct or indirect, in this agreement or the proceeds thereof. Neither Consultant nor any member of any Consultant's family shall serve on any City board or committee or hold any such position which either by rule, practice or action nominates, recommends, or supervises Consultant's performance of the Scope of Work or authorizes funding to Consultant.

9. COMPLIANCE WITH LAWS

9.1 In General. Consultant shall keep itself fully informed of and comply with all laws, policies, general rules and regulations established by City and shall comply with the common law and all laws, ordinances, codes and regulations of governmental agencies, (including federal, state, municipal and local governing bodies) applicable to the performance of the Scope of Work hereunder.

9.2 Licenses and Permits. Consultant represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession. In addition to the foregoing, Consultant shall obtain and maintain during the term hereof a valid City of Saratoga Business License.

10. WORK PRODUCT AND RECORDS

10.1 Property of City. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda or other written documents or materials prepared by Consultant pursuant to this agreement shall become the property of City upon completion of the work to be performed hereunder or upon termination of this agreement. Without limiting the generality of the foregoing, if, in connection with services performed under this agreement, the Consultant or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of City. If it is ever determined that any works created by the Consultant or its subcontractors under this agreement are not works for hire under U.S. law, the Consultant hereby assigns all copyrights to such works to City, grants City a royalty-free, exclusive, and irrevocable license to reproduce, publish, use, and to authorize others to do so, all such works and agrees to provide

any material and execute any documents necessary to effectuate such assignment and license. The Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

10.2 Intellectual Property. Consultant represents and warrants that it has the legal right to utilize all intellectual property it will utilize in the performance of this agreement. Consultant further represents that it shall ensure City has the legal right to utilize all intellectual property involved in and/or resulting from Consultant's performance of this agreement. Consultant shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this agreement.

10.3 Retention of Records. Until the expiration of five years after the furnishing of any services pursuant to this agreement, Consultant shall retain and make available to the City or any party designated by the City, upon written request by City, this agreement, and such books, documents and records of Consultant (and any books, documents, and records of any subcontractor(s)) that are necessary or convenient for audit purposes to certify the nature and extent of the reasonable cost of services to City.

10.4 Use of Recycled Paper and Electronic Documents. Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper. Documents shall be printed on both sides of the page and City shall be provided with electronic copies of documents (in Word or .pdf format) except where unusual circumstances make it infeasible to do so.

11. CONFIDENTIAL INFORMATION. Consultant shall hold any confidential information received from City in the course of performing this agreement in trust and confidence and will not reveal such confidential information to any person or entity, either during the term of the agreement or at any time thereafter. Upon expiration of this agreement, or termination as provided herein, Consultant shall return materials which contain any confidential information to City. Consultant may keep one copy for its confidential file. For purposes of this paragraph, confidential information is defined as all information disclosed to Consultant which relates to City's past, present, and future activities, as well as activities under this agreement, which information is not otherwise of public record under California law.

12. RESPONSIBILITY OF CONSULTANT. Consultant shall take all responsibility for the work, shall bear all losses and damages directly or indirectly resulting to Consultant, to any subcontractor, to the City, to City officers and employees, or to parties designated by the City, on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences or other causes to the extent predicated on active or passive negligence of the Consultant or of any subcontractor.

13. INDEMNIFICATION. Consultant and City agree that City, its employees, agents and officials shall be fully protected from any loss, injury, damage, claim, lawsuit, cost, expense, attorneys fees, litigation costs, defense costs, court costs or any other cost incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part, to the performance of this agreement as set forth below. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the City. Consultant acknowledges that City would not enter into this agreement in the absence of the commitment of Consultant to indemnify and protect City as set forth below.

13.1 General Indemnity. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless City, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs (including, without limitation, costs and fees of alternative dispute resolution and litigation) of any kind whatsoever without restriction or limitation, incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part, to Consultant, or its employees, agents, or subcontractors. All obligations under this provision are to be paid by Consultant as they are incurred by the City.

13.2 Duty to Defend. In addition to Consultant's obligation to indemnify City, Consultant shall defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its councilmembers, officers, and employees, immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Consultant are responsible for the claim does not relieve Consultant from its separate and distinct obligation to defend. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused solely by the negligence or willful misconduct of an indemnified party, Consultant may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the indemnified party.

13.3 Limitation on Indemnity. Without affecting the rights of City under any provision of this agreement or this section, Consultant shall not be required to defend, indemnify, and hold harmless City as set forth above for liability attributable to the sole fault of City, provided such sole fault is determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the City is shown to have been solely at fault and not in instances where Consultant is solely or partially at fault or in instances where City's fault accounts for only a percentage of the liability involved. In those instances, the obligation of Consultant will be all-inclusive and

City will be held harmless, indemnified, and defended for all liability incurred, even though a percentage of the liability is attributable to conduct of the City.

13.4 Acknowledgement. Consultant acknowledges that its obligation pursuant to this section extends to liability attributable to City, if that liability is less than the sole fault of City. Consultant has no obligation under this agreement for liability proven in a court of competent jurisdiction or by written agreement between the parties to be the sole fault of City.

13.5 Scope of Consultant Obligation. The obligations of Consultant under this or any other provision of this agreement will not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its employees and officials.

13.6 Subcontractors. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance or subject matter of this agreement.

13.7 No Waiver. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns, or heirs of Consultant and shall survive the termination of this agreement or this section. For purposes of Section 2782 of the Civil Code the parties hereto recognize and agree that this agreement is not a construction contract. By execution of this agreement, Consultant acknowledges and agrees that it has read and understands the provisions hereof and that this paragraph is a material element of consideration. City approval of insurance required by this agreement does not relieve the Consultant or subcontractors from liability under this section.

13.8 Relation to Insurance Obligations. The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.

14. DEFAULT AND REMEDIES.

14.1 Events of default. Each of the following shall constitute an event of default hereunder:

(a) Failure by Consultant to perform any obligation under this agreement and failure to cure such breach immediately upon receiving notice of such breach, if the breach is such that the City determines the health, welfare, or safety of the public is immediately endangered; or

(b) Failure by either party to perform any obligation under this agreement and failure to cure such breach within fifteen (15) days of receiving notice of such breach (except for breaches subject to subparagraph (a), above);

provided that if the nature of the breach is such that the non-breaching party determines it will reasonably require more than fifteen (15) days to cure, the breaching party shall not be in default if it promptly commences the cure and diligently proceeds to completion of the cure.

14.2 **Remedies upon default**. Upon any default, the non-defaulting party shall have the right to immediately suspend or terminate this agreement, seek specific performance and/or seek damages to the full extent allowed by law. City shall have the right to contract with another party to perform this agreement

14.3 **No Waiver**. Failure by City to seek any remedy for any default hereunder shall not constitute a waiver of any other rights hereunder or any right to seek any remedy for any subsequent default.

15. **TERMINATION.** Either party may terminate this agreement with or without cause by providing 10 days' notice in writing to the other party. The City may terminate this agreement at any time without prior notice in the event that Consultant commits a material breach of the terms of this agreement. Upon termination, this agreement shall become of no further force or affect whatsoever and each of the parties hereto shall be relieved and discharged from the rights and obligations of this agreement, subject to payment for acceptable services rendered prior to the expiration of the notice of termination and delivery to City of any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this agreement, and any completed or partially completed work which, if this agreement had been completed, would have been required to be furnished to City. Notwithstanding the foregoing and section 2 on page 1, this section and the provisions of this agreement concerning insurance (Exhibit B), Funding Agency Requirements (as set forth in Exhibit D if applicable), Work Product and Records, Confidential Information, Responsibility of Consultant, Indemnification, Default and Remedies, Litigation, and Jurisdiction and Severability shall survive termination or expiration of this agreement.

16. **DISPUTE RESOLUTION**. The parties shall make a good faith effort to settle any dispute or claim arising under this agreement. If the parties fail to resolve such disputes or claims, they shall submit them to non-binding mediation in California at shared expense of the parties for at least 8 hours of mediation. If mediation does not arrive at a satisfactory result, arbitration, if agreed to by all parties, or litigation may be pursued. In the event any dispute resolution processes are involved, each party shall bear its own costs and attorneys' fees.

17. **LITIGATION**. If any litigation is commenced between parties to this agreement concerning any provision hereof or the rights and duties of any person in relation thereto, each party shall bear its own attorneys' fees and costs.

18. **JURISDICTION AND SEVERABILITY**. This agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this agreement shall be in that state and venue shall be in Santa Clara County, California. If any part of this agreement is found to conflict with applicable laws, such part shall be inoperative, null and void insofar as it conflicts with said laws, but the remainder of this agreement shall be in full force and effect.

19. **NOTICE OF NON-RENEWAL**. Consultant understands and agrees that there is no representation, implication, or understanding that the City will request that work product provided by Consultant under this agreement be supplemented or continued by Consultant under a new agreement following expiration or termination of this agreement. Consultant waives all rights or claims to notice or hearing respecting any failure by City to continue to request or retain all or any portion of the work product from Consultant following the expiration or termination of this agreement.

20. **PARTIES IN INTEREST**. This agreement is entered only for the benefit of the parties executing this agreement and not for the benefit of any other individual, entity or person.

21. **WAIVER.** Neither the acceptance of work or payment for work pursuant to this agreement shall constitute a waiver of any rights or obligations arising under this agreement. The failure by the City to enforce any of Consultant's obligations or to exercise City's rights shall in no event be deemed a waiver of the right to do so thereafter.

-End of Exhibit C-

City of Saratoga Services Contract
Exhibit D – Funding Agency Requirements

☐ This agreement is funded in part pursuant to the contract between City and _____ ("Funding Agency") attached hereto as Exhibit D-1 ("Funding Agreement"). In recognition of the Funding Agreement City and Contractor agree that:

1. All contractual provisions required by the Funding Agreement are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all Funding Agreement-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the Funding Agreement terms and conditions.

2. If Consultant claims or receives payment from City for a service, reimbursement for which is later disallowed by the Funding Agency, the Consultant shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Consultant under this agreement or any other agreement.

3. City may terminate or suspend performance of this agreement if Funding Agency suspends or terminates funding pursuant to the terms of the Funding Agreement. In the event of suspension or termination City shall be obligated to fund only that portion of Consultant's work performed prior to the suspension or termination that is not funded by the Funding Agreement.

4. By executing this agreement, the Consultant certifies that the Consultant is not suspended, debarred or otherwise excluded from participation in the program(s) supported by the Funding Agreement. Consultant acknowledges that this certification of eligibility to receive Funding Agency funds is a material term of the agreement.

-End of Exhibit D-

Exhibit E

I. GENERAL PROVISIONS

1. In Exhibit C to this contract, any reference to "Consultant" means "Contractor."

2. In the event of any apparent conflict between the terms of this Exhibit E and any other terms contained in the contract and its other exhibits, the parties shall meet and confer to see if both terms shall apply. If both terms cannot apply, the terms of this Exhibit E shall govern.

II. REPLACEMENT TERMS

Sections 3, 10.1, 11, and 15 of Exhibit C are replaced in their entirety as shown below.

Section 3 (PAYMENT) of Exhibit C to this contract is deleted in its entirety, and replaced with the following:

3. ALLOWABLE COSTS AND PAYMENTS

(a) Contractor will be reimbursed for hours worked at the hourly rates specified in Contractors Cost Proposal (Exhibit A-1, page 5). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.

(b) In addition, Contractor will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.

(c) Specific projects will be assigned to Contractor through issuance of Task Orders.

(d) After a project to be performed under this contract is identified by City, City will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a City Project Coordinator. The draft Task Order will be delivered to Contractor for review. Contractor shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both City and Contractor.

(e) Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Contractor's Cost Proposal.

(f) Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

(g) When milestone cost estimates are included in the approved Cost Proposal, Contractor shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

(h) Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

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

(j) A Task Order is of no force or effect until returned to City and signed by an authorized representative of City. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by City.

(k) Contractor will be reimbursed, as promptly as fiscal procedures will permit upon receipt by City's Contract Administrator of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Contractor is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number, project title and Task Order number. Credits due City that include any equipment purchased under the provisions of Section III, 7 (Equipment Purchase) of this Exhibit E, must be reimbursed by Contractor prior to the expiration or termination of this contract. Invoices shall be mailed to City's Contract Administrator at the following address:

CITY OF SARATOGA
MACEDONIO NUNEZ
13777 FRUITVALE AVENUE
SARATOGA, CA 95070

(l) The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Contract.

(m) The total amount payable by City for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.

(n) If the Contractor fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

(o) Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.

(p) The total amount payable by City for all Task Orders resulting from this contract shall not exceed $(Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.

Section 10.1 (Property of City) of Exhibit C to this contract is deleted in its entirety, and replaced with the following:

10.1 OWNERSHIP OF DATA

(a) It is mutually agreed that all materials prepared by Contractor under this agreement shall become the property of City, and Contractor shall have no property right therein

whatsoever. Immediately upon termination, City shall be entitled to, and Contractor shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by Contractor in performing this agreement which is not Contractor's privileged information, as defined by law, or Contractor's personnel information, along with all other property belonging exclusively to City which is in Contractor's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this agreement must be approved in writing by City.

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

(c) Nothing herein shall constitute or be construed to be any representation by Contractor that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.

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

(e) City may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

Section 11 (CONFIDENTIAL INFORMATION) of Exhibit C to this contract is deleted in its entirety, and replaced with the following:

(a) All financial, statistical, personal, technical, or other data and information relative to City's operations, which are designated confidential by City and made available to Contractor in order to carry out this agreement, shall be protected by Contractor from unauthorized use and disclosure.

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

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

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

(e) All information related to the construction estimate is confidential, and shall not be disclosed by Contractor to any entity, other than City, Caltrans, and/or FHWA. All of the materials prepared or assembled by Contractor pursuant to performance of this Contract are confidential and Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If Contractor or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from Contractor for any damages caused by Contractor releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

Section 15 (TERMINATION) of Exhibit C to this contract is deleted in its entirety, and replaced with the following:

15. TERMINATION

(a) This Agreement may be terminated by City, provided that City gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

(b) City may temporarily suspend this Agreement, at no additional cost to City, provided that Contractor is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, Contractor shall immediately suspend its activities under this Agreement. A temporary suspension may be issued concurrent with the notice of termination.

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

(e) In the event of termination, Contractor shall be compensated as provided for in this Agreement. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

III. SUPPLEMENTAL TERMS

The following terms supplement and are in addition to any other terms in this contract:

1. CONTRACTOR'S REPORTS OR MEETINGS

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

(b) Contractor's Project Manager shall meet with City's Contract Administrator, as needed, to discuss progress on the contract.

2. PERFORMANCE PERIOD

(a) This contract shall go into effect on [date], contingent upon approval by City, and Contractor shall commence work after notification to proceed by City's Contract Administrator. The contract shall end on [date], unless extended by contract amendment.

(b) Contractor is advised that any recommendation for contract award is not binding on City until the contract is fully executed and approved by City.

3. ALLOWABLE COSTS AND PAYMENTS.

(a) CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate.

(b) In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.

(c) Specific projects will be assigned to CONSULTANT through issuance of Task Orders.

(d) After a project to be performed under this AGREEMENT is identified by LOCAL AGENCY, LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.

(e) Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

(f) CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.

(g) Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

(h) When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

(i) Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

(j) CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.

(k) A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.

(l) CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

CITY OF SARATOGA
MACEDONIO NUNEZ
13777 FRUITVALE AVENUE
SARATOGA, CA 95070

(m) The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.

(n) The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.

(o) If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

(p) Task Orders may not be used to amend the language (or the terms) of this AGREEMENT nor to exceed the scope of work under this AGREEMENT.

(q) The total amount payable by LOCAL AGENCY for all Task Orders resulting from this AGREEMENT shall not exceed $ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.

4. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

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

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

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

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

5. RETENTION OF RECORDS/AUDIT

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

6. AUDIT REVIEW PROCEDURES

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

(b) Not later than 30 days after issuance of the final audit report, Contractor 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 Contractor from full and timely performance, in accordance with the terms of this contract.

(d) Contractor and subcontractor contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for

audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Contractor's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Contractor and approved by City contract manager to conform to the audit or review recommendations. Contractor agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by City at its sole discretion. Refusal by Contractor to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

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

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

   Accepted rates will be as follows:

   a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.

   b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.

   c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require Contractor to submit a revised independent CPA-audited ICR and audit

report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the Contractor's and/or the independent CPA's revisions.

3. If the Contractor fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this agreement.

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

7. SUBCONTRACTING

(a) Nothing contained in this contract or otherwise, shall create any contractual relation between City and any subcontractor(s), and no subcontract shall relieve Contractor of its responsibilities and obligations hereunder. Contractor agrees to be as fully responsible to City for the acts and omissions of its subcontractors(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 Contractor. Contractor's obligation to pay its subcontractors(s) is an independent obligation from City's obligation to make payments to the Contractor.

(b) Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by City's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

(c) All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subcontractors.

(d) Contractor shall pay its subcontractors within fifteen (15) calendar days from receipt of each payment made to the Contractor by the City

(e) Any substitution of subcontractors(s) must be approved in writing by City's Contract Administrator prior to assigning work to the subcontractor(s).

(f) Prompt Progress Payment

1. Contractor or subcontractor shall pay to any subcontractor, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed Contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of

the amount due on a progress payment from Contractor or subcontractor to a subcontractor, Contractor or subcontractor may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made.

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

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

8. EQUIPMENT PURCHASE

(a) Prior authorization in writing, by City's Contract Administrator shall be required before Contractor enters into any unbudgeted purchase order, or subcontract exceeding $5,000 for supplies, equipment, or Contractor services. Contractor 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 Contractor's Cost Proposal and exceeding $5,000, prior authorization by City's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of proposals must be adequately justified.

(c) Any equipment purchased as a result of this contract is subject to the following: Contractor 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 contract, or if the contract is terminated, Contractor 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 Contractor elects to keep the equipment, fair market value shall be determined at Contractor'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 Contractor, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by City. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars ($5,000) is credited to the project.

9. STATE PREVAILING WAGE RATES

(a) If this agreement or any subcontract contains public work elements then Contractor (and subcontractor, as applicable) shall be registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this agreement, including any subsequent amendments.

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

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

(d) Payroll Records

1. Contractor and each subcontractor shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor or subcontractor in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

   a. The information contained in the payroll record is true and correct.

   b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.

2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the Contractor under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by City representatives at all reasonable hours at the principal office of the Contractor.

The Contractor shall provide copies of certified payrolls or permit inspection of its records as follows:

a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.

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

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

3. Each Contractor shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

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

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

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

E. When prevailing wage rates apply, the Contractor is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the City Contract Administrator.

F. Penalty

1. The Contractor and any of its subcontractors shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the Contractor and any

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

2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor or subcontractor in meeting their respective prevailing wage obligations, or the willful failure by the Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the Contractor or subcontractor had knowledge of the obligations under the Labor Code. The Contractor is responsible for paying the appropriate rate, including any escalations that take place during the term of the agreement.

3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor or subcontractor.

4. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime Contractor of the project is not liable for the penalties described above unless the prime Contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime Contractor fails to comply with all of the following requirements:

   a. The agreement executed between the Contractor and the subcontractor for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.

   b. The Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees by periodic review of the certified payroll records of the subcontractor.

   c. Upon becoming aware of the subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, the Contractor shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

   d. Prior to making final payment to the subcontractor for work performed on the public works project, the Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor had paid the specified general prevailing rate of per diem wages to the subcontractor's employees on the public works project and any amounts due pursuant to Labor Code §1813.

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

6. If City determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if City did not retain sufficient money under the agreement to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Contractor shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by City.

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

H. Employment of Apprentices

1. If either this Agreement or any subcontract exceeds thirty thousand dollars ($30,000), the Contractor and any subcontractors under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

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

10. CONFLICT OF INTEREST

Without limiting the generality of the terms of section 8 to Exhibit C of this Agreement:

(a) During the term of this agreement, the Contractor shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this agreement or any ensuing City construction project. The Contractor 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) Contractor certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this agreement. Contractor agrees to advise City of any actual, apparent or potential conflicts

of interest that may develop subsequent to the date of execution of this agreement. Contractor further agrees to complete any statements of economic interest if required by either City ordinance or State law.

(c) Contractor hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

(d) Contractor hereby certifies that the Contractor or subcontractor and any firm affiliated with the Contractor or subcontractor that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this agreement, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

11. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

Contractor warrants that this contract 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 contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

12. STATEMENT OF COMPLIANCE

(a) Contractor's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Contractor has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

(b) During the performance of this Contract, Contractor and its subcontractors shall not shall not deny the Contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

(c) Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by City to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this agreement by reference and made a part hereof as if set forth in full.

(d) Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the City upon reasonable notice at any time during the normal business

hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or City shall require to ascertain compliance with this clause.

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

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

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

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

(i) Contractor, subrecipient or subcontractor will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the City components of the DBE Program Plan, Contractor, subrecipient or subcontractor will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin..

13. DEBARMENT AND SUSPENSION CERTIFICATION

(a) Contractor's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Contractor or any person associated therewith in the capacity of owner, partner, director, officer or manager:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

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

3. Does not have a proposed debarment pending; and

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

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

(c) Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

14. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

(a) Contractor and any subcontractors shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, The City shows a contract goal for DBEs. Contractor shall make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

1. Contractor shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is Contractor's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found here (https://dot.ca.gov/programs/civil-rights/dbe-search).

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

   100 percent counts if the materials or supplies are obtained from a DBE manufacturer.

   60 percent counts if the materials or supplies are purchased from a DBE regular dealer.

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

3. This agreement is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". By entering this federally-funded agreement Contractor will assist the City in a good faith effort to achieve California's statewide overall DBE goal.

(b) The goal for DBE participation for this agreement is 0 %. Participation by DBE Contractor or subcontractors shall be in accordance with information contained in Exhibit 10-O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the agreement. If a DBE subcontractor is unable to perform, Contractor must make a good faith effort to replace that subcontractor with another DBE subcontractor, if the goal is not otherwise met.

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

(d) Pursuant to 49 CFR 26.13(b) neither Contractor nor any subcontractor shall discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid subcontracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying Contractor from future proposing as non-responsible

(e) Termination and Substitution of DBE subcontractors

Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless Contractor or DBE subcontractor obtains the City's written consent. Contractor shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the City. Unless the City's consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid. The City authorizes a request to use other forces or sources of materials if Contractor shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.

2. The City stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the City's bond requirements.

3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.

4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).

5. Listed DBE's work is unsatisfactory and not in compliance with the contract.

6. Listed DBE is ineligible to work on the project because of suspension or debarment.

7. Listed DBE becomes bankrupt or insolvent.

8. Listed DBE voluntarily withdraws with written notice from the Contract

9. Listed DBE is ineligible to receive credit for the type of work required.

10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.

11. The City determines other documented good cause.

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

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

1. One or more of the reasons listed in the preceding paragraph.

2. Notices from Contractor to the DBE regarding the request.

3. Notices from the DBEs to Contractor regarding the request.

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

(f) Contractor shall:

1. Notify the City's contract administrator or designated representative of any changes to its anticipated DBE participation;

2. Provide this notification before starting the affected work;

3. Maintain records including:

Name and business address of each 1st-tier subcontractor;

Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier; and

Date of payment and total amount paid to each business;

4. Compile the information set forth in Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment and submit the completed form in accordance with the directions contained in the exhibit.

5. Compile the information set forth in Exhibit 10-G for each Task Order approved by the City and file a copy of the form with each invoice including charges for the referenced task order.

If Contractor is a DBE Contractor, it shall include the date of work performed by its own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify Contractor (if a subcontractor) or City (if the Contractor) in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify Contractor or City as appropriate in writing of the certification date. Contractor shall submit all notifications to the City. In addition, upon work completion, Contractor shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the City within 30 days of contract acceptance.

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

(g) A DBE is only eligible to be counted toward the agreement goal if it performs a commercially useful function (CUF) on the agreement. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the agreement, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the agreement is commensurate with the work it is actually performing, and other relevant factors.

(h) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

(i) If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its agreement with its own work force, or the DBE subcontracts a greater portion of the work of the agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

(j) Contractor shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE Contractor's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

(k) If a DBE subcontractor is decertified during the life of the agreement, the decertified subcontractor shall notify Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the agreement, the subcontractor shall notify Contractor in writing with the date of certification. Any changes should be reported to City's Contract Administrator within thirty (30) calendar days.

(l) After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the City.

(m) Any subcontract entered into as a result of this agreement shall contain all of the provisions of this section.

15. FUNDING REQUIREMENTS

(a) It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

(b) This contract is valid and enforceable only, if sufficient funds are made available to City for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or City governing board that may affect the provisions, terms, or funding of this contract in any manner.

(c) It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

(d) City has the option to void the contract under the 30-day termination clause pursuant to Section II, 3 (Termination) of this Exhibit E, or by mutual agreement to amend the contract to reflect any reduction of funds.

16. CHANGE IN TERMS

(a) This agreement may be amended or modified only by mutual written agreement of the parties.

(b) Contractor shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by City's Contract Administrator.

(c) There shall be no change in Contractor's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this contract, without prior written approval by City's Contract Administrator.

17. CONTINGENT FEE

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

securing business. For breach or violation of this warranty, City 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.

18. DISPUTES

(a) Any dispute, other than audit, concerning a question of fact arising under this agreement that is not disposed of by agreement shall be decided by a committee consisting of City's Contract Administrator and the Director of Public Works, who may consider written or verbal information submitted by Contractor.

(b) Not later than thirty (30) calendar days after completion of all work under the agreement , Contractor may request review by the City Council of the City of Saratoga of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

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

19. INSPECTION OF WORK

Contractor and any subcontractor shall permit City, 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.

20. SAFETY

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

(b) 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. Contractor shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Contractor shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

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

(d) Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Section 21.

21. CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR

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

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

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

22. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, Contractor 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 Contractor within the immediately preceding two-year period, because of Contractor's failure to comply with an order of a federal court that orders Contractor to comply with an order of the National Labor Relations Board.

23. EVALUATION OF CONTRACTOR

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

24. PROMPT PAYMENT

The City shall make any progress payment less any amounts retained pursuant to this agreement within 30 days after receipt of an undisputed and properly submitted payment request from Contractor. If the City fails to pay promptly, the City shall pay interest to the Contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the City shall act in accordance with both of the following:

(a) Each payment request shall be reviewed by the City as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

(b) Any payment request determined not to be a proper payment request suitable for payment shall be returned to Contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

25. SUPPLEMENTAL EXHIBITS

This Exhibit E includes the following supplemental exhibits referenced herein:

Exhibit 9-E – Sample Evaluation of Good Faith Efforts (for Consultant Reference).
Exhibit 9-F – Disadvantaged Business Enterprise (DBE) Running Tally of Payments.
Exhibit 10-G – Individual A&E Task Order DBE Tracking Sheet
Exhibit 10-O1 – Consultant Proposal DBE Commitment (Selected Consultant to submit to City prior of executed Contract)
Exhibit 10-O2 – Consultant Contract DBE Commitment (Selected Consultant to submit to City prior of executed Contract)
Exhibit 15-H: Proposer/Contractor Good Faith Efforts. (Selected Consultant to submit to City prior of executed Contract if DBE Goal cannot be met)
Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors (Selected Consultant to submit at end of Project)
Exhibit 17-O - Disadvantaged Business Enterprises (DBE) Certification Status Change (Selected Consultant to submit if required)

Each of these exhibits is available as a fillable form at this website:
https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

- End of Exhibit E -